

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, 2021

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 26, 2021 – 270,128,597 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,” “will,” “may” and similar expressions or by using future dates in connection with any discussion of, among other things, operating 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, anticipated disruptions to our operations and industry due to the COVID-19 pandemic, changes in global supply and demand conditions and prices for our products, international trade duties and other aspects of international trade policy, the integration of Big River Steel in our existing business, business strategies related to the combined business 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, 2020 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” refer 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)

	Three Months Ended June 30,		Six Months Ended June 30,	
(Dollars in millions, except per share amounts)	2021	2020	2021	2020
Net sales:				
Net sales	\$ 4,684	\$ 2,000	\$ 8,053	\$ 4,397
Net sales to related parties (Note 19)	341	91	636	442
Total (Note 6)	5,025	2,091	8,689	4,839
Operating expenses (income):				
Cost of sales	3,678	2,274	6,752	4,879
Selling, general and administrative expenses	106	62	208	134
Depreciation, depletion and amortization	202	159	391	319
(Earnings) loss from investees	(35)	39	(49)	47
Asset impairment charges (Note 1)	28	—	28	263
Gain on equity investee transactions (Note 5)	—	—	(111)	(31)
Restructuring and other charges (Note 20)	31	89	37	130
Net gain on sale of assets	(15)	—	(15)	—
Other (gains) losses, net	(4)	—	(11)	5
Total	3,991	2,623	7,230	5,746
Earnings (loss) before interest and income taxes	1,034	(532)	1,459	(907)
Interest expense	84	64	176	114
Interest income	(1)	(1)	(2)	(5)
Loss on debt extinguishment	1	—	256	—
Other financial costs	4	7	22	4
Net periodic benefit income	(29)	(8)	(60)	(16)
Net interest and other financial costs	59	62	392	97
Earnings (loss) before income taxes	975	(594)	1,067	(1,004)
Income tax benefit (Note 12)	(37)	(5)	(36)	(24)
Net earnings (loss)	1,012	(589)	1,103	(980)
Less: Net earnings attributable to noncontrolling interests	—	—	—	—
Net earnings (loss) attributable to United States Steel Corporation	\$ 1,012	\$ (589)	\$ 1,103	\$ (980)
Earnings (loss) per common share (Note 13):				
Earnings (loss) per share attributable to United States Steel Corporation stockholders:				
-Basic	\$ 3.75	\$ (3.36)	\$ 4.25	\$ (5.67)
-Diluted	\$ 3.53	\$ (3.36)	\$ 4.02	\$ (5.67)

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

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

(Dollars in millions)	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net earnings (loss)	\$ 1,012	\$ (589)	\$ 1,103	\$ (980)
Other comprehensive income (loss), net of tax:				
Changes in foreign currency translation adjustments	23	20	(24)	(3)
Changes in pension and other employee benefit accounts	205	29	229	81
Changes in derivative financial instruments	(31)	15	(51)	10
Total other comprehensive income, net of tax	197	64	154	88
Comprehensive income (loss) including noncontrolling interest	1,209	(525)	1,257	(892)
Comprehensive income attributable to noncontrolling interest	—	—	—	—
Comprehensive income (loss) attributable to United States Steel Corporation	\$ 1,209	\$ (525)	\$ 1,257	\$ (892)

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, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents (Note 7)	\$ 1,329	\$ 1,985
Receivables, less allowance of \$43 and \$34	1,903	914
Receivables from related parties (Note 19)	107	80
Inventories (Note 8)	1,914	1,402
Assets held for sale	154	—
Other current assets	231	51
Total current assets	5,638	4,432
Long-term restricted cash (Note 7)	95	130
Operating lease assets	192	214
Property, plant and equipment	19,757	17,704
Less accumulated depreciation and depletion	12,382	12,260
Total property, plant and equipment, net	7,375	5,444
Investments and long-term receivables, less allowance of \$4 and \$5	572	1,177
Intangibles, net (Note 9)	533	129
Deferred income tax benefits (Note 12)	44	22
Goodwill (Note 9)	909	4
Other noncurrent assets	726	507
Total assets	\$ 16,084	\$ 12,059
Liabilities		
Current liabilities:		
Accounts payable and other accrued liabilities	\$ 2,675	\$ 1,779
Accounts payable to related parties (Note 19)	144	105
Payroll and benefits payable	425	308
Accrued taxes	208	154
Accrued interest	100	59
Current operating lease liabilities	56	59
Short-term debt and current maturities of long-term debt (Note 15)	763	192
Liabilities held for sale	80	—
Total current liabilities	4,451	2,656
Noncurrent operating lease liabilities	145	163
Long-term debt, less unamortized discount and debt issuance costs (Note 15)	4,803	4,695
Employee benefits	208	322
Deferred income tax liabilities (Note 12)	46	11
Deferred credits and other noncurrent liabilities	488	333
Total liabilities	10,141	8,180
Contingencies and commitments (Note 21)		
Stockholders' Equity (Note 17):		
Common stock (279,242,676 and 229,105,589 shares issued) (Note 13)	279	229
Treasury stock, at cost (9,118,582 shares and 8,673,131 shares)	(183)	(175)
Additional paid-in capital	5,168	4,402
Retained earnings (accumulated deficit)	480	(623)
Accumulated other comprehensive income (loss) (Note 18)	107	(47)
Total United States Steel Corporation stockholders' equity	5,851	3,786
Noncontrolling interests	92	93
Total liabilities and stockholders' equity	\$ 16,084	\$ 12,059

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,	
	2021	2020
Increase (decrease) in cash, cash equivalents and restricted cash		
Operating activities:		
Net earnings (loss)	\$ 1,103	\$ (980)
Adjustments to reconcile to net cash provided by operating activities:		
Depreciation, depletion and amortization	391	319
Asset impairment charges (Note 1)	28	263
Gain on equity investee transactions	(111)	(31)
Restructuring and other charges (Note 20)	37	130
Loss on debt extinguishment	256	—
Pensions and other postretirement benefits	(46)	(10)
Deferred income taxes (Note 12)	(77)	(12)
Net gain on sale of assets	(15)	—
Equity investee (earnings) loss, net of distributions received	(49)	47
Changes in:		
Current receivables	(875)	134
Inventories	(343)	244
Current accounts payable and accrued expenses	789	(420)
Income taxes receivable/payable	47	10
All other, net	(32)	(56)
Net cash provided by (used in) operating activities	1,103	(362)
Investing activities:		
Capital expenditures	(284)	(455)
Acquisition of Big River Steel, net of cash acquired (Note 5)	(625)	—
Investment in Big River Steel	—	(3)
Proceeds from sale of assets	25	1
Proceeds from sale of ownership interests in equity investees	—	8
Other investing activities	(1)	(4)
Net cash used in investing activities	(885)	(453)
Financing activities:		
Repayment of short-term debt (Note 15)	(180)	—
Revolving credit facilities - borrowings, net of financing costs (Note 15)	50	1,462
Revolving credit facilities - repayments (Note 15)	(911)	(644)
Issuance of long-term debt, net of financing costs (Note 15)	825	1,048
Repayment of long-term debt (Note 15)	(1,418)	(6)
Proceeds from public offering of common stock (Note 22)	790	410
Proceeds from Stelco Option Agreement	—	40
Other financing activities	(11)	(4)
Net cash (used in) provided by financing activities	(855)	2,306
Effect of exchange rate changes on cash	(9)	(1)
Net (decrease) increase in cash, cash equivalents and restricted cash	(646)	1,490
Cash, cash equivalents and restricted cash at beginning of year (Note 7)	2,118	939
Cash, cash equivalents and restricted cash at end of period (Note 7)	\$ 1,472	\$ 2,429
Non-cash investing and financing activities:		
Change in accrued capital expenditures	\$ (26)	\$ (98)
U. S. Steel common stock issued for employee/non-employee director stock plans	27	18
Capital expenditures funded by finance lease borrowings	10	30
Export Credit Agreement (ECA) financing	23	34

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 including consideration of forecasted financial information in context with other information reasonably available to us. However, our future assessment of our current expectations, including consideration of the unknown future impacts of the COVID-19 pandemic, 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, 2020, which should be read in conjunction with these condensed financial statements.

Asset Impairment

In May 2019, U. S. Steel announced that it planned to construct a new endless casting and rolling facility at its Edgar Thomson Plant in Braddock, Pennsylvania, and a cogeneration facility at its Clairton Plant in Clairton, Pennsylvania, both part of the Company's Mon Valley Works. The Company purchased certain equipment for this project before delaying groundbreaking in March 2020 in response to COVID-19. In April 2021, the Company determined not to pursue this project and is re-evaluating uses for the already purchased equipment. An impairment of \$28 million was recognized for this project during the three-month period ended June 30, 2021.

There were no triggering events that required an impairment evaluation of our long-lived asset groups as of June 30, 2021.

2. **New Accounting Standards**

In August 2020, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* (ASU 2020-06). ASU 2020-06 simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. ASU 2020-06 requires entities to provide expanded disclosures about the terms and features of convertible instruments and amends certain guidance in ASC 260 on the computation of EPS for convertible instruments and contracts on an entity's own equity. ASU 2020-06 is effective for public companies for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years, with early adoption of all amendments in the same period permitted. The Company is continuing to assess the impact of adoption of the ASU.

3. **Recently Adopted Accounting Standards**

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740) - Simplifying the Accounting for Income Taxes* (ASU 2019-12). ASU 2019-12 simplifies accounting for income taxes by removing certain exceptions from the general principles in Topic 740 including elimination of the exception to the incremental approach for intraperiod tax allocation when there is a loss from continuing operations and income or a gain from other items such as other comprehensive income. U. S. Steel adopted this guidance on January 1, 2021. The adoption of this guidance did not have a material impact on the Company's Condensed Consolidated Financial Statements.

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 Mini Mill segment reflects the acquisition of Big River Steel after the purchase of the remaining equity interest on January 15, 2021. See Note 5 for further details. Prior to the purchase, the equity earnings of Big River Steel were included in the Other segment. The Tubular Products segment includes the newly constructed EAF at our Fairfield Tubular Operations in Fairfield, Alabama. The results of our railroad, real estate businesses and the previously held equity method investment in Big River Steel are combined and disclosed in the Other category.

The results of segment operations for the three months ended June 30, 2021 and 2020 are:

(In millions) Three Months Ended June 30, 2021	Customer Sales	Intersegment Sales	Net Sales	Earnings (loss) from investees	Earnings (loss) before interest and income taxes
Flat-Rolled	\$ 2,991	\$ 63	\$ 3,054	\$ 32	\$ 579
Mini Mill	759	142	901	—	284
USSE	1,078	1	1,079	—	207
Tubular	184	3	187	3	—
Total reportable segments	5,012	209	5,221	35	1,070
Other	13	27	40	—	14
Reconciling Items and Eliminations	—	(236)	(236)	—	(50)
Total	\$ 5,025	\$ —	\$ 5,025	\$ 35	\$ 1,034
Three Months Ended June 30, 2020					
Flat-Rolled	\$ 1,497	\$ 42	\$ 1,539	\$ (16)	\$ (329)
USSE	403	1	404	—	(26)
Tubular	182	3	185	2	(47)
Total reportable segments	2,082	46	2,128	(14)	(402)
Other	9	19	28	(25)	(21)
Reconciling Items and Eliminations	—	(65)	(65)	—	(109)
Total	\$ 2,091	\$ —	\$ 2,091	\$ (39)	\$ (532)

The results of segment operations for the six months ended June 30, 2021 and 2020 are:

(In millions) Six Months Ended June 30, 2021	Customer Sales	Intersegment Sales	Net Sales	Earnings (Loss) from investees	Earnings (loss) before interest and income taxes
Flat-Rolled	\$ 5,263	\$ 106	\$ 5,369	\$ 37	\$ 725
Mini Mill	1,209	204	1,413	—	416
USSE	1,876	2	1,878	—	312
Tubular	318	7	325	6	(29)
Total reportable segments	8,666	319	8,985	43	1,424
Other	23	56	79	6	22
Reconciling Items and Eliminations	—	(375)	(375)	—	13
Total	\$ 8,689	\$ —	\$ 8,689	\$ 49	\$ 1,459
Six Months Ended June 30, 2020					
Flat-Rolled	\$ 3,471	\$ 104	\$ 3,575	\$ (12)	\$ (364)
USSE	908	2	910	—	(40)
Tubular	437	6	443	3	(95)
Total reportable segments	4,816	112	4,928	(9)	(499)
Other	23	47	70	(38)	(20)
Reconciling Items and Eliminations	—	(159)	(159)	—	(388)
Total	\$ 4,839	\$ —	\$ 4,839	\$ (47)	\$ (907)

A summary of total assets by segment is as follows:

(In millions)	June 30, 2021	December 31, 2020
Flat-Rolled	\$ 7,468	\$ 7,099
Mini Mill	4,246	—
USSE	5,871	5,502
Tubular	1,026	887
Total reportable segments	\$ 18,611	\$ 13,488
Other	\$ 313	\$ 911
Corporate, reconciling items, and eliminations ^(a)	(2,840)	(2,340)
Total assets	\$ 16,084	\$ 12,059

^(a) The majority of Corporate, reconciling items, and eliminations total assets 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,	
	2021	2020	2021	2020
Items not allocated to segments:				
Gain on previously held investment in Big River Steel	\$ —	\$ —	\$ 111	\$ —
Big River Steel - inventory step-up amortization	—	—	(24)	—
Big River Steel - unrealized losses ^(a)	(6)	—	(15)	—
Big River Steel - acquisition costs	—	—	(9)	—
Restructuring and other charges (Note 20)	(31)	(89)	(37)	(130)
Asset impairment charges (Note 1)	(28)	—	(28)	(263)
Property Sale	15	—	15	—
Gain on previously held investment in UPI	—	—	—	25
Tubular inventory impairment charge	—	(24)	—	(24)
December 24, 2018 Clairton coke making facility fire	—	4	—	4
Total reconciling items	\$ (50)	\$ (109)	\$ 13	\$ (388)

^(a) Big River Steel – unrealized losses represent the post-acquisition mark-to-market impacts of hedging instruments acquired with the purchase of the remaining equity interest in Big River Steel on January 15, 2021. See Note 14 for further details.

5. Acquisitions and Disposition

Transtar Disposition

On July 28, 2021, U. S. Steel sold 100 percent of the equity interests in its wholly-owned short-line railroad, Transtar, LLC (Transtar) to an affiliate of Fortress Transportation and Infrastructure Investors, LLC for a cash purchase price of \$640 million subject to certain customary adjustments as set forth in the Membership Interest Purchase Agreement. In connection with the closing of the transaction, the Company entered into certain ancillary agreements including a railway services agreement, providing for continued rail services for its Gary and Mon Valley Works facilities, and a transition services agreement. Because Transtar does not represent a significant component of U. S. Steel's business and does not constitute a reportable business segment, its results are reported in the Other category. See Note 4 for further details. The assets and liabilities that are included in the transaction are reported as assets held for sale and liabilities held for sale in the Condensed Consolidated Balance Sheet as of June 30, 2021. Assets held for sale consist primarily of property, plant and equipment and receivables of \$129 million and \$10 million, respectively. Liabilities held for sale primarily consist of accounts payable and employee benefits of \$33 million and \$28 million, respectively.

Big River Steel Acquisition

On January 15, 2021, U. S. Steel purchased the remaining equity interest in Big River Steel for approximately \$625 million in cash net of \$36 million and \$62 million in cash and restricted cash received, respectively, and the assumption of liabilities of approximately \$50 million. There were acquisition related costs of approximately \$9 million during the six months ended June 30, 2021.

Prior to the closing of the acquisition on January 15, 2021, U. S. Steel accounted for its 49.9% equity interest in Big River Steel under the equity method as control and risk of loss were shared among the partnership members. Using step

acquisition accounting the Company increased the value of its previously held equity investment to its fair value of \$770 million which resulted in a gain of approximately \$111 million. The gain was recorded in gain on equity investee transactions in the Condensed Consolidated Statement of Operations.

The acquisition has been accounted for in accordance with ASC 805, *Business combinations*. There were step-ups to fair value of approximately \$308 million, \$194 million and \$24 million for property, plant and equipment, debt and inventory, respectively. An intangible asset for customer relationships and goodwill of approximately \$413 million and \$905 million were also recorded, respectively. Goodwill represents the excess of purchase price over the fair market value of the net assets. Goodwill is primarily attributable to Big River Steel's operational abilities, workforce and the anticipated benefits from their recent expansion and will be partially tax deductible. The inventory step-up was fully amortized as of March 31, 2021, the intangible asset will be amortized over a 22-year period and the debt step-up will be amortized over the contractual life of the underlying debt. See Note 15 for further details.

The value of Big River Steel was determined using Level 3 valuation techniques. Level 3 valuation techniques include inputs to the valuation methodology that are considered unobservable and significant to the fair value measurement. A significant factor in determining the equity value was the discounted forecasted cash flows of Big River Steel. Forecasted cash flows are primarily impacted by the forecasted market price of steel and metallic inputs as well as the expected timing of significant capital expenditures. The model utilized a risk adjusted discount rate of 11.0% and a terminal growth rate of 2%.

The following table presents the preliminary allocation of the aggregate purchase price based on estimated fair values:

	(in millions)
Assets Acquired:	
Receivables	\$ 166
Receivables with U. S. Steel ⁽¹⁾	99
Inventories	184
Other current assets	16
Property, plant and equipment	2,188
Intangibles	413
Goodwill	905
Other noncurrent assets	19
Total Assets Acquired	<u>\$ 3,990</u>
Liabilities Assumed:	
Accounts payable and accrued liabilities	\$ 224
Payroll and benefits payable	27
Accrued taxes	9
Accrued interest	33
Short-term debt and current maturities of long-term debt	29
Long-term debt	1,997
Deferred income tax liabilities	44
Deferred credits and other long-term liabilities	182
Total Liabilities Assumed	<u>\$ 2,545</u>
Fair value of previously held investment in Big River Steel	\$ 770
Purchase price, including assumed liabilities and net of cash acquired	<u>675</u>
Difference in assets acquired and liabilities assumed	<u>\$ 1,445</u>

⁽¹⁾ The transaction to purchase Big River Steel included receivables for payments made by Big River Steel on behalf of U. S. Steel for retention bonuses of \$22 million that impacted the previously held equity investment and for U. S. Steel liabilities assumed in the purchase of approximately \$50 million. In addition, there were assumed receivables of approximately \$27 million for steel substrate sales from Big River Steel to U. S. Steel. The receivables with U. S. Steel eliminate in consolidation with offsetting intercompany payables from U. S. Steel.

U. S. Steel is continuing to conform accounting policies and procedures and evaluate assets and liabilities assumed. During the one-year measurement period, we will continue to obtain information to assist in finalizing the fair value of assets acquired and liabilities assumed, which may differ materially from these preliminary estimates. The final purchase price allocation may include changes in allocations to intangible assets, such as customer relationships, as well as

goodwill, changes to the fair value of long-term debt and other changes to assets and liabilities. We will apply any material adjustments in the reporting period in which the adjustments are determined.

The following unaudited pro forma information for U. S. Steel includes the results of the Big River Steel acquisition as if it had been consummated on January 1, 2020. The unaudited pro forma information is based on historical information and is adjusted for amortization of the intangible asset, property, plant and equipment and debt fair value step-ups discussed above. Non-recurring acquisition related items included in the 2020 period include \$111 million for the gain on previously held equity investment, \$9 million in acquisition related costs and \$24 million in inventory step-up amortization related to the purchase of the remaining interest in Big River Steel. In addition, costs for non-recurring retention bonuses of \$44 million that occurred in January 2021 prior to the purchase of the remaining equity interest are included in the 2020 period. The pro forma information does not include any anticipated cost savings or other effects of the integration of Big River Steel. Accordingly, the unaudited pro forma information does not necessarily reflect the actual results that would have occurred, nor is it necessarily indicative of future results of operations. Pro forma adjustments were not tax-effected in 2020 as U. S. Steel had a full valuation allowance on its domestic deferred tax assets.

(in millions)	Six Months Ended June 30,			
	2021		2020	
Net sales	\$	8,761	\$	5,289
Net earnings (loss)	\$	1,033	\$	(967)

USS-POSCO Industries (UPI) Acquisition

On February 29, 2020, U. S. Steel purchased the remaining equity interest in USS-POSCO Industries (UPI) that it did not already own, now known as USS-UPI, LLC, from its joint venture partner for \$3 million, net of cash received of \$2 million. There was an assumption of accounts payable owed to U. S. Steel for prior sales of steel substrate of \$135 million associated with the purchase that is reflected as a reduction in receivables from related parties on the Company's Condensed Consolidated Balance Sheet.

Using step acquisition accounting the Company increased the value of its previously held equity investment to its fair value of \$5 million which resulted in a gain of approximately \$25 million. The gain was recorded in gain on equity investee transactions in the Condensed Consolidated Statement of Operations.

Receivables of \$44 million, inventories of \$96 million, accounts payable and accrued liabilities of \$19 million, current portion of long-term debt of \$55 million and payroll and employee benefits liabilities of \$78 million were recorded with the acquisition. Property, plant and equipment of \$97 million which included a fair value step-up of \$47 million and an intangible asset of \$54 million were also recorded on the Company's Condensed Consolidated Balance Sheet. The intangible asset, which will be amortized over ten years, arises from a land lease contract, under which a certain portion of payment owed to UPI is realized in the form of deductions from electricity costs.

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, 2021 and 2020, respectively:

Net Sales by Product (In millions):

Three Months Ended June 30, 2021	Flat-Rolled	Mini Mill	USSE	Tubular	Other	Total
Semi-finished	\$ —	\$ —	\$ 46	\$ —	\$ —	\$ 46
Hot-rolled sheets	653	451	561	—	—	1,665
Cold-rolled sheets	889	127	102	—	—	1,118
Coated sheets	1,020	179	334	—	—	1,533
Tubular products	—	—	14	178	—	192
All Other ^(a)	429	2	21	6	13	471
Total	\$ 2,991	\$ 759	\$ 1,078	\$ 184	\$ 13	\$ 5,025

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

Three Months Ended June 30, 2020	Flat-Rolled	USSE	Tubular	Other	Total
Semi-finished	\$ 31	\$ 1	\$ —	\$ —	\$ 32
Hot-rolled sheets	239	146	—	—	385
Cold-rolled sheets	342	26	—	—	368
Coated sheets	713	202	—	—	915
Tubular products	—	11	178	—	189
All Other ^(a)	172	17	4	9	202
Total	\$ 1,497	\$ 403	\$ 182	\$ 9	\$ 2,091

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

Six Months Ended June 30, 2021	Flat-Rolled	Mini Mill	USSE	Tubular	Other	Total
Semi-finished	\$ 12	\$ —	\$ 49	\$ —	\$ —	\$ 61
Hot-rolled sheets	1,103	700	947	—	—	2,750
Cold-rolled sheets	1,673	206	185	—	—	2,064
Coated sheets	1,898	300	632	—	—	2,830
Tubular products	—	—	24	306	—	330
All Other ^(a)	577	3	39	12	23	654
Total	\$ 5,263	\$ 1,209	\$ 1,876	\$ 318	\$ 23	\$ 8,689

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

Six Months Ended June 30, 2020	Flat-Rolled	USSE	Tubular	Other	Total
Semi-finished	\$ 58	\$ 2	\$ —	\$ —	\$ 60
Hot-rolled sheets	741	351	—	—	1,092
Cold-rolled sheets	940	71	—	—	1,011
Coated sheets	1,424	431	—	—	1,855
Tubular products	—	20	429	—	449
All Other ^(a)	308	33	8	23	372
Total	\$ 3,471	\$ 908	\$ 437	\$ 23	\$ 4,839

(a) 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:

(In millions)	June 30, 2021	June 30, 2020
Cash and cash equivalents	\$ 1,329	\$ 2,300
Restricted cash in other current assets	47	1
Restricted cash in other noncurrent assets	95	128
Transtar cash in assets held for sale	\$ 1	\$ —
Total cash, cash equivalents and restricted cash	\$ 1,472	\$ 2,429

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

8. Inventories

The LIFO method is the predominant method of inventory costing for our Flat-Rolled and Tubular segments. The 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, 2021 and December 31, 2020, the LIFO method accounted for 46 percent and 59 percent of total inventory values, respectively.

(In millions)	June 30, 2021	December 31, 2020
Raw materials	\$ 658	\$ 416
Semi-finished products	900	633
Finished products	305	300
Supplies and sundry items	51	53
Total	\$ 1,914	\$ 1,402

Current acquisition costs were estimated to exceed the above inventory values by \$667 million and \$848 million at June 30, 2021 and December 31, 2020, respectively. As a result of the liquidation of LIFO inventories, cost of sales decreased and earnings before interest and income taxes increased by \$6 million and \$7 million for the three months and six months ended June 30, 2021, respectively. Cost of sales increased and earnings before interest and income taxes decreased by \$1 million and \$6 million for the three months and six months ended June 30, 2020, 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, 2021			As of December 31, 2020			
		Gross Carrying Amount	Accumulated Amortization	Net Amount	Gross Carrying Amount	Accumulated Impairment	Accumulated Amortization	Net Amount
Customer relationships	22 Years	\$ 413	\$ 9	\$ 404	\$ 132	\$ 55	\$ 77	\$ —
Patents	10-15 Years	17	10	7	22	7	10	5
Energy Contract	10 Years	54	7	47	54	—	5	49
Other	4-20 Years	—	—	—	14	5	9	—
Total amortizable intangible assets		\$ 484	\$ 26	\$ 458	\$ 222	\$ 67	\$ 101	\$ 54

Total estimated amortization expense for the remainder of 2021 is \$13 million. We expect approximately \$25 million in annual amortization expense through 2026 and approximately \$320 million in remaining amortization expense thereafter.

The carrying amount of acquired water rights with indefinite lives as of June 30, 2021 and December 31, 2020 totaled \$75 million.

Below is a summary of goodwill by segment for the six months ended June 30, 2021:

	Flat-Rolled	Mini Mill	USSE	Tubular	Total
Balance at December 31, 2020	\$ —	\$ —	\$ 4	\$ —	\$ 4
Additions	—	905	—	—	905
Balance at June 30, 2021	\$ —	\$ 905	\$ 4	\$ —	\$ 909

10. Pensions and Other Benefits

The following table reflects the components of net periodic benefit cost (income) for the three months ended June 30, 2021 and 2020:

(In millions)	Pension Benefits		Other Benefits	
	2021	2020	2021	2020
Service cost	\$ 14	\$ 13	\$ 3	\$ 3
Interest cost	41	48	12	16
Expected return on plan assets	(89)	(84)	(20)	(20)
Amortization of prior service credit	1	1	(7)	(2)
Amortization of actuarial net loss (gain)	37	36	(6)	(4)
Net periodic benefit cost (income), excluding below	4	14	(18)	(7)
Multiemployer plans	18	18	—	—
Settlement, termination and curtailment losses ^(a)	3	2	—	—
Net periodic benefit cost (income)	\$ 25	\$ 34	\$ (18)	\$ (7)

(a) During the three months ended June 30, 2021 the pension plan incurred curtailment charges of approximately \$3 million with the sale of Transtar. For the three months ended June 30, 2020 the pension plan incurred special termination charges of \$2 million due to workforce restructuring.

The following table reflects the components of net periodic benefit cost (income) for the six months ended June 30, 2021 and 2020:

(In millions)	Pension Benefits		Other Benefits	
	2021	2020	2021	2020
Service cost	\$ 28	\$ 25	\$ 6	\$ 6
Interest cost	81	96	24	32
Expected return on plan assets	(178)	(165)	(40)	(40)
Amortization of prior service cost	1	1	(14)	(4)
Amortization of actuarial net loss (gain)	75	72	(12)	(8)
Net periodic benefit cost (income), excluding below	7	29	(36)	(14)
Multiemployer plans	37	39	—	—
Settlement, termination and curtailment losses ^(a)	3	8	—	—
Net periodic benefit cost (income)	\$ 47	\$ 76	\$ (36)	\$ (14)

(a) During the six months ended June 30, 2021 the pension plan incurred curtailment charges of approximately \$3 million with the sale of Transtar. For the six months ended June 30, 2020 the pension plan incurred settlement and special termination charges of approximately \$8 million due to workforce restructuring and lump sum payments made to certain individuals

Employer Contributions

During the first six months of 2021, U. S. Steel made cash payments of \$37 million to the Steelworkers' Pension Trust and \$2 million of pension payments not funded by trusts.

During the first six months of 2021, cash payments of \$18 million were made for other postretirement benefit payments not funded by trusts.

Company contributions to defined contribution plans totaled \$11 million and \$4 million for the three months ended June 30, 2021 and 2020, respectively. Company contributions to defined contribution plans totaled \$21 million and \$15 million for the six months ended June 30, 2021 and 2020, respectively.

Transtar Disposition

In connection with the Transtar sale, U. S. Steel remeasured its main pension benefit plan as of June 30, 2021. As a result of the remeasurement, the net pension obligation was reduced by \$255 million and the funded status level of plan increased to 103 percent.

11. Stock-Based Compensation Plans

U. S. Steel has outstanding stock-based compensation awards that were granted by the Compensation & Organization Committee of the Board of Directors (Committee), or its designee, under the 2005 Stock Incentive Plan (2005 Plan) and the 2016 Omnibus Incentive Compensation Plan, as amended and restated (Omnibus Plan). The Company's stockholders approved the Omnibus Plan and authorized the Company to issue up to 32,700,000 shares 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, 2021, there were 16,428,281 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 2021 and 2020.

Grant Details	2021		2020	
	Shares ^(a)	Fair Value ^(b)	Shares ^(a)	Fair Value ^(b)
Restricted Stock Units	1,492,880	\$ 18.30	2,640,690	\$ 8.82
Performance Awards ^(c)				
TSR	306,930	\$ 19.46	671,390	\$ 8.19
ROCE ^(d)	485,900	\$ 17.92	—	\$ —

^(a) The share amounts shown in this table do not reflect an adjustment for estimated forfeitures.

^(b) Represents the per share weighted average for all grants during the period.

^(c) The number of performance awards shown represents the target share grant of the award.

^(d) The ROCE awards granted in 2020 and a portion of ROCE awards granted in 2021 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 \$15 million and \$9 million in the three-month periods ended June 30, 2021 and 2020, respectively and \$26 million and \$13 million in the first six months of 2021 and 2020 respectively.

As of June 30, 2021, total future compensation expense related to nonvested stock-based compensation arrangements was \$48 million, and the weighted average period over which this expense is expected to be recognized is approximately 17 months.

Restricted stock units awarded as part of annual grants generally vest ratably over three years. Their fair value is the 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 stockholder return compared to the total stockholder return of a peer group of companies meets specified performance criteria with each year in the three-year performance period weighted at 20 percent and the full three-year performance weighted at 40 percent. TSR performance awards can vest at between zero and 200 percent of the target award. The fair value of the TSR 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 the specified ROCE performance metric. ROCE performance awards can vest between zero and 200 percent of the target award. The fair value of the ROCE performance awards is the average market price of the underlying common stock on the date of grant.

12. Income Taxes

Tax benefit

For the six months ended June 30, 2021 and 2020, the Company recorded a tax benefit of \$36 million and \$24 million, respectively. The tax benefit for the first six months of 2021 was 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.

The tax benefit for the six months ended June 30, 2021 includes a benefit of \$262 million for the release of the domestic valuation allowance recorded against domestic deferred tax assets that are more likely than not to be realized. During the second quarter of 2021, the Company evaluated all available positive and negative evidence, including the impact of profitability generated from current year operations and future projections of profitability. As a result, the Company determined that all of its domestic deferred tax assets were more likely than not to be realized with the exception of certain of its state net operating losses and state tax credits and reversed the valuation allowance against those deferred tax assets accordingly.

The tax benefit for the six months ended June 30, 2020 includes a \$14 million benefit related to recording a loss from continuing operations and income from other comprehensive income categories.

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 2021 pretax results for U.S. and foreign income or loss vary from estimates applied herein, the actual tax provision or benefit recognized in 2021 could be materially different from the forecasted amount used to estimate the tax benefit for the six months ended June 30, 2021.

13. Earnings and Dividends Per Common Share

Earnings (Loss) 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 (loss) per common share for the three and six months ended June 30, 2021 and June 30, 2020 were as follows.

(Dollars in millions, except per share amounts)	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Earnings (loss) attributable to United States Steel Corporation stockholders	\$ 1,012	\$ (589)	\$ 1,103	\$ (980)
Weighted-average shares outstanding (in thousands):				
Basic	269,872	175,327	259,668	172,775
Effect of Senior Convertible Notes	11,975	—	10,439	—
Effect of stock options, restricted stock units and performance awards	4,490	—	4,405	—
Adjusted weighted-average shares outstanding, diluted	286,337	175,327	274,512	172,775
Basic earnings (loss) per common share	\$ 3.75	\$ (3.36)	\$ 4.25	\$ (5.67)
Diluted earnings (loss) per common share	\$ 3.53	\$ (3.36)	\$ 4.02	\$ (5.67)

Excluded from the computation of diluted earnings (loss) per common share due to their anti-dilutive effect were 0.9 million and 1.3 million outstanding securities granted under the Omnibus Plan for the three and six months ended June 30, 2021, respectively and 5.9 million and 5.4 million outstanding securities granted under the Omnibus Plan for the three and six months ended June 30, 2020, respectively.

Dividends Paid Per Share

The dividend for each of the first and second quarters of 2021 and 2020 was one cent per common share.

14. Derivative Instruments

The USSE segment uses foreign exchange forward sales contracts (foreign exchange forwards) to exchange euros for U.S. dollars (USD), our Flat-Rolled segment used foreign exchange forwards to exchange USD for Canadian dollars and our Mini Mill segment uses foreign exchange forwards to exchange USD for euros. All of our foreign exchange forwards have maturities no longer than 13 months and are used to mitigate the risk of foreign currency exchange rate fluctuations and manage our foreign currency requirements. The USSE and Flat-Rolled segments use hedge accounting for their foreign exchange forwards. The Mini Mill segment has not elected hedge accounting; therefore, the changes in the fair value of their foreign exchange forwards are recognized immediately in the Condensed Consolidated Statements of Operations (mark-to-market accounting).

The Flat-Rolled and USSE segments also use financial swaps to protect from the commodity price risk associated with purchases of natural gas, zinc, tin and electricity (commodity purchase swaps). We elected cash flow hedge accounting for Flat-Rolled commodity purchase swaps for natural gas, zinc and tin and use mark-to-market accounting for electricity swaps used in our domestic operations and for commodity purchase swaps used in our European operations. The maximum derivative contract duration for commodity purchase swaps where hedge accounting was elected and was not elected is six months and 30 months, respectively.

The Flat-Rolled and Mini Mill segments have entered into financial swaps that are used to partially manage the sales price risk of certain hot-rolled coil sales (sales swaps). The Flat-Rolled segment uses hedge accounting for its sales swaps and the Mini Mill segment uses mark-to-market accounting for its sales swaps. Sales swaps have maturities of up to six months.

The table below shows the outstanding swap quantities used to hedge forecasted purchases and sales as of June 30, 2021 and June 30, 2020:

Hedge Contracts	Classification	June 30, 2021		June 30, 2020	
Natural gas (in mmbtus)	Commodity purchase swaps	25,251,000		44,462,000	
Tin (in metric tons)	Commodity purchase swaps	796		1,221	
Zinc (in metric tons)	Commodity purchase swaps	12,851		12,564	
Electricity (in megawatt hours)	Commodity purchase swaps	986,400		936,000	
Hot-rolled coils (in tons)	Sales swaps	159,880		—	
Foreign currency (in millions of euros)	Foreign exchange forwards	€	278	€	239
Foreign currency (in millions of dollars)	Foreign exchange forwards	\$	9	\$	—
Foreign currency (in millions of CAD)	Foreign exchange forwards	\$	—	\$	15

There were \$34 million and \$5 million in accounts receivable and \$151 million and \$54 million in accounts payable recorded for derivatives designated as hedging instruments as of June 30, 2021 and December 31, 2020, respectively. Amounts recorded in long-term asset and long-term liability accounts for derivatives were not material as of June 30, 2021 and December 31, 2020. Accounts payable recorded in the Condensed Consolidated Balance sheet for derivatives not designated as hedging instruments was \$14 million as of June 30, 2021 and was immaterial as of December 31, 2020.

The table below summarizes the effect of hedge accounting on AOCI and amounts reclassified from AOCI into earnings for the three and six months ended June 30, 2021 and 2020:

(In millions)	Gain (Loss) on Derivatives in AOCI		Location of Reclassification from AOCI ^(a)	Amount of Gain (Loss) Recognized in Income	
	Three Months Ended June 30, 2021	Three Months Ended June 30, 2020		Three Months Ended June 30, 2021	Three Months Ended June 30, 2020
Sales swaps	\$ (79)	\$ —	Net sales	\$ (23)	\$ —
Commodity purchase swaps	22	19	Cost of sales ^(b)	5	(12)
Foreign exchange forwards	2	(4)	Cost of sales	(5)	—

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

^(b) Costs for commodity purchase swaps are recognized in cost of sales as products are sold.

(In millions)	Gain (Loss) on Derivatives in AOCI		Location of Reclassification from AOCI ^(a)	Amount of Gain (Loss) Recognized in Income	
	Six Months Ended June 30, 2021	Six Months Ended June 30, 2020		Six Months Ended June 30, 2021	Six Months Ended June 30, 2020
Sales swaps	\$ (123)	\$ —	Net sales	\$ (33)	\$ —
Commodity purchase swaps	32	11	Cost of sales ^(b)	4	(20)
Foreign exchange forwards	21	1	Cost of sales	(10)	—

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

^(b) Costs for commodity purchase swaps are recognized in cost of sales as products are sold.

At current contract values, \$31 million currently in AOCI as of June 30, 2021 will be recognized as a decrease in cost of sales over the next year and \$149 million currently in AOCI as of June 30, 2021 will be recognized as a decrease in net sales over the next year.

The loss recognized for sales swaps where hedge accounting was not elected was \$6 million and \$15 million and was recognized in cost of sales for the three and six months ended June 30, 2021, respectively. The loss recognized for sales swaps where hedge accounting was not elected was not material for the three and six months ended June 30, 2020.

15. Debt

(In millions)	Issuer/Borrower	Interest Rates %	Maturity	June 30, 2021	December 31, 2020
2037 Senior Notes	U. S. Steel	6.650	2037	350	350
2029 Senior Secured Notes	Big River Steel	6.625	2029	900	—
2029 Senior Notes	U. S. Steel	6.875	2029	750	—
2026 Senior Notes	U. S. Steel	6.250	2026	600	650
2026 Senior Convertible Notes	U. S. Steel	5.000	2026	350	350
2025 Senior Notes	U. S. Steel	6.875	2025	718	750
2025 Senior Secured Notes	U. S. Steel	12.000	2025	—	1,056
Arkansas Teacher Retirement System Notes Payable	Big River Steel	5.500 - 7.750	2023	106	—
Export-Import Credit Agreement	U. S. Steel	Variable	2021	—	180
Environmental Revenue Bonds	U. S. Steel	4.125 - 6.750	2024 - 2050	717	717
Environmental Revenue Bonds	Big River Steel	4.500 - 4.750	2049	752	—
Finance leases and all other obligations	U. S. Steel	Various	2021 - 2029	80	81
Finance leases and all other obligations	Big River Steel	Various	2021 - 2031	115	—
Export Credit Agreement (ECA)	U. S. Steel	Variable	2031	136	113
Credit Facility Agreement	U. S. Steel	Variable	2024	—	500
Big River Steel ABL Facility, \$350 million	Big River Steel	Variable	2022	—	—
USSK Credit Agreement	U. S. Steel Kosice	Variable	2023	—	368
USSK Credit Facilities	U. S. Steel Kosice	Variable	2021	—	—
Total Debt				5,574	5,115
Less unamortized discount, premium, and debt issuance costs				8	228
Less short-term debt, long-term debt due within one year, and short-term issuance costs				763	192
Long-term debt				\$ 4,803	\$ 4,695

Senior Secured Notes, Senior Notes and Export-Import Credit Agreement Repayments

The following debt repayments were made by U. S. Steel during the six-month period ended June 30, 2021:

- All of the remaining outstanding principal of approximately \$180 million under the Export-Import Credit Agreement was repaid. There were approximately \$3 million in non-cash debt extinguishment costs associated with the repayment. The Export-Import Credit Agreement and related security interests were terminated in conjunction with the payment in full. No early termination penalties applied with respect to the prepayment.
- The full optional redemption of the outstanding 12.000% Senior Secured Notes due 2025 for an aggregate principal amount of approximately \$1.056 billion was completed. There were redemption premiums and unamortized discount and debt issuance write-offs of approximately \$181 million and \$71 million, respectively related to the repayment.
- Open market repurchases were made of approximately \$50 million and \$32 million of aggregate principal on the 6.250% Senior Notes due 2026 and its 6.875% Senior Notes due 2025, respectively.

2025 Senior Notes

On June 17, 2021, U. S. Steel issued an irrevocable notice of redemption to redeem the entirety of its approximately \$718 million aggregate principal amount of outstanding 6.875% Senior Notes due 2025 (2025 Senior Notes). The Company expects the total payment to the holders including the redemption premium to be approximately \$730 million (reflecting a redemption price of 101.719% of the aggregate principal amount), plus accrued and unpaid interest to, but excluding, the redemption date of August 15, 2021. The 2025 Senior Notes will be redeemed with cash on hand. The 2025 Senior Notes are reflected in short-term debt and current maturities of long-term debt on the Condensed Consolidated Balance Sheet as of June 30, 2021.

2029 Senior Notes

On February 11, 2021, U. S. Steel issued \$750 million aggregate principal amount of 6.875% Senior Notes due 2029 (2029 Senior Notes). U. S. Steel received net proceeds of approximately \$739 million after fees of approximately \$11 million related to underwriting and third-party expenses. The net proceeds from the issuance of the 2029 Senior Notes, together with the proceeds of our recent common stock issuance were used to redeem all of our outstanding 2025 Senior Secured Notes as discussed above. See Note 22 for further details regarding our recent common stock issuance. The 2029 Senior Notes will pay interest semi-annually in arrears on March 1 and September 1 of each year beginning on September 1, 2021, and will mature on March 1, 2029, unless earlier redeemed or repurchased.

On and after March 1, 2024, the Company may redeem the 2029 Senior Notes at its option, at any time in whole or from time to time in part, upon not less than 15 nor more than 60 days' notice, at the redemption prices (expressed in percentages of principal amount) listed below, plus accrued and unpaid interest on the 2029 Senior Notes, if any, to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on March 1 of each of the years indicated below.

Year	Redemption Price
2024	103.438 %
2025	101.719 %
2026 and thereafter	100.000 %

At any time prior to March 1, 2024, U. S. Steel may also redeem the 2029 Senior Notes, 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 2029 Senior Notes to be redeemed, or the sum of the present value of the redemption price of the 2029 Senior Notes if they were redeemed on March 1, 2024 plus interest payments due through March 1, 2024 discounted to the date of redemption on a semi-annual basis at the applicable treasury yield, plus 50 basis points and accrued and unpaid interest, if any.

At any time prior to March 1, 2024 we may also purchase up to 35% of the original aggregate principal amount of the 2029 Senior Notes at 106.875%, plus accrued and unpaid interest, if any, up to, but excluding the applicable date of redemption, with proceeds from equity offerings.

Similar to our other senior notes, the indenture governing the 2029 Senior Notes restricts our ability to create certain liens, to enter into sale leaseback transactions and to consolidate, merge, transfer or sell all, or substantially all of our assets. It also contains provisions requiring that U. S. Steel make an offer to purchase the 2029 Senior Notes from holders upon a change of control under certain specified circumstances, as well as other customary provisions.

2029 Senior Secured Notes

On September 18, 2020, Big River Steel's indirect subsidiaries, Big River Steel LLC and BRS Finance Corp. (Issuers), issued \$900 million in aggregate principal amount of 6.625% Senior Secured Notes (Green Bonds) (2029 Senior Secured Notes). The 2029 Senior Secured Notes pay interest semi-annually in arrears on January 31 and July 31 of each year and will mature on January 31, 2029, unless earlier redeemed or repurchased.

On and after September 15, 2023, Big River Steel LLC may redeem the 2029 Senior Secured Notes 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 Notes, if any, to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on September 15 of each of the years indicated below.

Year	Redemption Price
2023	103.313 %
2024	101.656 %
2025 and thereafter	100.000 %

The obligations under the 2029 Senior Secured Notes are fully and unconditionally guaranteed, jointly and severally, on a secured basis by the Issuers' parent company, BRS Intermediate Holdings LLC (BRS Intermediate), which is a direct subsidiary of Big River Steel, and by all future direct and indirect wholly owned domestic subsidiaries of the Issuers. Additionally, the 2029 Senior Secured Notes and related guarantees are secured by (i) first priority liens on most of the tangible and intangible assets of the Issuers and the guarantors and all of the equity interests of the Issuers held by BRS Intermediate (shared in equal priority with each other pari passu lien secured party) (ii) and second priority liens on accounts receivable, inventory and certain other related assets of the Issuers and the guarantors (shared in equal priority with each other pari passu lien secured party).

If the Issuers or BRS Intermediate experience specified change in control events, the Issuers must make an offer to purchase the 2029 Senior Secured Notes. If the Issuers sell assets under specified circumstances, the Issuers must make an offer to purchase the 2029 Senior Secured Notes at a price equal to 100% of the aggregate principal amount plus accrued and unpaid interest. The Indenture also limits the ability of the Issuers and their restricted subsidiaries to: incur or guarantee additional indebtedness; pay dividends and make other restricted payments; make investments; consummate certain asset sales; engage in transactions with affiliates; grant or assume liens; and consolidate, merge or transfer all or substantially all of their assets. The Indenture also includes other customary events of default.

Big River Steel Environmental Revenue Bonds - Series 2019

On May 31, 2019, Arkansas Development Finance Authority (ADFA) issued \$487 million of tax-exempt bonds and loaned 100% of the proceeds to Big River Steel LLC under a bond financing agreement to finance the expansion of Big River Steel's electric arc furnace steel mill and fund the issuance cost of the bonds (2019 ADFA Bonds). The 2019 ADFA Bonds accrue interest at the rate of 4.50% per annum payable semiannually on March 1 and September 1 of each year with a final maturity of September 1, 2049.

The 2019 ADFA Bonds are subject to optional redemption during the periods and at the redemption prices shown below plus, in each case, accrued interest.

Year	Redemption Price
September 1, 2026 to August 31, 2027	103 %
September 1, 2027 to August 31, 2028	102 %
September 1, 2028 to August 31, 2029	101 %
On and after September 1, 2029	100 %

Prior to September 1, 2026, the 2019 ADFA Bonds are not redeemable.

The 2019 ADFA Bonds are fully and unconditionally guaranteed, jointly and severally, on a senior secured basis by first priority liens on most of the tangible and intangible assets and second priority liens on accounts receivable, inventory and certain other related assets of BRS Intermediate and by all future direct and indirect wholly owned domestic subsidiaries of the Issuers.

The 2019 ADFA Bonds are subject to certain mandatory sinking fund redemption provisions beginning in 2040, as well as extraordinary mandatory redemption, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the date fixed for redemption, from surplus funds at the earlier of the completion of the tax-exempt project or expiration of a certain period for construction financings, and upon an event of taxability. The 2019 ADFA Bonds are subject to substantially similar asset sale offer and change of control offer provisions, affirmative and negative covenants, events of default and remedies as the Indenture governing the 2029 Senior Secured Notes.

Big River Steel Environmental Revenue Bonds - Series 2020

On September 10, 2020, ADFA issued \$265 million of tax-exempt bonds with a green bond designation and loaned 100% of the proceeds to Big River Steel LLC under a bond financing agreement to finance or refinance the expansion of Big River Steel's electric arc furnace steel mill and fund the issuance cost of the bonds (2020 ADFA Bonds). The 2020 ADFA Bonds accrue interest at 4.75% per annum payable semi-annually on March 1 and September 1 of each year with final maturity on September 1, 2049.

The 2020 ADFA Bonds are subject to optional redemption during the periods and at the redemption prices shown below, plus, in each case accrued interest.

Year	Redemption Price
September 1, 2027 to August 31, 2028	103 %
September 1, 2028 to August 31, 2029	102 %
September 1, 2029 to August 31, 2030	101 %
On and after September 1, 2030	100 %

At any time prior to September 1, 2027, Big River Steel LLC may also redeem the 2020 ADFA Bonds, at its 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 2020 ADFA Bonds to be redeemed, or the present value of the redemption price of the 2020 ADFA Bonds if they were redeemed on September 1, 2027 plus interest payments due through September 1, 2027 discounted to the date of redemption on a semi-annual basis at the applicable tax exempt municipal bond rate and accrued and unpaid interest to the date fixed for redemption.

The 2020 ADFA Bonds are fully and unconditionally guaranteed, jointly and severally, on a secured basis by certain of Big River Steel's subsidiaries and subject to first priority liens and second priority liens on certain Big River Steel collateral.

The 2020 ADFA Bonds are subject to substantially similar asset sale offer and change of control offer provisions, affirmative and negative covenants, events of default and remedies as the Indenture governing the 2029 Senior Secured Notes.

Arkansas Teacher Retirement System Notes Payable

Big River Steel entered into three financing agreements with the Arkansas Teacher Retirement System during 2018 and 2019. The interest rates on the notes range from 5.50% to 7.75% at present. Interest on these agreements may be paid-in-kind through the respective dates of maturity and therefore requires no interim debt service by Big River Steel prior to the date of maturity or early repayment, as the case may be. Big River Steel may prepay amounts owed under these agreements at any time without penalty. One such agreement has the benefit of a pledge of future income streams generated through an anticipated monetization of recycling tax credits provided by the State of Arkansas in conjunction with the expansion of Big River Steel. As of June 30, 2021, the outstanding balance for these financing agreements was \$106 million.

Big River Steel ABL Facility

On August 23, 2017, subsidiaries of Big River Steel entered into a senior secured asset-based revolving credit facility and subsequently amended such facility (Big River Steel ABL Facility) by entering into the First Amendment to the Big River Steel ABL Credit Agreement, dated as of September 10, 2020. The Big River Steel ABL 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.

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. The Big River Steel ABL Facility matures on August 23, 2022. The outstanding principal balance was zero at June 30, 2021. Availability under the Big River Steel ABL Facility, pursuant to the available borrowing base was \$350 million at June 30, 2021.

The Big River Steel ABL Facility provides for borrowings at interest rates based on defined, short-term market rates plus a spread based on availability. The Big River Steel ABL Facility also requires a commitment fee on the unused portion of the Big River Steel ABL Facility, determined quarterly based on Big River Steel LLC's utilization levels.

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 March 31, 2021, Big River Steel would have met the fixed charge coverage ratio test. The Big River Steel ABL Facility includes affirmative and negative covenants that are customary for facilities of this type. The Big River Steel ABL Facility also includes customary events of default.

Credit Facility Agreement

As of June 30, 2021, there were approximately \$5 million of letters of credit issued, and no loans drawn under the Fifth Amended and Restated Credit Facility Agreement (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 total aggregate commitments and \$200 million. Based on the most recent four quarters as of June 30, 2021, the Company would have met the fixed charge coverage ratio test. In

addition, since the value of our inventory and trade accounts receivable less specified reserves calculated in accordance with the Credit Facility Agreement do not support the full amount of the facility at June 30, 2021, the amount available to the Company under this facility was further reduced by \$77 million. The availability under the Credit Facility Agreement was \$1.918 billion as of June 30, 2021.

U. S. Steel Košice (USSK) Credit Facilities

At June 30, 2021, USSK had no borrowings under its €460 million (approximately \$547 million) revolving credit facility (USSK Credit Agreement).

At June 30, 2021, USSK had no borrowings under its €20 million and €10 million credit facilities (collectively, approximately \$36 million) and the availability was approximately \$32 million due to approximately \$4 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, bank checks outstanding, 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.

Big River Steel

On October 31, 2019, a wholly owned subsidiary of U. S. Steel purchased a 49.9% ownership interest in Big River Steel. The transaction included a call option (U. S. Steel Call Option) to acquire the remaining equity interest within the next four years at an agreed-upon price formula. The investment purchase included other options that were marked to fair value during 2020. The net change in fair value of the options during the six months ended June 30, 2020 resulted in a \$6 million decrease to other financial costs. When the U. S. Steel Call Option was exercised on December 8, 2020, the other options were legally extinguished and a new contingent forward asset was recorded for \$11 million. As the contingent forward was a contract to purchase a business, it was no longer considered a derivative subject to ASC 815, *Derivative Instruments and Hedging Activities*, and was not subject to subsequent fair value adjustments. The contingent forward asset was removed with the recognition of the gain on the previously held investment in Big River Steel when the purchase of the remaining interest closed on January 15, 2021. See Note 20 to the Consolidated Financial Statements in our Annual Report on Form 10-K for the year-ended December 31, 2020 and Note 5 for further details.

Prior to exercise of the U. S. Steel Call Option, the options were marked to fair value each period using a Monte Carlo simulation which is considered a Level 3 valuation technique. Level 3 valuation techniques include inputs to the valuation methodology that are considered unobservable and significant to the fair value measurement. The simulation relied on assumptions that included Big River Steel's equity value, volatility, the risk-free interest rate and U. S. Steel's credit spread.

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, Stelco paid the Company an aggregate amount of \$100 million in five \$20 million installments, which began on the Effective Date and ended on December 31, 2020 and are recorded net of transaction costs in noncontrolling interest in the Condensed Consolidated Balance Sheet. 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.

The following table summarizes U. S. Steel's financial liabilities that were not carried at fair value at June 30, 2021 and December 31, 2020. The fair value of long-term debt was determined using Level 2 inputs.

(In millions)	June 30, 2021		December 31, 2020	
	Fair Value	Carrying Amount	Fair Value	Carrying Amount
Financial liabilities:				
Short-term and long-term debt ^(a)	\$ 6,005	\$ 5,265	\$ 5,323	\$ 4,806

^(a) Excludes finance lease obligations.

17. **Statement of Changes in Stockholders' Equity**

The following table reflects the first six months of 2021 and 2020 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, 2021 (In millions)	Total	(Accumulated Deficit) Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Common Stock	Treasury Stock	Paid-in Capital	Non- Controlling Interest
Balance at beginning of year	\$ 3,879	\$ (623)	\$ (47)	\$ 229	\$ (175)	\$ 4,402	\$ 93
Comprehensive income (loss):							
Net earnings	91	91	—	—	—	—	—
Other comprehensive income (loss), net of tax:							
Pension and other benefit adjustments	24	—	24	—	—	—	—
Currency translation adjustment	(47)	—	(47)	—	—	—	—
Derivative financial instruments	(20)	—	(20)	—	—	—	—
Employee stock plans	6	—	—	2	(7)	11	—
Common Stock Issued	790	—	—	48	—	742	—
Dividends paid on common stock	(3)	—	—	—	—	(3)	—
Balance at March 31, 2021	\$ 4,720	\$ (532)	\$ (90)	\$ 279	\$ (182)	\$ 5,152	\$ 93
Comprehensive income (loss):							
Net earnings	1,012	1,012	—	—	—	—	—
Other comprehensive income (loss), net of tax:							
Pension and other benefit adjustments	205	—	205	—	—	—	—
Currency translation adjustment	23	—	23	—	—	—	—
Derivative financial instruments	(31)	—	(31)	—	—	—	—
Employee stock plans	17	—	—	—	(1)	18	—
Dividends paid on common stock	(2)	—	—	—	—	(2)	—
Other	(1)	—	—	—	—	—	(1)
Balance at June 30, 2021	\$ 5,943	\$ 480	\$ 107	\$ 279	\$ (183)	\$ 5,168	\$ 92

Six Months Ended June 30, 2020 (In millions)	Total	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Loss	Common Stock	Treasury Stock	Paid-in Capital	Non- Controlling Interest
Balance at beginning of year	\$ 4,093	\$ 544	\$ (478)	\$ 179	\$ (173)	\$ 4,020	\$ 1
Comprehensive income (loss):							
Net loss	(391)	(391)	—	—	—	—	—
Other comprehensive income (loss), net of tax:							
Pension and other benefit adjustments	52	—	52	—	—	—	—
Currency translation adjustment	(23)	—	(23)	—	—	—	—
Derivative financial instruments	(5)	—	(5)	—	—	—	—
Employee stock plans	2	—	—	—	(2)	4	—
Dividends paid on common stock	(2)	(2)	—	—	—	—	—
Balance at March 31, 2020	\$ 3,726	\$ 151	\$ (454)	\$ 179	\$ (175)	\$ 4,024	\$ 1
Comprehensive income (loss):							
Net loss	(589)	(589)	—	—	—	—	—
Other comprehensive income (loss), net of tax:							
Pension and other benefit adjustments	29	—	29	—	—	—	—
Currency translation adjustment	20	—	20	—	—	—	—
Derivative financial instruments	15	—	15	—	—	—	—
Employee stock plans	8	—	—	—	—	8	—
Common Stock Issued	410	—	—	50	—	360	—
Dividends paid on common stock	(1)	—	—	—	—	(1)	—
Stelco Option Agreement	37	—	—	—	—	—	37
Other	(1)	—	—	—	—	—	(1)
Balance at June 30, 2020	\$ 3,654	\$ (438)	\$ (390)	\$ 229	\$ (175)	\$ 4,391	\$ 37

18. Reclassifications from Accumulated Other Comprehensive Income (AOCI)

(In millions)	Pension and Other Benefit Items	Foreign Currency Items	Unrealized Gain (Loss) on Derivatives	Total
Balance at December 31, 2020	\$ (458)	\$ 449	\$ (38)	\$ (47)
Other comprehensive income (loss) before reclassifications	191	(24)	(79)	88
Amounts reclassified from AOCI ^(a)	38	—	28	66
Net current-period other comprehensive income (loss)	229	(24)	(51)	154
Balance at June 30, 2021	\$ (229)	\$ 425	\$ (89)	\$ 107
Balance at December 31, 2019	\$ (843)	\$ 381	\$ (16)	\$ (478)
Other comprehensive income (loss) before reclassifications	8	(3)	(8)	(3)
Amounts reclassified from AOCI ^(a)	73	—	18	91
Net current-period other comprehensive income (loss)	81	(3)	10	88
Balance at June 30, 2020	\$ (762)	\$ 378	\$ (6)	\$ (390)

^(a) See table below for further details.

Details about AOCI components (in millions)	Amount reclassified from AOCI ^(a)			
	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Amortization of pension and other benefit items				
Prior service credits ^(a)	\$ (6)	\$ (1)	\$ (13)	\$ (3)
Actuarial losses ^(a)	32	32	63	64
Settlement, termination and curtailment losses ^(a)	1	—	1	—
UPI Purchase Accounting Adjustment	—	—	—	23
Total pensions and other benefits items	27	31	51	84
Derivative reclassifications to Condensed Consolidated Statements of Operations	22	10	37	22
Total before tax	49	41	88	106
Tax provision	(21)	(7)	(22)	(15)
Net of tax	\$ 28	\$ 34	\$ 66	\$ 91

^(a) 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 \$341 million and \$91 million for the three months ended June 30, 2021 and 2020, respectively and \$636 million and \$442 million for the six months ended June 30, 2021 and 2020, respectively.

Accounts payable to related parties include balances due to PRO-TEC Coating Company, LLC (PRO-TEC) of \$143 million and \$86 million at June 30, 2021 and December 31, 2020, 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 and \$19 million for the periods ending June 30, 2021 and December 31, 2020, respectively.

Purchases from related parties for outside processing services provided by equity investees amounted to \$6 million and \$10 million for the three months ended June 30, 2021 and 2020, respectively and \$26 million and \$38 million for the six months ended June 30, 2021 and 2020, respectively. Purchases of iron ore pellets from related parties amounted to \$30 million and \$16 million for the three months ended June 30, 2021 and 2020, respectively and \$54 million and \$34 million for the six months ended June 30, 2021 and 2020, respectively.

20. Restructuring and Other Charges

During the three months ended June 30, 2021, the Company recorded restructuring and other charges of \$31 million, which consist of \$25 million for Great Lakes Works and \$6 million for environmental and other charges. Cash payments were made related to severance and exit costs of approximately \$15 million.

During the six months ended June 30, 2021, the Company recorded restructuring and other charges of \$37 million, which consists of \$27 million for Great Lakes Works and \$10 million for environmental related charges at other facilities and costs related to severance. Cash payments were made related to severance and exit costs of approximately \$44 million.

During the three months ended June 30, 2020, the Company recorded restructuring and other charges of \$89 million, which consists of charges of \$47 million for the indefinite idling of our Keetac mining operations and a significant portion of Great Lakes Works, \$2 million for other charges, \$8 million for employee benefit costs related to Company-wide headcount reductions and \$32 million headcount reductions under a Voluntary Early Retirement Program (VERP) offered at USSK.

During the six months ended June 30, 2020, the Company recorded restructuring and other charges of \$130 million, which consists of charges of \$72 million for the indefinite idling of our Keetac mining operations and a significant portion of Great Lakes Works, \$13 million for the indefinite idling of Lorain Tubular Operations and Lone Star Tubular Operations, \$13 million and \$32 million for employee benefit costs related to Company-wide headcount reductions and headcount reductions under a VERP offered at USSK, respectively. Cash payments were made related to severance and exit costs of approximately \$33 million.

The activity in the accrued balances incurred in relation to restructuring programs during the six months ended June 30, 2021 were as follows:

(In millions)	Employee Related Costs	Exit Costs	Non-cash Charges	Total
Balance at December 31, 2020	\$ 51	\$ 126	\$ —	\$ 177
Additional charges	3	33	1	37
Cash payments/utilization ^(a)	(27)	(23)	(1)	(51)
Balance at June 30, 2021	\$ 27	\$ 136	\$ —	\$ 163

(a) Payments of \$6 million were made from the pension fund trust.

Accrued liabilities for restructuring programs are included in the following balance sheet lines:

(In millions)	June 30, 2021	December 31, 2020
Accounts payable	\$ 38	\$ 34
Payroll and benefits payable	11	29
Employee benefits	16	22
Deferred credits and other noncurrent liabilities	98	92
Total	\$ 163	\$ 177

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, 2021, U. S. Steel was a defendant in approximately 935 active cases involving approximately 2,525 plaintiffs. The vast majority of these cases involve multiple defendants. About 1,545, or approximately 61 percent, of these plaintiff claims are currently pending in a jurisdiction which permits filings with massive numbers of plaintiffs. At December 31, 2020, U. S. Steel was a defendant in approximately 855 cases involving approximately 2,445 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 ^(a)	New Claims	Closing Number of Claims
December 31, 2018	3,315	1,285	290	2,320
December 31, 2019	2,320	195	265	2,390
December 31, 2020	2,390	240	295	2,445
June 30, 2021	2,445	75	155	2,525

(a) The period ending December 31, 2018 includes approximately 1,000 dismissed cases previously pending in the State of Texas.

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. In 2020 and 2019, the Company engaged an outside valuation consultant to assist in assessing its ability to estimate an accrual for unasserted claims. This assessment was based on the Company's settlement experience, including recent claims trends. The analysis focused 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, 2021
Beginning of period	\$ 146
Accruals for environmental remediation deemed probable and reasonably estimable	2
Obligations settled	(10)
End of period	\$ 138

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

(In millions)	June 30, 2021	December 31, 2020
Accounts payable and other accrued liabilities	\$ 42	\$ 43
Deferred credits and other noncurrent liabilities	96	103
Total	\$ 138	\$ 146

Expenses related to remediation are recorded in cost of sales and were immaterial for both the six-month periods ended June 30, 2021 and June 30, 2020. 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 40 to 60 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* - Projects which are still in the development phase. 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 five environmental remediation projects where additional costs for completion are not currently estimable, but could be material. These projects are at Fairfield Works, Lorain Tubular, USS-POSCO Industries (UPI), Duluth Works and the former steelmaking plant at Joliet, Illinois. As of June 30, 2021, accrued liabilities for these projects totaled \$34 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 \$50 million to \$75 million.
- (2) *Significant Projects with Defined Scope* - Projects with significant accrued liabilities with a defined scope. As of June 30, 2021, there are two significant projects with defined scope greater than or equal to \$5 million each, with a total accrued liability of \$43 million. These projects are Gary Resource Conservation and Recovery Act (RCRA) (accrued liability of \$24 million) and the former Geneva facility (accrued liability of \$19 million).
- (3) *Other Projects with a Defined Scope* - Projects with 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 three 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, 2021 was \$7 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, 2021 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, 2021 and were based on known scopes of work.

Administrative and Legal Costs – As of June 30, 2021, U. S. Steel had an accrued liability of \$13 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 \$7 million in both the first six months of 2021 and 2020. 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 (EU) Environmental Requirements - Phase IV of the EU Emissions Trading System (EU ETS) commenced on January 1, 2021 and will finish on December 31, 2030. The European Commission issued final approval of the Slovak National Allocation table in July 2021. The Slovak Ministry of Environment's decision on USSE's free allocation for the first five years of the Phase IV period is expected by the end of September 2021. In the fourth quarter of 2020 USSE started purchasing European Union Allowances (EUA) for the Phase IV period. As of June 30, 2021, we have pre-purchased approximately 2.0 million EUA totaling €67 million (approximately \$79 million).

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 comply with or go beyond BAT requirements were €138 million (approximately \$164 million) over the actual program period. 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. USSK complied with these covenants as of June 30, 2021. 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.

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 \$138 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, 2021.

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 \$21 million at June 30, 2021). No liability has been recorded for these guarantees as the potential loss is not probable.

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 \$215 million as of June 30, 2021, 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 \$142 million and \$133 million at June 30, 2021 and December 31, 2020, respectively.

Capital Commitments – At June 30, 2021, U. S. Steel's contractual commitments to acquire property, plant and equipment totaled \$573 million.

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 2021	2022	2023	2024	2025	Later Years	Total
\$616	\$1,136	\$464	\$227	\$204	\$842	\$3,489

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 two to 15 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, 2021, if U. S. Steel were to terminate the agreement, it may be obligated to pay in excess of \$95 million.

Total payments relating to unconditional purchase obligations were \$169 million and \$134 million for the three months ended June 30, 2021 and 2020, respectively, and \$369 million and \$302 million for the six months ended June 30, 2021 and 2020, respectively.

22. **Common Stock Issued**

In February 2021, U. S. Steel issued 48,300,000 shares of common stock for net proceeds of approximately \$790 million.

In June 2020, U. S. Steel issued 50 million shares of common stock for net proceeds of approximately \$410 million.

23. **Subsequent Event**

On July 23, 2021, U. S. Steel announced changes to its Credit Facility Agreement and Big River Steel ABL Facility that reward performance in meeting sustainability targets, part of the ongoing execution of the company's Best for AllSM strategy of creating profitable pathways to sustainable steelmaking. The Credit Facility Agreement has been amended to include an increase or decrease in the margin payable based on achievement targets related to carbon reduction, safety performance and facility certifications by ResponsibleSteelTM. In addition to the new sustainability link, the Credit Facility Agreement has been amended to reduce the credit line to \$1.75 billion from \$2.0 billion, which is consistent with the Company's efforts to optimize its global liquidity position.

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

RESULTS OF OPERATIONS

U. S. Steel's results in the three and six months ended June 30, 2021 compared to the same periods in 2020 benefited from significantly improved business conditions as certain challenges presented by the COVID-19 pandemic began to subside. Flat-

Rolled results improved due to higher steel demand across most consumer and manufacturing industries, pushing both spot and contract prices higher. In Mini Mill, with the acquisition of Big River Steel on January 15, 2021, results were added for the first time in the first quarter of 2021. USSE results improved due to stronger performance of the manufacturing and construction sectors and higher selling prices though continued high levels of imports persist. In Tubular, net sales increased slightly in the three months ended June 30, 2021 and decreased in the six months ended June 30, 2021 as disruptions in the oil and gas industry continue to create significant reductions of drilling activity in the U.S. and continued high levels of tubular imports persist.

Net sales by segment for the three months and six months ended June 30, 2021 and 2020 are set forth in the following table:

(Dollars in millions, excluding intersegment sales)	Three Months Ended June 30,			Six Months Ended June 30,		
	2021	2020	% Change	2021	2020	% Change
Flat-Rolled Products (Flat-Rolled)	\$ 2,991	\$ 1,497	100 %	\$ 5,263	\$ 3,471	52 %
Mini Mill ^(a)	759	—	n/a	1,209	—	n/a
U. S. Steel Europe (USSE)	1,078	403	167 %	1,876	908	107 %
Tubular Products (Tubular)	184	182	1 %	318	437	(27) %
Total sales from reportable segments	5,012	2,082	141 %	8,666	4,816	80 %
Other	13	9	44 %	23	23	— %
Net sales	\$ 5,025	\$ 2,091	140 %	\$ 8,689	\$ 4,839	80 %

^(a) Mini Mill segment added after January 15, 2021 with the purchase of the remaining equity interest in Big River Steel.

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, 2021 versus the three months ended June 30, 2020 is set forth in the following table:

Steel Products ^(a)						
	Volume	Price	Mix	FX ^(b)	Other ^(c)	Net Change
Flat-Rolled	26 %	58 %	(1) %	— %	17 %	100 %
Mini Mill ^(d)	n/a	n/a	n/a	n/a	n/a	n/a
USSE	87 %	77 %	(14) %	18 %	(1) %	167 %
Tubular	(20) %	14 %	6 %	— %	1 %	1 %

^(a) Excludes intersegment sales

^(b) Foreign currency translation effects

^(c) Primarily of sales of raw materials and coke making by-products

^(d) Not applicable (n/a), Mini Mill segment added after January 15, 2021 with the purchase of the remaining equity interest in Big River Steel.

Net sales for the three months ended June 30, 2021 compared to the same period in 2020 were \$5,025 million and \$2,091 million, respectively.

- For the Flat-Rolled segment the increase in sales primarily resulted from higher average realized prices (\$357 per ton) and increased shipments (536 thousand tons) across most products.
- For the USSE segment the increase in sales primarily resulted from higher average realized prices (\$273 per net ton) and increased shipments (557 thousand tons) across all products.
- For the Tubular segment the increase in sales primarily resulted from higher average realized prices (\$345 per net ton) across all products, partially offset by decreased shipments (27 thousand tons) predominantly for electric resistance welded (ERW) products.

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, 2021 versus the six months ended June 30, 2020 is set forth in the following table:

Steel Products ^(a)						
	Volume	Price	Mix	FX ^(b)	Other ^(c)	Net Change
Flat-Rolled	8 %	34 %	2 %	— %	8 %	52 %
Mini Mill ^(d)	n/a	n/a	n/a	n/a	n/a	n/a
USSE	55 %	45 %	(7)%	15 %	(1)%	107 %
Tubular	(38)%	6 %	4 %	— %	1 %	(27)%

^(a) Excludes intersegment sales

^(b) Foreign currency translation effects

^(c) Primarily of sales of raw materials and coke making by-products

^(d) Not applicable (n/a), Mini Mill segment added after January 15, 2021 with the purchase of the remaining equity interest in Big River Steel.

Net sales for the six months ended June 30, 2021 compared to the same period in 2020 were \$8,689 million and \$4,839 million, respectively.

- For the Flat-Rolled segment the increase in sales primarily resulted from higher average realized prices (\$268 per ton) across all products and increased shipments (359 thousand tons) primarily for cold-rolled and coated sheet products.
- For the USSE segment the increase in sales primarily resulted from higher average realized prices (\$211 per net ton) across all products and increased shipments (799 thousand tons) across most products.
- For the Tubular segment the decrease in sales primarily resulted from decreased shipments (125 thousand tons) across all products, partially offset by higher average realized prices (\$228 per net ton) predominantly for seamless products.

Selling, general and administrative expenses

Selling, general and administrative expenses were \$106 million and \$208 million in the three months and six months ended June 30, 2021, respectively, compared to \$62 million and \$134 million in the three months and six months ended June 30, 2020, respectively. The increase in expenses in the three and six months ended June 30, 2021 versus the same periods in 2020 primarily resulted from increased profit based payments and the addition of Big River Steel with the purchase of its remaining equity interest.

Restructuring and other charges

During the three months and six months ended June 30, 2021, the Company recorded restructuring and other charges of \$31 million and \$37 million, respectively compared to \$89 million and \$130 million in the three months and six months ended June 30, 2020, respectively. See Note 20 to the Condensed Consolidated Financial Statements for further details.

Strategic projects and technology investments

We are delivering on our customer-centric and world-competitive, Best of BothSM strategy, by combining the best of the integrated steelmaking model with the best of the mini mill steelmaking model. We are reshaping U. S. Steel to be Best for AllSM by providing customers with profitable steel solutions for all of our stakeholders. We will continue to expand our capabilities to deliver product and process innovation to create unmatched value for our customers while enhancing our earnings profile and delivering long-term cash flow through industry cycles.

On January 15, 2021, the Company completed a significant strategic step with the acquisition of the remaining equity interest in Big River Steel for approximately \$625 million in cash net of \$36 million and \$62 million in cash and restricted cash received, respectively, and the assumption of liabilities of approximately \$50 million. The results of Big River Steel are reflected within the new Mini Mill segment. The acquisition of Big River Steel increased U. S. Steel's annual raw steel production capability by 3.3 million net tons to 26.2 million net tons. The Mini Mill segment has two electric arc furnaces (EAFs), two ladle metallurgical furnace stations (LMFs), a Ruhrstahl Heraeus degasser, two continuous slab casters, a pickle line tandem cold mill, batch annealing, a temper mill and a galvanizing line. Big River Steel commenced commercial production on the second EAF during the fourth quarter of 2020, doubling its raw steel production capacity. In the second quarter, the Company announced plans to build a non-grain oriented (NGO) electrical steel line at Big River Steel. The Company expects this investment to make Big River Steel a leader in NGO electric steels by delivering product capabilities unmatched in today's market. The approximately \$450 million investment is expected to be funded by cash generated from Big River Steel's robust profitability and cash flow. The 200,000 ton NGO electrical steel line is expected to deliver first coil in September 2023 and be available to meet the growing electric vehicle demand expected in the United States over the coming years.

In addition to the investments at Big River Steel, the Company will continue to evaluate capability-focused opportunities across the Flat-Rolled segment, including at the Gary Hot Strip Mill.

Operating configuration adjustments

The Company also adjusted its operating configuration in response to changing market conditions including global overcapacity, unfair trade practices and increases in domestic demand as a result of tariffs on imports by indefinitely and temporarily idling and then re-starting production at certain of its facilities. U. S. Steel will continue to adjust its operating configuration in order to maximize its strategy of combining the Best of Both leading integrated and mini mill technology.

In December 2019, U. S. Steel announced that it would indefinitely idle a significant portion of Great Lakes Works due to market conditions including continued high levels of imports. The Company began idling the iron and steelmaking facilities in March 2020 and the hot strip mill rolling facility in June 2020. The carrying value of the Great Lakes Works facilities that were indefinitely idled was approximately \$310 million as of June 30, 2021.

In December 2019, the Company completed the indefinite idling of its East Chicago Tin (ECT) operations within its Flat-Rolled segment. ECT was indefinitely idled primarily due to increased tin import levels in the U.S. Additionally, U. S. Steel indefinitely idled its finishing facility in Dearborn, Michigan (which operates an electrolytic galvanizing line), during the fourth quarter of 2019. The carrying value of these facilities was approximately \$15 million as of June 30, 2021.

In 2020, we took actions to adjust our footprint by temporarily idling certain operations for an indefinite period to better align production with customer demand and respond to the impacts from the COVID-19 pandemic. The operations that were initially idled in 2020 and remained idle as of June 30, 2021 included:

- Blast Furnace A at Granite City Works
- Lone Star Tubular Operations
- Lorain Tubular Operations
- Wheeling Machine Products coupling production facility at Hughes Springs, Texas

As of June 30, 2021 the carrying value of the idled fixed assets for facilities noted above was: Granite City Works Blast Furnace A, \$60 million; Lone Star Tubular Operations, \$5 million; Lorain Tubular Operations, \$70 million and Wheeling Machine Product's production facility, immaterial.

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

(Dollars in millions)	Three months ended June 30,		% Change	Six months ended June 30,		% Change
	2021	2020		2021	2020	
Flat-Rolled	\$ 579	\$ (329)	276 %	\$ 725	\$ (364)	299 %
Mini Mill ^(a)	284	—	n/a	416	—	n/a
USSE	207	(26)	896 %	312	(40)	880 %
Tubular	—	(47)	100 %	(29)	(95)	69 %
Total earnings (loss) from reportable segments	1,070	(402)	366 %	1,424	(499)	385 %
Other	14	(21)	167 %	22	(20)	210 %
Segment earnings (loss) before interest and income taxes	1,084	(423)	356 %	1,446	(519)	379 %
Items not allocated to segments:						
Big River Steel - inventory step-up amortization	—	—		(24)	—	
Big River Steel - unrealized losses	(6)	—		(15)	—	
Big River Steel - acquisition costs	—	—		(9)	—	
Restructuring and other charges	(31)	(89)		(37)	(130)	
Gain on previously held investment in Big River Steel	—	—		111	—	
Asset impairment charge	(28)	—		(28)	(263)	
Property sale	15	—		15	—	
Tubular inventory impairment	—	(24)		—	(24)	
Gain on previously held investment in UPI	—	—		—	25	
December 24, 2018 Clairton coke making facility fire	\$ —	\$ 4		\$ —	\$ 4	
Total earnings (loss) before interest and income taxes	\$ 1,034	\$ (532)	294 %	\$ 1,459	\$ (907)	261 %

^(a) Mini Mill segment added after January 15, 2021 with the purchase of the remaining equity interest in Big River Steel.

Segment results for Flat-Rolled

	Three months ended June 30,		% Change	Six months ended June 30,		% Change
	2021	2020		2021	2020	
Earnings (loss) before interest and taxes (\$ millions)	\$ 579	\$ (329)	276 %	\$ 725	\$ (364)	299 %
Gross margin	25 %	(10)%	35 %	21 %	— %	21 %
Raw steel production (mnt)	2,485	1,468	69 %	5,066	4,616	10 %
Capability utilization	59 %	35 %	24 %	60 %	54 %	6 %
Steel shipments (mnt)	2,326	1,790	30 %	4,658	4,299	8 %
Average realized steel price per ton	\$ 1,078	\$ 721	50 %	\$ 983	\$ 715	37 %

The increase in Flat-Rolled results for the three months ended June 30, 2021 compared to the same period in 2020 was primarily due to:

- increased average realized prices (approximately \$850 million)
- increased shipments (approximately \$10 million)
- increased mining sales (approximately \$105 million)
- increased coke sales (approximately \$30 million),

this change was partially offset by:

- higher raw material costs (approximately \$15 million)
- higher other costs, primarily variable compensation partially offset by favorable equity investee income, (approximately \$70 million).

The increase in Flat-Rolled results for the six months ended June 30, 2021 compared to the same period in 2020 was primarily due to:

- increased average realized prices (approximately \$1,195 million)
- increased mining sales (approximately \$75 million)

- increased coke sales (approximately \$30 million),
- this change was partially offset by:
- higher raw material costs (approximately \$35 million)
 - higher energy costs (approximately \$15 million)
 - higher other costs, primarily variable compensation (approximately \$160 million).

Gross margin for the three and six months ended June 30, 2021 compared to the same period in 2020 increased primarily as a result of higher sales volume and average realized prices.

Segment results for Mini Mill ^(a)

	Three Months Ended June 30,			% Change	Six Months Ended June 30,			% Change
	2021	2020			2021	2020		
Earnings before interest and taxes (\$ millions)	\$ 284	\$ —	n/a		\$ 416	\$ —	n/a	
Gross margin	45 %	— %	n/a		41 %	— %	n/a	
Raw steel production (mnt)	747	—	n/a		1,257	—	n/a	
Capability utilization	91 %	— %	n/a		84 %	— %	n/a	
Steel shipments (mnt)	616	—	n/a		1,063	—	n/a	
Average realized steel price per ton	\$ 1,207	\$ —	n/a		\$ 1,106	\$ —	n/a	

^(a) Mini Mill segment added after January 15, 2021 with the purchase of the remaining equity interest in Big River Steel.

Segment results for USSE

	Three Months Ended June 30,			% Change	Six Months Ended June 30,			% Change
	2021	2020			2021	2020		
Earnings (loss) before interest and taxes (\$ millions)	\$ 207	\$ (26)	896 %		\$ 312	\$ (40)	880 %	
Gross margin	22 %	2 %	20 %		20 %	3 %	17 %	
Raw steel production (mnt)	1,279	645	98 %		2,476	1,527	62 %	
Capability utilization	103 %	52 %	51 %		100 %	61 %	39 %	
Steel shipments (mnt)	1,167	610	91 %		2,210	1,411	57 %	
Average realized steel price per (\$/ton)	\$ 905	\$ 632	43 %		\$ 831	\$ 620	34 %	
Average realized steel price per (€/ton)	€ 750	€ 575	30 %		€ 689	€ 563	22 %	

The increase in USSE results for the three months ended June 30, 2021 compared to the same period in 2020 was primarily due to:

- increased average realized prices (approximately \$300 million)
- increased shipments, including volume efficiencies (approximately \$30 million)
- strengthening of the Euro versus the U.S. dollar (approximately \$30 million)
- increased energy efficiencies (approximately \$5 million),

these changes were partially offset by:

- higher raw material costs (approximately \$120 million)
- increased operating costs (approximately \$5 million)
- higher other costs (approximately \$10 million).

The increase in USSE results for the six months ended June 30, 2021 compared to the same period in 2020 was primarily due to:

- increased average realized prices (approximately \$400 million)
- increased shipments, including volume efficiencies (approximately \$30 million)
- strengthening of the Euro versus the U.S. dollar (approximately \$45 million)
- increased energy efficiencies (approximately \$15 million),

these changes were partially offset by:

- higher raw material costs (approximately \$120 million)
- increased operating costs (approximately \$10 million)
- higher other costs (approximately \$10 million).

Gross margin for the three and six months ended June 30, 2021 compared to the same periods in 2020 increased primarily as a result of higher sales volume and higher average realized prices.

Segment results for Tubular

	Three Months Ended June 30,			% Change	Six Months Ended June 30,			% Change
	2021	2020			2021	2020		
Loss before interest and taxes (\$ millions)	\$ —	\$ (47)		100 %	\$ (29)	\$ (95)		69 %
Gross margin	7 %	(21)%		28 %	(1)%	(16)%		15 %
Raw steel production (mnt) ^(a)	114	—		n/a	207	—		n/a
Capability utilization ^(a)	51 %	— %		51 %	46 %	— %		46 %
Steel shipments (mnt)	105	132		(20) %	194	319		(39) %
Average realized steel price per ton	\$ 1,633	\$ 1,288		27 %	\$ 1,513	\$ 1,285		18 %

^(a) Tubular segment raw steel added in October 2020 with the start-up of the new electric arc furnace.

The increase in Tubular results for the three months ended June 30, 2021 as compared to the same period in 2020 occurred despite continued high levels of imports and was primarily due to:

- increased average realized prices (approximately \$35 million)
- lower other costs, primarily idled plant carrying costs, (approximately \$20 million),

these changes were partially offset by:

- higher raw material costs (approximately \$5 million)
- higher energy costs (approximately \$5 million).

The increase in Tubular results for the six months ended June 30, 2021 as compared to the same period in 2020 occurred despite continued high levels of imports and was primarily due to:

- increased average realized prices (approximately \$35 million)
- lower operating costs (approximately \$10 million)
- lower other costs, primarily idled plant carrying costs, (approximately \$40 million),

these changes were partially offset by:

- decreased shipments (approximately \$5 million)
- higher raw material costs (approximately \$10 million)
- higher energy costs (approximately \$5 million).

Gross margin for the three and six months ended June 30, 2021 compared to the same periods in 2020 increased primarily as a result of higher average realized prices and positive cost improvements from the new EAF and plant idlings, partially offset by increased raw material costs.

Items not allocated to segments

- We recorded Big River Steel - inventory step-up amortization charge of \$24 million in the six months ended June 30, 2021. See Note 5 to the Condensed Consolidated Financial Statements for further details.
- We recorded Big River Steel - unrealized losses of \$6 million and \$15 million in the three months and six months ended June 30, 2021, respectively for the post-acquisition mark-to-market impacts of hedging instruments acquired with the purchase of the remaining equity interest in Big River Steel. See Note 14 to the Condensed Consolidated Financial Statements for further details.
- We recorded Big River Steel - acquisition costs of \$9 million in the six months ended June 30, 2021. See Note 5 to the Condensed Consolidated Financial Statements for further details.
- We recorded restructuring and other charges of \$31 million and \$37 million in the three months and six months ended June 30, 2021, respectively. See Note 20 to the Condensed Consolidated Financial Statements for further details.
- We recorded a gain on previously held equity investment in Big River Steel of \$111 million in the six months ended June 30, 2021. See Note 5 to the Condensed Consolidated Financial Statements for further details.
- We recorded an impairment of \$28 million for the Mon Valley Works endless casting and rolling project. See Note 1 to the Condensed Consolidated Financial Statement for further details.
- We recorded a property sale gain of \$15 million on the sale of a non-core real estate asset.

Net interest and other financial costs

(Dollars in millions)	Three Months Ended June 30,			% Change	Six Months Ended June 30,			% Change
	2021	2020			2021	2020		
Interest expense	\$ 84	\$ 64	(31)%		\$ 176	\$ 114	(54)%	
Interest income	(1)	(1)	— %		(2)	(5)	(60)%	
Loss on debt extinguishment	1	—	(100)%		256	—	(100)%	
Other financial costs	4	7	43 %		22	4	(450)%	
Net periodic benefit income	(29)	(8)	263 %		(60)	(16)	275 %	
Total net interest and other financial costs	\$ 59	\$ 62	5 %		\$ 392	\$ 97	(304)%	

Net interest and other financial costs decreased in the three months ended June 30, 2021 as compared to the same period last year from an increase in net periodic benefit income (as discussed further below), partially offset by increased interest expense.

Net interest and other financial costs increased in the six months ended June 30, 2021 as compared to the same period last year from increased interest expense, debt retirement costs and higher other financial costs, partially offset by an increase in net periodic benefit income (as discussed below).

The net periodic benefit income components of pension and other benefit costs are reflected in the table above, and increased in the three months and six months ended June 30, 2021 as compared to the same periods last year primarily due to better than expected asset performance and lower amortization of prior service costs.

Income taxes

The **income tax benefit** was \$(37) million and \$(36) million in the three and six months ended June 30, 2021, respectively compared to \$(5) million and \$(24) million in the three and six months ended June 30, 2020, respectively.

At June 30, 2021, U. S. Steel determined, based upon weighing all positive and negative evidence, that a full valuation allowance for the domestic deferred tax assets was no longer required. Accordingly, we reversed all of the domestic valuation allowance except for a portion of the domestic valuation allowance related to certain state net operating losses and state tax credits, which resulted in a \$262 million non-cash net benefit to earnings. That determination was based, in part, on U. S. Steel's cumulative income from the past three years and projections of income in future years. The release of the valuation allowance contains discrete and current year impacts that are recorded in the income tax benefit and will be remeasured in upcoming 2021 periods.

The tax benefit for the six months ended June 30, 2020 includes a \$14 million benefit related to recording a loss from continuing operations and income from other comprehensive income categories.

Net earnings attributable to United States Steel Corporation were \$1,012 million and \$1,103 million in the three and six months ended June 30, 2021, respectively, compared to a net loss of \$(589) million and \$(980) million in the three and six months ended June 30, 2020, respectively. The changes primarily reflect the factors discussed above.

LIQUIDITY AND CAPITAL RESOURCES

Net cash provided by operating activities was \$1,103 million for the six months ended June 30, 2021 compared to net cash used by operating activities of \$362 million in the same period last year. The increase in cash from operations is primarily due to stronger financial results, partially offset by changes in working capital period over period. 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.

Our cash conversion cycle for the second quarter of 2021 improved by ten days as compared to the fourth quarter of 2020 as shown below:

Cash Conversion Cycle	2021		2020	
	\$ millions	Days	\$ millions	Days
Accounts receivable, net ^(a)	\$2,010	33	\$994	38
+ Inventories ^(b)	\$1,914	45	\$1,402	54
- Accounts Payable and Other Accrued Liabilities ^(c)	\$2,684	64	\$1,861	68
= Cash Conversion Cycle ^(d)		14		24

^(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 in the United States. 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 2021.

Capital expenditures for the six months ended June 30, 2021, were \$284 million, compared with \$455 million in the same period in 2020. Flat-Rolled capital expenditures were \$167 million and included spending for Mon Valley Works Endless Casting and Rolling, Gary Hot Strip Mill upgrades, Mining Equipment and various other infrastructure, environmental, and strategic projects. Mini Mill capital expenditures were \$56 million and primarily included spending for Phase II expansion. USSE capital expenditures of \$26 million consisted of spending for Degasser improvements, Dynamo Line and various other infrastructure, and environmental projects. Tubular capital expenditures were \$34 million and included spending for the Fairfield Electric Arc Furnace (EAF) project and various other infrastructure, and environmental projects.

U. S. Steel's contractual commitments to acquire property, plant and equipment at June 30, 2021, totaled \$573 million.

Net cash used by financing activities was \$855 million for the six months ended June 30, 2021 compared to net cash provided of \$2,306 million in the same period last year. The decrease was primarily due to the repayment of debt, partially offset by the issuance of common stock.

The following table summarizes U. S. Steel's liquidity as of June 30, 2021:

(Dollars in millions)	
Cash and cash equivalents	\$ 1,329
Amount available under Credit Facility Agreement	1,918
Amount available under Big River Steel - Revolving Line of Credit	350
Amount available under USSK credit facilities	579
Total estimated liquidity	\$ 4,176

In the first half of 2021, we issued 48,300,000 shares of common stock for net proceeds of approximately \$790 million and issued \$750 million in aggregate principal amount of 6.875% Senior Notes due 2029 (2029 Senior Notes) for net proceeds of \$739 million after transaction costs. With the common stock and 2029 Senior Notes issuance proceeds and cash on hand we fully redeemed our 12.000% Senior Secured Notes due 2025 in the aggregate principal amount of \$1.056 billion plus premiums of \$181 million, repaid in full our Export-Import Credit Agreement in the amount of \$180 million and reduced the borrowing under our Credit Facility Agreement and USSK Facility Agreement by \$500 million and \$368 million, respectively. See Note 15 to the Condensed Consolidated Financial Statements for further details.

On June 17, 2021, U. S. Steel issued an irrevocable notice of redemption to redeem the entirety of its approximately \$718 million aggregate principal amount of outstanding 6.875% Senior Notes due 2025 (2025 Senior Notes). The Company expects the total payment to the holders including the redemption premium to be approximately \$730 million (reflecting a redemption price of 101.719% of the aggregate principal amount), plus accrued and unpaid interest to, but excluding, the redemption date of August 15, 2021. The 2025 Senior Notes will be redeemed with cash on hand. The 2025 Senior Notes are reflected in short-term debt and current maturities of long-term debt on the Condensed Consolidated Balance Sheet as of June 30, 2021.

With the acquisition of Big River Steel on January 15, 2021 we assumed additional indebtedness. Below is a summary of the most significant debt acquired as of June 30, 2021. See Note 15 to the Condensed Consolidated Financial Statements for further details.

- 6.625% Senior Secured Notes in the aggregate principal amount of \$900 million that mature in January 2029;
- 4.50% Arkansas Development Finance Authority Bonds in the aggregate principal amount of \$487 million that have a final maturity in September 2049;
- 4.75% Arkansas Development Finance Authority Bonds Tax Exempt Series 2020 (Green Bonds) in the aggregate principal amount of \$265 million that have a final maturity in September 2049;
- Arkansas Teacher Retirement System Notes Payable in the amount of \$106 million that mature in 2023.

As of June 30, 2021, \$107 million of the total cash and cash equivalents was held by foreign subsidiaries. Substantially all of the liquidity attributable to our foreign subsidiaries can be accessed without the imposition of income taxes as a result of the election effective December 31, 2013 to liquidate for U.S. income tax purposes a foreign subsidiary that holds most of our international operations.

On April 12, 2021, United States Steel Corporation entered into a Notice and Acknowledgement with the Export Credit Agreement (ECA) lender, facility agent and ECA agent, KfW IPEX-BANK GMBH to acknowledge that the previously announced endless casting and rolling project at Mon Valley Works would no longer be pursued and the associated equipment for the project is now being evaluated for other uses. Use of the Export-Credit Agreement for further equipment purchases is also being evaluated. As of June 30, 2021, \$136 million was owed on the ECA.

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.

We may from time to time seek to retire or repurchase our outstanding long-term debt through open market purchases, privately negotiated transactions, exchange transactions, redemptions or otherwise. Such purchases or exchanges, if any, will depend on prevailing market conditions, our liquidity requirements, and other factors and may be commenced or suspended at any time. The amounts involved may be material. See Note 15 to the Condensed Consolidated Financial Statements for further details regarding U. S. Steel's debt.

We use surety bonds, trusts and letters of credit to provide 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 \$215 million of liquidity sources for financial assurance purposes as of June 30, 2021. Increases 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.

In October 2020, the Company entered into a supply chain finance agreement with a third-party administrator with an initial term of one year which is guaranteed by the Export Import Bank of the United States (Ex-Im Guarantee). See our Annual Report on Form 10-K for the year-ended December 31, 2020 for further details. As of June 30, 2021, accounts payable and accrued expenses included \$75 million of outstanding payment obligations which suppliers elected to sell to participating financial institutions. Access to supply chain financing could be curtailed in the future if the terms of the Ex-Im Guarantee are modified or if our credit ratings are downgraded. If access to supply chain financing is curtailed, working capital could be negatively impacted which may necessitate additional borrowing.

We finished the second quarter of 2021 with \$1,329 million of cash and cash equivalents and \$4,176 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. 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.

We expect that our estimated liquidity requirements will consist primarily of the remaining portion of our 2021 planned strategic and sustaining capital expenditures, additional debt repayment, working capital requirements, interest expense, and operating costs and employee benefits for our operations after taking into account recent footprint actions and cost reductions at our plants and headquarters. Our available liquidity at June 30, 2021 consists principally of our cash and cash equivalents and available borrowings under the Credit Facility Agreement, Big River Steel ABL Facility and the USSK Credit Facilities. 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, repayment or refinancing of outstanding debt, the incurrence of additional debt or the issuance of additional debt or equity securities, drawing on available capacity under the Credit Facility Agreement, Big River Steel ABL Facility and/or the USSK Credit Facilities, or reducing outstanding borrowings under those facilities from time to time if deemed appropriate by management.

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 (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 CAA obligations and similar obligations in Europe.

EU Environmental Requirements and Slovak Operations

Phase IV of the EU Emissions Trading System (EU ETS) commenced on January 1, 2021 and will finish on December 31, 2030. The European Commission issued final approval of the Slovak National Allocation table in July 2021. The Slovak Ministry of Environment's decision on USSE's free allocation for the first five years of the Phase IV period is expected by the end of September 2021. In the fourth quarter of 2020 USSE started purchasing EUA for the Phase IV period. As of June 31, 2021, we have pre-purchased approximately 2.0 million EUA totaling €67 million (approximately \$79 million).

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 comply with or go beyond BAT requirements were €138 million (approximately \$164 million) over the actual program period. 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. USSK complied with these covenants as of June 30, 2021. 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.

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

Future compliance with CO₂ emission requirements may include substantial costs for emission allowances, restriction of production and higher prices for coking coal, natural gas and electricity generated by carbon-based systems. Because we cannot predict what requirements ultimately will be imposed in the U.S. and Europe, it is difficult to estimate the likely impact on U. S. Steel, but it could be substantial. On March 28, 2017, President Trump signed Executive Order 13783 instructing the United States Environmental Protection Agency (U.S. EPA) to review the Clean Power Plan (CPP). As a result, in June 2019, the U.S. EPA published a final rule, the "Affordable Clean Energy (ACE) Rule" that replaced the CPP. Twenty-three states, the District of Columbia, and seven municipalities are challenging the CPP repeal and ACE rule in the U.S. Court of Appeals for the D.C. Circuit. A coalition of 21 states has intervened in the litigation in support of the U.S. EPA. Various other public interest organizations, industry groups, and Members of Congress are also participating in the litigation. On January 19, 2021, the District of Columbia Circuit vacated and remanded the ACE to the U.S. EPA, while the CPP remains stayed. It is unclear as to how the new Biden administration will proceed with the remand. Any impacts to our operations as a result of any future greenhouse gas regulations are not estimable at this time since the matter is unsettled. In any case, to the extent expenditures associated with any greenhouse gas regulation, as with all costs, are not ultimately reflected in the prices of U. S. Steel's products and services, operating results will be reduced.

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 are still being finalized and may differ between the periods. Currently, the overall EU target is a 40 percent reduction of 1990 emissions by 2030. Free allocation of CO₂ 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 missed the 15 percent threshold in 2019-20; therefore, the free allocation for 2021 will be decreased. Additionally, lower production in 2019 and 2020 will have an impact on the future free allocation for 2026-2030, where the historical production average for years 2019-2023 will be assessed.

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 (CBAM) to impose carbon fees on EU imports, further reduction of free CO₂ allowance allocation to heavy industry and measures to strengthen the supply of carbon allowances. 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 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.

On July 13, 2020, the U.S. EPA published a Residual Risk and Technology Review (RTR) 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 (AISI), Clean Air Council and others, were filed with the United States Court of Appeals for the District of Columbia Circuit. The cases were consolidated and are being held in abeyance until the U.S. EPA reviews and responds to administrative petitions for review. 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. Based upon our analysis of the proposed taconite rule, the Company does not expect any material impact as a result of the rule. However, petitions for review of the rule were filed in the United States Court of Appeals for the District of Columbia Circuit, in which the Company and AISI intervened. 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.

On March 12, 2018, the New York State Department of Environmental Conservation (DEC), along with other petitioners, submitted a CAA Section 126(b) petition to the U.S. EPA. In the petition, the DEC asserts that stationary sources from the following nine states are interfering with attainment or maintenance of the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS) in New York: Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia. DEC is requesting the U.S. EPA to require sources of nitrogen oxides in the nine states to reduce such emissions. In a final rule promulgated in the October 18, 2019, Federal Register, the U.S. EPA denied the petition. On October 29, 2019, New York, New Jersey, and the City of New York petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the U.S. EPA's denial of the petition. In July 2020, the Court vacated the U.S. EPA's determination and remanded it back to the U.S. EPA to reconsider the 126(b) petition in a manner consistent with the Court's opinion. At this time, since the U.S. EPA's decision after its reconsideration is unknown, the impacts of any reconsideration are indeterminable and inestimable.

The CAA also requires the U.S. EPA to develop and implement NAAQS for criteria pollutants, which include, among others, particulate matter (PM) - consisting of PM₁₀ and PM_{2.5}, lead, carbon monoxide, nitrogen dioxide, sulfur dioxide (SO₂), 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 District of Columbia Circuit. Several other states and industry trade groups intervened in support of the U. S. EPA's action. The case remains before the Court.

On December 14, 2012, the U.S. EPA lowered the annual standard for PM_{2.5} from 15 micrograms per cubic meter (ug/m³) to 12 ug/m³, and retained the PM_{2.5} 24-hour and PM₁₀ NAAQS rules. In December 2014, the U.S. EPA designated some areas in which U. S. Steel operates as nonattainment with the 2012 annual PM_{2.5} standard. On April 6, 2018, the U.S. EPA published a notice that Pennsylvania, California and Idaho failed to submit a SIP to demonstrate attainment with the 2012 fine particulate standard by the deadline established by the CAA. As a result of the notice, Pennsylvania, a state in which we operate, was required to submit a State Implementation Plan (SIP) to the U.S. EPA no later than November 7, 2019 to avoid sanctions. On April 29, 2019, the ACHD published a draft SIP for the Allegheny County nonattainment area which demonstrates that all of Allegheny County will meet its reasonable further progress requirements and be in attainment with the 2012 PM_{2.5} annual and 24-hour NAAQS by December 31, 2021 with the existing controls that are in place. On September 12, 2019, the Allegheny County Board of Health unanimously approved the draft SIP. The draft SIP was then sent to the Pennsylvania Department of Environmental Protection (PADEP). PADEP submitted the SIP to the U.S. EPA for approval on November 1, 2019. To date, the U.S. EPA has not taken action on PADEP's submittal. 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_{2.5} 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 District of Columbia Circuit. Several industry trade groups intervened in support of the U.S. EPA's action. The case remains before the Court.

On January 26, 2021, ACHD announced that for the first time in history all eight air quality monitors in Allegheny County met the federal air quality standards including particulate matter (PM_{2.5} and PM₁₀).

On November 20, 2020, ACHD proposed a reduction to the current allowable emissions from coke plant operations, including the hydrogen sulfide content of coke oven gas, that would be more stringent than the Federal Best Available Control Technology and Lowest Achievable Emission Rate requirements. In various meetings with ACHD, U. S. Steel has raised significant objections, in particular, that ACHD has not demonstrated that continuous compliance with the draft rule is economically and technologically feasible. While U. S. Steel continues to meet with ACHD regarding the draft rule, U. S. Steel believes that any rule promulgated by ACHD must comply with its statutory authority. If the draft rule or similar rule is adopted, the financial and operational impacts to U. S. Steel could be material. To assist in developing rules objectively and with adequate technical justification, the June 27, 2019, Settlement Agreement, establishes procedures that would be used when developing a new rule. Because U. S. Steel believes ACHD did not follow the procedures prescribed in the June 27, 2019 Settlement Agreement (Agreement) with ACHD, U. S. Steel has invoked dispute resolution per the terms of the Agreement regarding ACHD's proposed coke rule. U. S. Steel and ACHD are currently negotiating resolution of the disputes.

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 2021.

INTERNATIONAL TRADE

U. S. Steel continues to face import competition, much of which is unfairly traded, supported by foreign governments, and fueled by massive global steel overcapacity, currently estimated to be over 625 million metric tons per year—more than seven times the entire U.S. steel market and more than thirty times total U.S. steel imports. These imports, as well as the underlying policies/practices and overcapacity, 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 for imports from: (1) Argentina, Brazil, and South Korea, which are subject to restrictive quotas; (2) Canada and Mexico, which are not subject to either tariffs or quotas but tariffs could be re-imposed on surging product groups after consultations; and (3) Australia, which is not subject to tariffs, quotas, or an anti-surge mechanism.

The U.S. Department of Commerce (DOC) is managing a process in which U.S. companies may request and/or oppose one-year temporary product exclusions from the Section 232 tariffs and quotas. Over 276,000 temporary exclusions have been requested for steel products.

Multiple legal challenges to the Section 232 action continue before the U.S. Court of International Trade (CIT) and U.S. Court of Appeals for the Federal Circuit (CAFC). U.S. courts have consistently rejected constitutional and statutory challenges to the initial steel Section 232 action and overall product exclusion process. Multiple countries have challenged the Section 232 action at the World Trade Organization (WTO), imposed retaliatory tariffs, and/or acted to safeguard their domestic steel industries from increased steel imports. In turn, the United States has challenged the retaliation at the WTO.

In May 2021, the United States and the EU agreed to begin discussions to address global steel overcapacity and the Section 232 action. The EU suspended the doubling of Section 232 retaliation scheduled for June 2021 for six months until December 2021. In June 2021, the United States and the EU issued a joint statement committing to complete discussions on a wide range of trade issues including overcapacity and the Section 232 action and retaliation by the end of 2021.

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, thereby strengthening U.S. national and economic security. The Company continues to actively defend the Section 232 action.

In February 2019, the European Commission (EC) imposed a definitive tariff rate quota safeguard of 25 percent tariffs on certain steel imports that exceed established quotas. In June 2021, the EC voted to extend the safeguard for an additional three years, until June 2024.

Antidumping duties (AD) and countervailing duties (CVD or anti-subsidy duties) are applied to certain steel product imports in addition to Section 232 measures in the United States or the steel safeguard in the EU, and AD/CVD orders will continue beyond the Section 232 action and the EC's safeguard. U. S. Steel continues to actively defend and maintain the 55 U.S. AD/CVD orders and 12 EU AD/CVD orders covering products that can be manufactured by U. S. Steel in multiple proceedings before the DOC, U.S. International Trade Commission, CIT, CAFC, EC, European courts, and the WTO.

In June 2021, the DOC made a final affirmative determination that corrosion-resistant steel (CORE) from Malaysia made from Chinese and Taiwanese substrate circumvent the AD/CVD orders on CORE from China and Taiwan, resulting in AD/CVD between 4 and 248 percent on such imports. In the EU, in April 2021, the EC announced definitive 4.7 to 7.3 percent AD duties on EU imports of hot-rolled steel from Turkey, effective July 2021. In June 2021, the EC initiated new AD investigations of EU imports of hot-dipped galvanized steel from Turkey and Russia.

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 products, pursuant to Section 301 of the Trade Act of 1974.

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, 2020, there were no material changes in U. S. Steel's exposure to market risk from December 31, 2020.

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, 2021. 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, 2021, 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 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 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 Defendants formed a civil conspiracy in violation of Texas common law, and that the Defendants tortiously interfered with JSW's business relationships. The basis for JSW's allegations relate to the Defendants participation in the U. S. Department of Commerce's Section 232 process, including Defendants' support of the enactment of the President's Section 232 proclamation, statements made by the Defendants after the enactment of Section 232, and 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. The Company intends to vigorously defend the matter.

On January 22, 2021, NLMK Pennsylvania, LLC and NLMK Indiana, LLC (NLMK) filed a Complaint in the Court of Common Pleas of Allegheny County, Pennsylvania against the Company. The Complaint alleges that the Company made misrepresentations to the U. S. Department of Commerce regarding NLMK's requests to be excluded from tariffs assessed on steel slabs imported into the United States pursuant to the March 2018 Section 232 Presidential Order imposing tariffs. NLMK claims over \$100 million in compensatory and other damages. The Company removed the claim to the United States District Court for the Western District of Pennsylvania on February 25, 2021. NLMK filed a Motion to Remand the claim back to State court, which is currently pending before the court. The Company is vigorously defending the matter.

On April 11, 2017, there was a process waste-water release at our Midwest Plant (Midwest) in Portage, Indiana, that impacted a water outfall that discharges to Burns Waterway near Lake Michigan. The Company has since implemented substantial operational, process and notification improvements at Midwest. In January of 2018, The Surfrider Foundation and the City of Chicago initiated suits in the Northern District of Indiana alleging Clean Water Act (CWA) and permit violations at Midwest. On April 2, 2018, the U.S. EPA and the State of Indiana initiated a separate action against the Company and lodged a Consent Decree negotiated between U. S. Steel and the relevant governmental agencies consisting of all material terms to resolve the CWA and National Pollutant Discharge Elimination System (NPDES) violations at the Midwest Plant. A public comment period for the Consent Decree ensued. The suits that the Surfrider Foundation and the City of Chicago filed are currently stayed. The Surfrider Foundation and the City of Chicago also filed motions, which were granted, to intervene in the Consent Decree case. The United States Department of Justice (DOJ) filed a revised Consent Decree and a motion with the court to enter the Consent Decree as final on November 20, 2019. Surfrider Foundation, City of Chicago and other non-governmental organizations filed objections to the revised Consent Decree. The DOJ and U. S. Steel made filings in support of the revised Consent Decree. On March 8, 2021, the Court granted the Company's Motion to Dismiss the Surfrider Foundation and City of Chicago Complaints in Intervention and granted leave to amend their respective Complaints.

On November 30, 2018, the Minnesota Pollution Control Agency (MPCA) issued a new Water Discharge Permit for the Minntac Tailings Basin waters. The permit contains new sulfate limitations applicable to water in the Tailings Basin and groundwater flowing from U. S. Steel's property. The MPCA also acted on the same date, denying the Company's requests for variances from ground and surface water standards and request for a contested case hearing. U. S. Steel filed appeals with the Minnesota Court of Appeals challenging the actions taken by the MPCA. Separate appeals were filed by a Minnesota Native American Tribe (Fond du Lac Band) and a nonprofit environmental group (Water Legacy). All cases were consolidated. On December 9, 2019, the Court issued a favorable ruling to U. S. Steel, removing the sulfate limitations for the Tailings Basin and groundwater. The opposing parties filed appeals with the Minnesota Supreme Court on January 8, 2020 which were accepted by that Court. On February 10, 2021 the Minnesota Supreme Court reversed the Court of Appeals' decision regarding sulfate limitations and remanded the case for further proceedings, including a determination on the Company's requests for variances. On June 28, 2021, the Court of Appeals issued a ruling denying the Company's request for a variance from the sulfate standard for a contested case hearing.

On October 2, 2017, an Amended Shareholder Class Action Complaint was filed in the United States District Court for the Western District of Pennsylvania consolidating previously-filed actions. Separately, five related shareholder derivative lawsuits were filed in State and Federal courts in Pittsburgh, Pennsylvania and the Delaware Court of Chancery. The underlying consolidated class action lawsuit alleges that U. S. Steel, certain current and former officers, an upper level manager of the Company and the financial underwriters who participated in the August 2016 secondary public offering of the Company's common stock (collectively, Defendants) violated federal securities laws in making false statements and/or failing to discover and disclose material information regarding the financial condition of the Company. The lawsuit claims that this conduct caused a prospective class of plaintiffs to sustain damages during the period from January 27, 2016 to April 25, 2017 as a result of the prospective class purchasing the Company's common stock at artificially inflated prices and/or suffering losses when the price of the common stock dropped. The derivative lawsuits generally make the same allegations against the same officers and also

allege that certain current and former members of the Board of Directors failed to exercise appropriate control and oversight over the Company and were unjustly compensated. The plaintiffs seek to recover losses that were allegedly sustained. The class action Defendants moved to dismiss plaintiffs' claims. On September 29, 2018 the Court ruled on those motions granting them in part and denying them in part. On March 18, 2019, the plaintiffs withdrew the claims against the Defendants related to the 2016 secondary offering. As a result, the underwriters are no longer parties to the case. The Company and the individual defendants are vigorously defending the remaining claims. On December 31, 2019, the Court granted Plaintiffs' motion to certify the proceeding as a class action. The Company's appeal of that decision has been denied by the Third Circuit Court of Appeals and the class has been notified. Discovery is proceeding.

ENVIRONMENTAL PROCEEDINGS

The following is a summary of the proceedings of U. S. Steel that were pending or contemplated as of June 30, 2021, 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 (PRPs) 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, 2021, 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 costs associated with implementing 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 has recently contracted for the second phase of work at the site which will extend through early 2022. Work continues on refinement of the final phase of the remedial design and permitting. Additional, design, oversight costs, and implementation of Phase 1 and Phase 2 of the preferred remedial alternative on the upland property and Estuary are currently estimated as of June 30, 2021 at approximately \$33 million. 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."

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 nine 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 five 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 a RCRA Facility Investigation (RFI), a Corrective Measures Study (CMS) and Corrective Measure Implementation. Evaluations are underway at six groundwater areas on the east side of the facility. An Interim Stabilization Measure work plan has been approved by the U.S. EPA for one of the six areas and a contractor has recently completed 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 \$24 million as of June 30, 2021, 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 \$19 million as of June 30, 2021, for our estimated share of the remaining costs of remediation at the site.

USS-POSCO Industries (UPI)

In February 2020, U. S. Steel purchased the remaining 50 percent interest in UPI, a former joint venture that is located in Pittsburg, California between subsidiaries of U. S. Steel and POSCO. 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, 2021. As of June 30, 2021, approximately \$1 million 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." See Note 5 to the Condensed Consolidated Financial Statements "Acquisition" for further details regarding U. S. Steel's purchase of UPI.

In 2017, the Contra Costa Health Services Hazardous Materials Programs (County Health Services) conducted inspections of UPI's facility, which resulted in the identification of several alleged environmental violations. Thereafter, UPI was able to resolve many of the issues to the satisfaction of County Health Services, but UPI also encountered some delays and disagreements pertaining to certain alleged violations. In 2018, County Health Services referred the matter to the Contra Costa District Attorney's Office. In October 2019, UPI and the District Attorney's Office agreed to a tentative settlement whereby UPI would pay \$2.4 million in civil penalties in installments over 24 months. The tentative settlement also calls for UPI to spend \$1 million on environmental compliance at its facility (expenditures that benefit UPI). In addition, the tentative settlement includes a \$1 million suspended penalty that would be due if UPI were to fall out of compliance during the compliance period. The tentative settlement has been finalized and will be submitted for Court approval.

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 a 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, 2021. In total, the accrued liability for remaining work under the Corrective Action Program, was approximately \$118,000 at June 30, 2021. 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."

Cherryvale (KS) Zinc

In April 2003, U. S. Steel and Salomon Smith Barney Holdings, Inc. (SSB) entered into a Consent Order with the Kansas Department of Health & Environment (KDHE) concerning a former zinc smelting operation in Cherryvale, Kansas. Remediation of the site proper was essentially completed in 2007. The Consent Order was amended on May 3, 2013, to require investigation (but not remediation) of potential contamination beyond the boundary of the former zinc smelting operation. On November 22, 2016, KDHE approved a State Cooperative Final Agency Decision Statement that identified the remedy selected to address

potential contamination beyond the boundary of the former zinc smelting site. The Removal Action Design Plan was approved during the second quarter of 2018. The Waste Deposition Area design and the Interim Risk Management Plan (which includes institutional controls) were approved by KDHE during the fourth quarter of 2018. An amended consent order for remediation was signed in May 2019 and a remediation contract was executed in June 2019. Remediation work is now underway and is projected to continue through 2022. U. S. Steel has an accrued liability of approximately \$4 million as of June 30, 2021, for our estimated share of the cost of remediation.

Air Related Matters

Great Lakes Works

In June 2010, the U.S. EPA significantly lowered the primary (NAAQS) for SO₂ from 140 ppb on a 24-hour basis to an hourly standard of 75 ppb. Based upon the 2009-2011 ambient air monitoring data, the U.S. EPA designated the area in which Great Lakes Works is located as nonattainment with the 2010 SO₂ NAAQS.

As a result, pursuant to the CAA, the Michigan Department of Environment, Great Lakes and Energy (EGLE) was required to submit a SIP to the U.S. EPA that demonstrates that the entire nonattainment area (and not just the monitor) would be in attainment by October 2018 by using conservative air dispersion modeling. To develop the SIP, U. S. Steel met with EGLE on multiple occasions and had offered reduction plans to EGLE but the parties could not agree to a plan. EGLE, instead promulgated Rule 430 which was solely directed at U. S. Steel. The Company challenged Rule 430 before the Michigan Court of Claims who by Order dated October 4, 2017, granted the Company's motion for summary disposition voiding Rule 430 finding that it violated rule-making provisions of the Michigan Administrative Procedures Act and Michigan Constitution. Since Rule 430 has been invalidated and EGLE's SIP has not been approved, the U.S. EPA has indicated that it would promulgate a Federal Implementation Plan (FIP) pursuant to its obligations and authority under the CAA. Because development of the FIP is in the early stages, the impacts of the nonattainment designation to the Company are not estimable at this time.

Granite City Works

In October 2015, Granite City Works received a Violation Notice from 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 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 November 9, 2017, the U.S. EPA Region III and the Allegheny County Health Department (ACHD) jointly issued a Notice of Violation (NOV) regarding the Company's Edgar Thomson facility in Braddock, PA. In addition, on November 20, 2017, ACHD issued a separate, but related NOV to the Company regarding the Edgar Thomson facility. In the NOV's, based upon their inspections and review of documents collected throughout the last two years, the agencies allege that the Company has violated

the CAA by exceeding the allowable visible emission standards from certain operations during isolated events. In addition, the agencies allege that the Company has violated certain maintenance, reporting, and recordkeeping requirements. U. S. Steel met with the U.S. EPA Region III and ACHD several times. ACHD, the U.S. EPA Region III and U. S. Steel continue to negotiate a potential resolution of 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 SO₂ emissions exceeded the hourly NAAQS for SO₂ 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 February 13, 2019, PennEnvironment and Clean Air Council, both environmental, non-governmental organizations, sent U. S. Steel a 60-day notice of intent to sue letter pursuant to the CAA. The letter alleged Title V permit violations at the Clairton, Irvin, and Edgar Thomson facilities as a result of the December 24, 2018 Clairton Plant fire. The 60-day notice letter also alleged that the violations caused adverse public health and welfare impacts to the communities surrounding the Clairton, Irvin, and Edgar Thomson facilities. PennEnvironment and Clean Air Council subsequently filed a Complaint in Federal Court in the Western District of Pennsylvania on April 29, 2019 to which U. S. Steel has responded. On May 3, 2019, ACHD filed a motion to intervene in the lawsuit which was granted by the Court. On June 25, 2019, ACHD filed its Complaint in Intervention, seeking injunctive relief and civil penalties regarding the alleged Permit violations following the December 24, 2018 fire. The parties are currently engaged in discovery.

Water Related Matters

On February 7, 2020, the Indiana Department of Environmental Management (IDEM) issued an Amended Notice of Violation and Proposed Agreed Order related to alleged NPDES permit water discharge violations at our Midwest Plant (Midwest) in Portage, Indiana during the period of November 2018 through December 2019 unrelated to the violations resolved in the Consent Decree. The Proposed Agreed Order seeks corrective actions, a civil penalty, and stipulated penalties for future violations. The parties continue to negotiate a Proposed Agreed Order.

ASBESTOS LITIGATION

See Note 21 to our 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, 2020.

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

None.

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

None.

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 July 28, 2020. \(Incorporated by reference to Exhibit 3.1 to United States Steel Corporation's Form 8-K filed on July 30, 2020, Commission File Number 1-16811.\)](#)
- 10.1 [Amended and Restated Senior Multicurrency Revolving Credit Facility Agreement Dated 26 September 2018 as Amended and Restated on the Second Effective Date.](#)
- 10.2 [Membership Interest Purchase Agreement, dated June 7, 2021, by and between United States Steel Corporation and Percy Acquisition LLC. \(Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on June 8, 2021, Commission File Number 1-16811.\)*](#)
- 10.3 [Amendment No. 3 to Fifth Amended and Restated Credit Agreement, dated July 23, 2021, by and among United States Steel Corporation, the Subsidiary Guarantors party thereto, the Lenders party thereto, the LC Issuing Banks party thereto, and JPMorgan Chase Bank, N.A., as Administrative and Collateral Agent.](#)
- 10.4 [Second Amendment to ABL Credit Agreement, dated July 23, 2021, by and among Big River Steel LLC, BRS Intermediate Holdings LLC, Goldman Sachs Bank USA, as administrative agent and collateral agent, and each lender party thereto.](#)
- 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, 2021 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) the Condensed Consolidated Statement of Operations, (ii) the Condensed Consolidated Statement of Comprehensive Income (Loss), (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).

* Schedules and exhibits have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of the omitted schedules and exhibits upon request by the U.S. Securities and Exchange Commission.

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 30, 2021

WEB SITE POSTING

This Form 10-Q will be posted on the U. S. Steel web site, www.ussteel.com, within a few days of its filing.

**AMENDED AND RESTATED SENIOR MULTICURRENCY
REVOLVING CREDIT FACILITY AGREEMENT**

**DATED 26 SEPTEMBER 2018 AS AMENDED AND RESTATED ON THE SECOND
EFFECTIVE DATE**

€460,000,000

SENIOR MULTICURRENCY REVOLVING CREDIT FACILITY

FOR

U. S. STEEL KOŠICE, S.R.O.

GUARANTEED BY

FERROENERGY S.R.O.

ARRANGED BY

**COMMERZBANK AKTIENGESELLSCHAFT, POBOČKA ZAHRANIČNEJ BANKY,
BRATISLAVA**

ING BANK N.V., POBOČKA ZAHRANIČNEJ BANKY

KOMERČNÍ BANKA, A.S., POBOČKA ZAHRANIČNEJ BANKY

SLOVENSKÁ SPORITEĽŇA, A.S.

and

**UNICREDIT BANK CZECH REPUBLIC AND SLOVAKIA, A.S., POBOČKA ZAHRANIČNEJ
BANKY**

as Mandated Lead Arrangers

AND

ČESKOSLOVENSKÁ OBCHODNÁ BANKA, A.S.

CITIBANK EUROPE PLC, POBOČKA ZAHRANIČNEJ BANKY

as Lead Arrangers

WITH

COMMERZBANK FINANCE & COVERED BOND S.A.

as Facility Agent

ALLEN & OVERY

Allen & Overy Bratislava, s.r.o.

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THIS AGREEMENT is an amended and restated agreement which sets out the terms on which an up to EUR460,000,000 credit agreement dated 26 September 2018 between, amongst others, the Company and the Facility Agent is amended and restated and sets out the terms and conditions on which, from the Second Effective Date, the Facility continues to be made available to the Company, and in its amended and restated form is made

BETWEEN:

- (1) **U. S. STEEL KOŠICE, S.R.O.** (U. S. Steel Košice, s.r.o.), with its registered seat at Vstupný areál U. S. Steel, Košice 044 54, Slovak Republic, registered in the Commercial Register of District Court Košice I, insert No. 11711/V, section Sro, company identification number (*IČO*): 36 199 222 as borrower (the **Company**);
- (2) **FERROENERGY S.R.O.** (Ferroenergy s.r.o.), with its registered seat at Vstupný areál U. S. Steel, Košice 044 54, Slovak Republic, registered in the Commercial Register of District Court Košice I, insert No. 40717/V, section Sro, company identification number (*IČO*): 50 720 937 as guarantor (the **Guarantor**);
- (3)
 - (a) **COMMERZBANK AKTIENGESELLSCHAFT**, with its registered office Kaiserstrasse 16, 603 11 Frankfurt am Main, Federal Republic Germany, entered in the Commercial Register at the District Court in Frankfurt am Main under Entry HR B 32000, acting through its organizational unit **COMMERZBANK AKTIENGESELLSCHAFT, POBOČKA ZAHRANIČNEJ BANKY, BRATISLAVA**, with its seat at Bratislava 1, Rajska 15/A, Postcode 811 08, Identification No.: 30847737, entered in the Commercial Register of the District Court Bratislava I, Sec. Po, Insert No. 1121/B;
 - (a) **ING BANK N.V.**, with its registered seat at Bijlmerdreef 106, 1102CT Amsterdam, The Netherlands, a company limited by shares, registered in the Trade Register of Chamber of Commerce and Industry for Amsterdam under file No. 33031431 acting through its organisational unit **ING BANK N.V., POBOČKA ZAHRANIČNEJ BANKY**, Pribinova 10, Bratislava 811 09, Slovak Republic, Identification No. 30 844 754, registered in the Commercial register maintained by the District Court of Bratislava I, in Section Po, inserted file No. 130/B; and
 - (b) **KOMERČNÍ BANKA, A.S.**, a company incorporated and existing under the laws of the Czech Republic, with its registered office at Na Příkopě 33/969, Praha 1, 114 07, Czech Republic, Identification No. 453 17 054, registered in the Commercial register maintained by the Municipal Court of Prague, insert No. B 1360, acting through its organisational unit **KOMERČNÍ BANKA, A.S., POBOČKA ZAHRANIČNEJ BANKY**, with its registered office at Hodžovo námestie 1A, 811 06 Bratislava, Slovak Republic, Identification No. 47 231 564, registered in the Commercial register maintained by the District Court of Bratislava I, in Section Po, insert No. 1914/B;
 - (c) **SLOVENSKÁ SPORITEĽNA, A.S.**, with its registered seat at Tomášikova 48, 832 37 Bratislava, Slovak Republic, Identification No. 00 151 653, registered in the Commercial register maintained by the District Court of Bratislava I, in Section Sa, insert No. 601/B; and
 - (d) **UNICREDIT BANK CZECH REPUBLIC AND SLOVAKIA, A.S.**, a bank incorporated under the laws of the Czech Republic, with its registered seat at Želetavská 1525/1, Prague 4 - Michle, Post Code 140 92, Czech Republic, company identification number (*IČ*) 649 48 242, registered with the commercial register of the Municipal Court in Prague under file no. B 3608, acting through its branch **UNICREDIT BANK CZECH REPUBLIC AND**

SLOVAKIA, A.S., POBOČKA ZAHRANIČNEJ BANKY, with its registered seat at Šancová 1/A, Bratislava 813 33, Slovak Republic, identification number (IČO) 47 251 336, registered in the commercial register of the District Court Bratislava I, section Po, insert No. 2310/B,

as mandated lead arrangers (in this capacity the **Mandated Lead Arrangers**);

- (e) **ČESKOSLOVENSKÁ OBCHODNÁ BANKA, A.S.**, with its registered office at Žižkova 11, 811 02 Bratislava, Slovak Republic, ID No: 36 854 140, registered in the Commercial Register maintained by District Court Bratislava I, section Sa, file No. 4314/B; and
- (f) **CITIBANK EUROPE PLC**, with its registered office at North Wall Quay 1, Dublin 1, Republic of Ireland, registered with the Companies Registration Office under No. 132781, acting through its organisational unit **CITIBANK EUROPE PLC, POBOČKA ZAHRANIČNEJ BANKY**, Dvořákovo nábrežie 8, Bratislava 811 02, Slovak Republic, registered in the Commercial register maintained by the District Court of Bratislava I, in Section Po, insert No. 1662/B,

as lead arrangers (in this capacity the **Lead Arrangers**);

(4)

- (a) **COMMERZBANK AKTIENGESELLSCHAFT**, with its registered office at Kaiserstrasse 16, 603 11 Frankfurt am Main, Federal Republic Germany, entered in the Commercial Register at the District Court in Frankfurt am Main under Entry HR B 32000; and
- (b) **ING BANK N.V.**, with its registered seat at Bijlmerdreef 106, 1102CT Amsterdam, The Netherlands, a company limited by shares, registered in the Trade Register of Chamber of Commerce and Industry for Amsterdam under file No. 33031431,

as bookrunners and co-ordinators (in this capacity the **Bookrunners and Co-ordinators**);

- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (Original Lenders) as original lenders (the **Original Lenders**); and
- (6) **COMMERZBANK FINANCE & COVERED BOND S.A.**, with its seat at 25, rue Edward Steichen, 2540 Luxembourg as the agent of the Finance Parties (the **Facility Agent**).

IT IS AGREED as follows:

1. INTERPRETATION

1.1. Definitions

In this Agreement:

Acceptable Bank means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB+ or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or BAA1 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Facility Agent.

Acceptance Period has the meaning given to it in Clause 2.2 (Additional Commitments).

Account Debtor means a customer of the Company who has entered into a Sales Contract with the Company.

Additional Commitment Lender means any Additional Lender or Existing Lender identified as such in an Additional Commitment Request.

Additional Commitment Request means a request substantially in the form set out in Schedule 12 (Form of Additional Commitment Request).

Additional Commitment Request Notification means a notification substantially in the form set out in Schedule 11 (Form of Additional Commitment Request Notification).

Additional Lender means any bank or financial institution or a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets.

Administrative Party means an Arranger, the Security Agent or the Facility Agent.

Affiliate means, in relation to any person, a Subsidiary or a Holding Company of that person or any other Subsidiary of that Holding Company.

Agency Insolvency Event in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and;
- (f) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- (g) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (h) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

- (i) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (j) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (k) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or
- (l) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

Anti-Corruption Laws means, from time to time, all laws, rules, and regulations of any jurisdiction concerning or relating to bribery, money laundering or corruption, including the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

Arranger means each of the Mandated Lead Arrangers, Lead Arrangers and the Bookrunners and Co-ordinators.

Assets means, in relation to any person, a present and future business, undertaking, properties, assets and revenues (including any uncalled capital) of that person.

Availability Period means the period from and including the date of this Agreement to and including the date falling one week prior to the Final Maturity Date.

Bilateral Loan Agreements means each of the Commerzbank Bilateral Loan Agreement and the ING Bilateral Loan Agreement.

Break Costs means the amount (if any) that a Lender is entitled to receive under Clause 26.3 (Break Costs).

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for general business in New York, Luxembourg, Prague and Bratislava and:

- (a) if on that day a payment in or a purchase of a currency (other than euro) is to be made, the principal financial centre of the country of that currency; or
- (b) if on that day a payment in or a purchase of euro is to be made, which is also a TARGET Day.

Central Bank means the National Bank of Slovakia.

Centre of Main Interests means the “centre of main interests” of the Company or the Guarantor (as applicable) for the purposes of the Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the **Regulation**) (as that term is used in Article 3(1) of the Regulation).

Charged Property means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

Code means the United States Internal Revenue Code of 1986.

Commerzbank Bilateral Loan Agreement means the loan agreement between the Company as borrower and Commerzbank Aktiengesellschaft as lender dated 6 December 2013 (as most recently amended on 11 December 2018).

Commitment means:

- (a) for an Original Lender, the amount set opposite its name in Schedule 1 (Original Lenders) under the heading “**Commitments**” and the amount of any other Commitment it acquires; and
- (b) for any other Lender, the amount of any Commitment it acquires,

to the extent not cancelled, transferred or reduced under this Agreement.

Compliance Certificate means a certificate, substantially in the form set out in Schedule 4 (Form of Compliance Certificate), with any amendments which the Facility Agent acting on the instructions of Majority Lenders and the Company may agree.

Confidential Information means all information relating to any Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 31 (Disclosure of information); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) of this definition or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (iv) is a Funding Rate or a Reference Bank Quotation.

Confidentiality Undertaking means a confidentiality undertaking substantially in the then current recommended form of the Loan Market Association or in any other form agreed between the Company and the Facility Agent.

Debt Purchase Transaction means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

Default means:

- (a) an Event of Default; or
- (b) an event or circumstance which, with the giving of notice, lapse of time or fulfilment of any other applicable condition (or any combination of the foregoing) set out in Clause 22 (Default), would constitute an Event of Default.

Defaulting Lender means any Lender:

- (a) that has failed to make its participation in a Loan available within five Business Days from the Utilisation Date of that Loan or has notified the Facility Agent that it will not make its participation in a Loan available by the Utilisation Date of that Loan, in accordance with Clause 5.3 (Advance of Loan); or
- (b) that has been is adjudged bankrupt or insolvent pursuant to a final non-appealable order,

unless, in case of paragraph (a) of this definition:

- (i) the Lender's failure to pay is caused by a Disruption Event and the respective payment is made within 10 Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is legally obliged to make the payment in question.

Delegate means any delegate, agent, attorney or co-trustee appointed by the Security Agent pursuant to the Intercreditor Agreement.

Disruption Event means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that Party, or any other Party:

- (i) from performing its payment obligations under the Finance Documents; or
- (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

Downgraded Lender means a Lender:

- (a) that:
 - (i) is rated by any of Moody's Investors Service Limited, Standard & Poor's Rating Services, Fitch Ratings Limited or any other internationally recognised rating agency; and
 - (ii) does not have or ceases to have a rating of at least Baa3 (or equivalent), if rated by Moody's Investors Service Limited, BBB- (or equivalent), if rated by Standard & Poor's Rating Services, BBB- (or equivalent), if rated by Fitch Ratings Limited or investment grade rating, if rated by another internationally recognised rating agency.

For the avoidance of doubt, if a Lender is not rated by any agency specified in paragraph (a)(i) of this definition, it shall not be considered a Downgraded Lender pursuant to this paragraph (a) until it receives a rating non-compliant with paragraph (a)(ii) of this definition or later its rating becomes non-compliant with paragraph (a)(ii) of this definition; or

- (b) is a Subsidiary of an entity, which is subject to bankruptcy, insolvency or similar proceedings.

Eligible Institution means any Lender or other bank, financial institution, trust, fund or other entity selected by the Company and which, in each case, is not an Affiliate of U. S. Steel.

ERISA means the United States Employee Retirement Income Security Act of 1974, to which the following definitions apply:

- (a) **ERISA Affiliate** means any person treated as a single employer with the Company for the purpose of section 414 of the Code.
- (b) **Plan** means an employee benefit plan as defined in section 3(3) of ERISA:
 - (i) maintained by the Company or any ERISA Affiliate; or
 - (ii) pursuant to which the Company or any ERISA Affiliate is required to make any payment or contribution.
- (c) **Reportable Event** means:
 - (i) an event specified as such in section 4043 of ERISA or any related regulation, other than an event in relation to which the requirement to give notice of that event is waived by any regulation; or
 - (ii) a failure to meet the minimum funding standard under section 412 or 430 of the Code or section 302 of ERISA, whether or not there has been any waiver of notice or waiver of the minimum funding standard under section 412 of the Code.

Establishment means any place of operations where the Company or the Guarantor (as applicable) carries on non-transitory economic activity with human means and goods, for the purposes of the Regulation.

EURIBOR means, in relation to any Loan in euro:

- (a) the applicable Screen Rate as of the Specified Time on the Rate Fixing Day for euro and for a period equal in length to the Term of that Loan; or
- (b) as otherwise determined pursuant to Clause 11.1 (Unavailability of Screen Rate),

and if, in either case, that rate is below zero, EURIBOR will be deemed to be zero.

euro or **EUR** or **€** means the single currency of the Participating Member States.

Event of Default means an event specified as such in Clause 22 (Default).

Existing Facility means the credit facility made available under the Existing Facility Agreement.

Existing Facility Agreement means the agreement on EUR200,000,000 multicurrency revolving credit facility dated 22 February 2016, as amended and entered into between (*inter alia*) the Company as borrower and Commerzbank Finance & Covered Bond S.A. as facility agent.

Existing Lender has the meaning given to it in Clause 29.2 (Assignments and transfers by Lenders).

Facility means the credit facility made available under this Agreement.

Facility Agent's Spot Rate of Exchange has the meaning given to it in Clause 6.1 (General provisions on Optional Currency).

Facility Office means the office(s) notified by a Lender to the Facility Agent:

- (a) on or before the date it becomes a Lender; or
- (b) by not less than five Business Days' notice,

as the office(s) through which it will perform its obligations under this Agreement.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) of this definition; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) of this definition with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

FATCA Deduction means a deduction or withholding from a payment under a Finance Document required by FATCA.

FATCA Event has the meaning given to it in Clause 8.8 (Mandatory repayment and cancellation of FATCA Protected Lenders).

FATCA Exempt Party means a Party that is entitled to receive payments free from any FATCA Deduction.

FATCA Protected Lender means any Lender irrevocably designated as a “FATCA Protected Lender” by the Company by notice to that Lender and the Facility Agent at least six months prior to the earliest FATCA Application Date for a payment by a Party to that Lender (or to the Facility Agent for the account of that Lender).

Fee Letter means any letter entered into by reference to this Agreement between one or more Administrative Parties and the Company setting out the amount of certain fees referred to in this Agreement.

Final Maturity Date means the fifth anniversary of the date of this Agreement.

Finance Document means:

- (a) this Agreement;
- (b) each Transaction Security Document;
- (c) a Fee Letter;
- (d) a Transfer Certificate;
- (e) an Increase Confirmation;
- (f) an Additional Commitment Request; or
- (g) any other document designated as such by the Facility Agent and the Company.

Finance Party means a Lender or an Administrative Party.

Financial Indebtedness means, without duplication, Indebtedness (whether being principal, premium, interest or other amounts) for or in respect of:

- (a) money borrowed;
- (b) liabilities under or in respect of any acceptance or acceptance credit;

- (c) any notes, bonds, debentures, debenture stock, loan stock or other debt securities offered, issued or distributed whether by way of public offer, private placing, acquisition consideration or otherwise and whether issued for cash or in whole or in part for a consideration other than cash;
- (d) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (e) any interest rate and/or currency swap, forward foreign exchange transaction, financial or commodity futures transaction, commodity swap or other derivative transaction (and, when calculating the value of any of the foregoing transactions, only the net amount of the marked to market value shall be taken into account, to the extent such netting is permitted);
- (f) liabilities pursuant to any lease which are capitalised in accordance with USGAAP (other than operating lease obligations);
- (g) any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; or
- (h) liabilities under any guarantee, indemnity or other assurance against financial loss given in relation to any of the foregoing.

First Effective Date has the meaning given to it in the First Supplemental Agreement.

First Supplemental Agreement means the supplemental agreement dated on or around 23 December 2019 entered into between, among others, the Company and the Facility Agent, in relation to this Agreement.

Fixed Assets means, in relation to the Group, those assets treated as fixed assets (e.g. property, plant and equipment) for the purposes of the Latest Accounts.

Funding Rate means any individual rate notified by a Lender to the Facility Agent pursuant to paragraph (a)(ii) of Clause 11.4 (Cost of funds).

Group means the Company and its Subsidiaries.

Holding Company of any other person, means an entity in respect of which that other person is a Subsidiary.

IBOR means EURIBOR or LIBOR.

IFRS means international accounting standards within the meaning of the IAS Regulation 1606/2002, as amended by Regulation 297/2008, as may be amended or replaced from time to time, to the extent applicable to the relevant financial statements.

Impaired Agent means the Facility Agent at any time when:

- (a) it has failed to make (or has notified a party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Facility Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Facility Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender"; or

(d) an Insolvency Event has occurred and is continuing with respect to the Facility Agent;

unless, in the case of paragraph (a) above:

(i) its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and

payment is made within five Business Days of its due date; or

(ii) the Facility Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

Increase Confirmation means a confirmation substantially in the form set out in Schedule 14 (Form of Increase Confirmation).

Increased Cost means:

(a) an additional or increased cost;

(b) a reduction in the rate of return from the Facility or on a Finance Party's (or its Holding Company's) overall capital; or

(c) a reduction of an amount due and payable under any Finance Document,

that is incurred or suffered by a Finance Party or its Holding Company but only to the extent attributable to that Finance Party having entered into any Finance Document or funding or performing its obligations under any Finance Document.

Indebtedness means any obligation for the payment or repayment of money in whatever currency denominated, whether as principal or as surety and whether present or future, actual, deferred or contingent.

Insolvency Event means any of the following events:

(a) declaration of bankruptcy (*vyhlásenie konkurzu*) with respect to the assets of the Company in the Republic;

(b) opening of the restructuring (*povolenie reštrukturalizácie*) of the Company in the Republic; or

(c) commencement of any insolvency or enforcement procedure against the Company in any other jurisdiction, with a purpose analogous to the purpose of any of the procedures specified in paragraphs (a) and (b) of this definition.

ING Bilateral Loan Agreement means the loan agreement between the Company as borrower and ING Bank N.V., pobočka zahraničnej banky as lender dated 11 December 2009 (as most recently amended by an amendment and restatement agreement dated 7 December 2018).

Insolvency Related Party means, with respect to any person, a related party (*spriaznená osoba*) of that person as defined in section 9 of the Slovak Bankruptcy Act.

Intercompany Loan Agreement means the intercompany loan agreement dated on or around the date of the First Supplemental Agreement between U. S. Steel as creditor and the Company as borrower in respect of the Subordinated Intercompany Indebtedness.

Intercreditor Agreement means the intercreditor agreement dated on or about the date of the First Supplemental Agreement and made between, among others, U. S. Steel, the Company, the Security Agent and the Facility Agent.

Interest Payment Date has the meaning given to it in Clause 9.2 (Payment of interest).

Interpolated Screen Rate means, in relation to the applicable IBOR for any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Term of that Loan, provided that if any such rate is below zero, then the applicable Screen Rate will be deemed to be zero; and
- (b) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Term of that Loan, provided that if any such rate is below zero, then the applicable Screen Rate will be deemed to be zero,

each as of the Specified Time on the Rate Fixing Day for the currency of that Loan.

Inventory means all items treated as inventory including stock of raw materials, work in progress, semi-finished production and finished products for the purposes of the annual unaudited consolidated balance sheet and profit and loss statements of the Group delivered to the Facility Agent pursuant to paragraph (c) of Clause 19.2 (Financial Information) and the quarterly unaudited consolidated balance sheet and cash flow statement of the Group delivered to the Facility Agent pursuant to paragraph (e) of Clause 19.2 (Financial Information).

Latest Accounts means the audited unconsolidated financial statements of the Company or the Group last delivered to the Facility Agent under Clause 19.2 (Financial Information).

Legal Reservations means any matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions provided to the Finance Parties pursuant to Schedule 6 (Form of Legal opinion of legal adviser to the Company in respect of this Agreement), Schedule 8 (Form of English legal opinion) or Schedule 9 (Form of Slovak legal opinion).

Lender means:

- (a) an Original Lender;
- (b) an Additional Lender that becomes a Lender after the date of this Agreement in accordance with Clause 2.2 (Additional Commitments); or
- (c) any person that becomes a Lender after the date of this Agreement in accordance with Clause 29.2 (Assignments and transfers by Lenders).

Leverage Condition has the meaning given to it in Clause 17 (Leverage Condition).

LIBOR means for a Term of any Loan in US Dollars:

- (a) the applicable Screen Rate as of the Specified Time on the Rate Fixing Day for US Dollars and for a period equal in length to the Term of that Loan; or
- (b) as otherwise determined pursuant to Clause 11.1 (Unavailability of Screen Rate),

and if, in either case, that rate is below zero, LIBOR will be deemed to be zero.

Loan means, unless otherwise stated in this Agreement, the principal amount of each borrowing under this Agreement or the principal amount outstanding of that borrowing.

Majority Lenders means, at any time, Lenders:

- (a) whose participation in the outstanding Loans and whose undrawn Commitments then aggregate $66\frac{2}{3}$ per cent. or more of the aggregate of all the outstanding Loans and the undrawn Commitments of all the Lenders;
- (b) if there is no Loan then outstanding, whose undrawn Commitments then aggregate $66\frac{2}{3}$ per cent. or more of the Total Commitments; or
- (c) if there is no Loan then outstanding and the Total Commitments have been reduced to zero, whose Commitments aggregated $66\frac{2}{3}$ per cent. or more of the Total Commitments immediately before the reduction;

as adjusted by paragraph (e) of Clause 23.8 (Instructions), if applicable.

Margin means, subject to Clause 20.5 (Exceeded Leverage Period), in respect of any Loan in:

- (a) euro, 2.50 per cent. per annum; and
- (b) US Dollars, 2.90 per cent. per annum.

Margin Regulations means Regulations U and X issued by the Board of Governors of the United States Federal Reserve System.

Margin Stock has the meaning given to it in the Margin Regulations.

Maturity Date means the last day of the Term of a Loan.

Notifiable Debt Purchase Transaction has the meaning given to that term in paragraph (b) of Clause 30.2 (Disenfranchisement on Debt Purchase Transactions entered into by Affiliates of the Company).

Obligor means the Company or the Guarantor.

Obligors' Agent means the Company, appointed to act on behalf of the Guarantor in relation to the Finance Documents pursuant to Clause 2.5 (Obligors' Agent).

Participating Member State means a member state of the European Union that has the euro as its lawful currency under the legislation of the European Union relating to Economic and Monetary Union.

Party means a party to this Agreement.

Permitted Disposal means any of the following:

- (a) in respect of Fixed Assets and Inventory, disposal in the ordinary course of trading at arms' length;
- (b) in respect of Inventory, disposal pursuant to consignment or supply chain financing arrangements entered into by the Company provided that the amount (in aggregate) of such consignment or supply chain financing arrangements does not exceed EUR100,000,000 (or its equivalent in any other currency) at any time;
- (c) in respect of Trade Receivables, pursuant to Permitted Factoring Arrangements.
- (d) in respect of Fixed Assets, disposal on normal commercial terms of obsolete Assets or Assets no longer used or useful in the Company's or the Guarantor's business;
- (e) in respect of Fixed Assets, payment of cash as consideration for the acquisition of any Asset on normal commercial terms;
- (f) in respect of Fixed Assets, temporary application of funds not immediately required in the Company's or the Guarantor's business for the purchase of investments or the realisation of such investments;
- (g) in respect of Fixed Assets, exchange of Assets for other assets of a similar nature and value, or the sale of Assets on normal commercial terms for cash that is payable in full on completion of the sale and is to be, and is, applied toward the purchase of similar Assets within six months;
- (h) in respect of Fixed Assets, disposal of Assets located outside the Republic; and
- (i) in respect of Fixed Assets, Inventory and Trade Receivables, any disposal approved in writing by the Majority Lenders.

Permitted Factoring Arrangements means in respect of Trade Receivables, factoring arrangements entered into by the Company on arm's length terms that constitute (a) non-recourse sales or disposals or (b) recourse sales or disposals in each case:

- (i) with any Account Debtors notified to the Facility Agent prior to the First Effective Date, provided that such Account Debtors are members of the customer groups listed in the amendment request letter received on or around 25 November 2019 by the Facility Agent from the Company; and
- (ii) in addition to the factoring arrangements in paragraph (i) above, with no more than ten Account Debtors concurrently at any time and notified to the Facility Agent after the First Effective Date (it being understood that Account Debtors that are Affiliates of each other shall count as a single Account Debtor for the purposes of this paragraph (ii)).

Permitted Merger means any of the following:

- (a) a merger of any Subsidiary of the Company into the Company or the Guarantor, such that the Company or the Guarantor (as applicable) acquires all the assets and liabilities of such Subsidiary and the Company or the Guarantor (as applicable) is the surviving legal entity, provided the Company's or the Guarantor's (as applicable) post-merger consolidated net worth equals or exceeds the immediately preceding pre-merger consolidated net worth of the Company or the Guarantor (as applicable) and that Subsidiary as determined on the basis of accounting principles and practices consistent with the preparation of the Latest Accounts;

- (b) a merger of any Subsidiary of U. S. Steel into the Company or the Guarantor, such that the Company or the Guarantor (as applicable) acquires all the assets and liabilities of such Subsidiary and the Company or the Guarantor (as applicable) is the surviving legal entity, provided the Company's or the Guarantor's (as applicable) post-merger consolidated net worth equals or exceeds the immediately preceding pre-merger consolidated net worth of the Company or the Guarantor (as applicable) and that Subsidiary as determined on the basis of accounting principles and practices consistent with the preparation of the Latest Accounts; and
- (c) any merger or corporate restructuring approved in advance in writing by the Majority Lenders.

Permitted Security Interest means any of the following:

- (a) any Security Interest existing on the date of this Agreement and disclosed to the Facility Agent in writing on or before the date of this Agreement;
- (b) any Transaction Security;
- (c) the assumption of any Security Interest previously existing on (i) an acquired asset or (ii) any asset of any person when such person is acquired by the Company or any of its Subsidiaries, provided in each case that the Indebtedness secured by such Security Interest does not exceed the fair market value of that asset as at the date of that acquisition;
- (d) any easement, right-of-way, minor defect or irregularity in title or other similar encumbrance on real property that, in each case, has no material adverse effect on the then current use or value of such real property or on the then current conduct of the business of any member of the Group;
- (e) any unexercised lien for tax not being delinquent or contested in good faith by appropriate proceedings and for which reserves, adequate under USGAAP, are being maintained;
- (f) any Security Interest on equipment of the Company or the Guarantor in each case arising solely under lease of such equipment that, in accordance with USGAAP, are required to be capitalised, provided that any such Security Interest extends to no other property and secures no other Indebtedness and the Indebtedness secured by any such Security Interest does not exceed the fair market value of such equipment;
- (g) any purchase money Security Interest on equipment acquired by the Company or the Guarantor, in each case after the date of this Agreement incurred simultaneously with or within 180 days after the completion of installation thereof solely to secure payment of all or part of the purchase price thereof provided that each such Security Interest secures no other Indebtedness and extends to no other property and the Indebtedness secured by any such Security Interest does not exceed the fair market value of such equipment;
- (h) any lien arising solely by operation of law (or by an agreement evidencing the same) in the ordinary course of Company's or the Guarantor's business, in each case in respect of Indebtedness that either: (i) has been due for less than 90 days; or (ii) is being contested in good faith by appropriate means and for which reserves, adequate under USGAAP, are being maintained;
- (i) any Security Interest arising out of title retention provisions in a supplier's standard conditions of supply of goods acquired by Company or the Guarantor, in each case in the ordinary course of its business;

- (j) any Security Interest approved in advance in writing by the Majority Lenders;
- (k) any lien in favour of a financial institution arising from a documentary letter of credit in the ordinary course of business;
- (l) renewal of or substitution for any Security Interest permitted under any preceding paragraph; and
- (m) any Security Interest arising in the ordinary course of business in connection with: (i) the performance of a bid, trade contract, (to the extent not covered by paragraph (c) of this definition), lease (to the extent that lease constitutes a finance lease and not an operating lease), statutory obligations, surety and appeal bond, performance bond and other obligations of a like nature; (ii) a deposit account; and (iii) a deposit made in the ordinary course of business for the purposes of cash collateralising a letter of credit, provided that the aggregate book value of Assets subject to the Security Interests described in this paragraph (m) does not at any time exceed euro 50,000,000 or its equivalent; provided, however, the maximum amount under this paragraph (m) does not apply to cash deposits that are subject to any bank's general right of set-off but does apply in situations where a specific security agreement exists, including any specific Security Interest that entitles any secured creditor to separately satisfy its claim under the Slovak Bankruptcy Act or any analogous right in any jurisdiction arising in bankruptcy or insolvency.

Pro Rata Share means:

- (a) for the purpose of determining a Lender's participation in a utilisation of the Facility, the proportion which its Commitment bears to the Total Commitments; and
- (b) for any other purpose on a particular date:
 - (i) the proportion which a Lender's participation of the Loans (if any) bears to all the Loans;
 - (ii) if there is no Loan outstanding on that date, the proportion which its Commitment bears to the Total Commitments on that date; or
 - (iii) if the Total Commitments have been cancelled, the proportion which its Commitment bore to the Total Commitments immediately before being cancelled.

Qualified Related-Party Receivable means a receivable which:

- (a) in case of the bankruptcy (*konkurz*) in the Republic in respect of the assets of an Obligor would be satisfied in the same manner as subordinated receivables owed by that Obligor to its subordinated creditors (i.e. receivables in respect of which a subordination undertaking (*záväzok podriadenosti*) under section 408a of Slovak Act 513/1991 Coll. the Commercial Code was made); or
- (b) in case of the restructuring (*reštrukturalizácia*) in the Republic relating to the assets of an Obligor, could not be satisfied in the same or better manner than any other unsubordinated receivable owed by that Obligor to its unrelated creditors registered in the restructuring plan (*reštrukturalizačný plán*) of that Obligor.

Rate Fixing Day means in relation to any period for which an interest rate is to be determined:

- (a) the second Business Day before the first day of a Term for a Loan denominated in any currency other than euro; or
- (b) the second TARGET Day before the first day of a Term for a Loan denominated in euro,

unless market practice differs in the Relevant Market for that currency, in which case the Rate Fixing Day for that currency will be determined by the Facility Agent in accordance with market practice in the Relevant Market and if quotations would normally be given on more than one day, the Rate Fixing Day will be the last of those days.

Receiver means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

Reference Bank Quotation means any quotation supplied to the Facility Agent by a Reference Bank.

Reference Bank Rate means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks:

- (a) in relation to LIBOR as either:
 - (i) if:
 - (A) the Reference Bank is a contributor to the applicable Screen Rate; and
 - (B) it consists of a single figure,

the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or
 - (ii) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market; or
- (b) in relation to EURIBOR:
 - (i) (other than where paragraph (b)(ii) of this definition applies) as the rate at which the relevant Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in euro within the Participating Member States for the relevant period; or
 - (ii) if different, as the rate (if any and applied to the relevant Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

Reference Banks means Commerzbank Aktiengesellschaft, Filiale Luxemburg, ING Bank N.V. and KBC Bank NV and any other bank or financial institution appointed as such by the Facility Agent in consultation with the Company and which accepts such appointment.

Relevant Market means, in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.

Related Fund in relation to a fund (the **first fund**), means:

- (a) a fund which is managed or advised by the same investment manager or investment adviser as the first fund; or
- (b) if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

Relevant Tax means any Tax imposed or levied by the Republic (or any political subdivision or taxing authority of the Republic) or by any other jurisdiction from or through which any payment is made by the Company under the Finance Document, but excludes any Tax imposed by the Republic which is so imposed as a direct consequence of the relevant Finance Party maintaining a permanent establishment in the Republic and of that establishment being directly involved in any Loan.

Repeating Representations means the representations and warranties that are then made or deemed to be repeated under Clause 18.29 (Times for making representations and warranties).

Representative means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

Republic means the Slovak Republic.

Request means a request for a Loan, substantially in the form of Schedule 3 (Form of Request).

Restricted Lender has the meaning given to it in Clause 18.25 (Anti-Corruption Laws and Sanctions).

Rollover Loan means one or more Loans:

- (a) to be made on the same day that a maturing Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Loan;
- (c) in the same currency as the maturing Loan; and
- (d) to be made for the purpose of refinancing a maturing Loan.

Sales Contract means a sales contract between the Company and an Account Debtor for the supply of goods or Inventory by the Company.

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, or by the United Nations Security Council, Her Majesty's Treasury of the United Kingdom, the European Union, the United Kingdom or any member state of the European Union;
- (b) any person operating, organized or resident in a country being subject to Sanctions; or
- (c) any person owned or controlled by any such person or persons described in paragraphs (a) or (b) of this definition.

Sanctions means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by 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, the United Nations Security Council, the European Union, any member state of the European Union or Her Majesty's Treasury of the United Kingdom.

Screen Rate means:

- (a) in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); and
- (b) in relation to EURIBOR, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate),

or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Company.

Second Effective Date has the meaning given to the term "Effective Date" in the Second Supplemental Agreement.

Second Supplemental Agreement means the supplemental agreement dated on or around _____ 2020 entered into between, among others, the Company and the Facility Agent, in relation to this Agreement.

Secured Parties means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

Security Agent means Commerzbank Finance & Covered Bond S.A.

Security Interest means any mortgage, pledge, lien, charge (including a floating charge), assignment (whether conditional or otherwise), hypothecation or security interest or any other agreement or arrangement having the effect of conferring security, or any other arrangement having a similar economic effect including total transfer, 'flawed asset', sale and repurchase, buyback or conditional transfer arrangements.

Slovak Banking Act means the Slovak Act No. 483/2001 Coll., as amended.

Slovak Bankruptcy Act means the Slovak Act No. 7/2005 Coll., as amended.

Slovak Commercial Code means the Slovak Act No. 513/1991 Coll., as amended.

Slovak Finance Party means a Finance Party which is a bank or a branch of a foreign bank incorporated in the Republic.

Slovak Inventory Pledge means the Slovak law governed movable assets pledge agreement to be entered into by the Company as pledgor and the Security Agent as pledgee as a condition subsequent in accordance with Clause 21.18 (Conditions subsequent).

Slovak Public Sector Partners Act means Slovak Act No. 315/2016 Coll. on the registry of public sector partners, as amended.

Slovak Receivables Pledge means the Slovak law governed receivables pledge agreement to be entered into by the Company as pledgor and the Security Agent as pledgee as a condition subsequent in accordance with Clause 21.18 (Conditions subsequent).

Specified Lender means a Defaulting Lender or a Downgraded Lender.

Specified Time means:

- (a) in relation to EURIBOR, 11.00 a.m.; and
- (b) in relation to LIBOR, noon.

Subsidiary means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

TARGET2 means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

TARGET Day means any day on which TARGET2 is open for the settlement of payments in euro.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

Tax Deduction means a deduction or withholding for or on account of any Tax from a payment under a Finance Document, other than a FATCA Deduction.

Tax Payment means a payment made by the Company to a Finance Party in any way relating to a Tax Deduction or under any indemnity given by the Company in respect of any Tax under any Finance Document.

Term means each period determined under this Agreement by reference to which interest on a Loan is calculated.

Total Commitments means the aggregate of the Commitments of all the Lenders.

Trade Receivables means all those assets treated as trade receivables for the purposes of the annual unaudited consolidated balance sheet and profit and loss statements of the Group delivered to the Facility Agent pursuant to paragraph (c) of Clause 19.2 (Financial Information) and the quarterly unaudited consolidated balance sheet and cash flow statement of the Group delivered to the Facility Agent pursuant to paragraph (e) of Clause 19.2 (Financial Information).

Transaction Security means the Security Interests created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

Transaction Security Document means each of:

- (a) the Slovak Receivables Pledge;

- (b) the Slovak Inventory Pledge;
- (c) any other document evidencing or creating a Security Interest over any asset to secure any obligation of any Obligor to a Secured Party under the Finance Documents; or
- (d) any other document designated as such by the Security Agent and an Obligor.

Transfer Certificate means a certificate, substantially in the form of Schedule 5 (Form of Transfer Certificate), with such amendments as the Facility Agent may approve or reasonably require or any other form agreed between the Facility Agent and the Company.

US Dollars or **USD** means the lawful currency for the time being of the United States of America.

USGAAP means the generally accepted accounting principles and practices in the United States of America in effect from time to time.

U. S. Steel means United States Steel Corporation, currently a corporation organized under the laws of the State of Delaware, U.S.A., Delaware registration number 3396733.

Utilisation Date means each date on which the Facility is utilised.

1.2. Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to:
 - (i) an **amendment** includes a supplement, novation, restatement or re-enactment and **amended** will be construed accordingly;
 - (ii) **assets** means assets as defined in the Latest Accounts;
 - (iii) an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
 - (iv) **disposal** means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly;
 - (v) the words **include** or **including** shall be deemed to be followed by **without limitation** or **but not limited to** whether or not they are followed by such phrases or words of like import;
 - (vi) **know your customer requirements** are the “know your customer” or similar identification procedures that a Finance Party is obliged to undertake in order to meet its obligations under any applicable law or regulation including, in relation to a Slovak Finance Party, for performance of care by a Slovak Finance Party as an obliged person (*vykonanie starostlivosti ako povinnou osobou*) according to section 10 of the Slovak Act No. 297/2008 Coll., as amended, including any documentation or other evidence which is reasonably requested by a Slovak Finance Party (whether for itself, on behalf of any prospective new Lender) to establish whether it has a “special relationship” (*osobitný vzťah*) with the Company (as defined in the Slovak Banking Act);
 - (vii) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government,

state, agency, organisation or other entity whether or not having separate legal personality;

- (viii) a **group of Lenders** includes all the Lenders;
 - (ix) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (x) a currency is a reference to the lawful currency for the time being of the relevant country;
 - (xi) a Default being **continuing** means that it has not been remedied or waived;
 - (xii) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
 - (xiii) a Clause or a Schedule is a reference to a clause of, or a schedule to, this Agreement;
 - (xiv) a Party, any Secured Party, the Security Agent or any other person includes its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
 - (xv) a Finance Document or another document is a reference to that Finance Document or other document as amended;
 - (xvi) the word “will” shall be construed to have the same meaning and effect as the word “shall”; and
 - (xvii) a time of day is a reference to Central European time (i.e. CET or CEST, as applicable in the given time of the year).
- (b) The determination of the extent to which a rate is **for a period equal in length** to a Term shall disregard any inconsistency arising from the last day of that Term being determined pursuant to the terms of this Agreement.
- (c) Unless the contrary intention appears, a reference to a **month** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
- (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
 - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
 - (iii) notwithstanding paragraph (c)(i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.

- (d) Unless a contrary intention appears:
 - (i) a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement;
 - (ii) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement;
 - (iii) if there is an inconsistency between this Agreement and any other Finance Document, this Agreement will prevail;
 - (iv) any non-payment obligations of the Company under the Finance Documents remain in force for so long as any payment obligation of the Company is or may be outstanding under the Finance Documents; and
 - (v) an accounting term used in this Agreement is to be construed in accordance with USGAAP.
- (e) The headings in this Agreement do not affect its interpretation.

1.3. Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 28.3 (Other exceptions) but otherwise notwithstanding any term of any Finance Document, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of any Finance Document.
- (c) The Security Agent and any Receiver, Delegate or any person described in paragraph (b) of Clause 23.11 (Exclusion of liability) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

1.4. Slovak terms

In this Agreement and any other Finance Document (except if expressly stipulated otherwise in the relevant Finance Document), a reference to:

- (a) a **novation** governed by Slovak law includes *privatívna novácia* and *kumulatívna novácia*;
- (b) a **Security Interest** governed by Slovak law includes *záložné právo*, *zádržné právo*, *zabezpečovací prevod práva* and *zabezpečovacie postúpenie pohľadávky*;
- (c) a **bankruptcy**, **insolvency** or **administration** in the Republic includes *konkurzné konanie*, *konkurz*, *reštrukturalizačné konanie*, *reštrukturalizácia* and *nútená správa*;
- (d) being **bankrupt** or **insolvent** in the Republic includes being *v úpadku*, *predĺžený*, *platobne neschopný*, *v konkurze*, *v reštrukturalizácii* and *v nútenej správe*;
- (e) an **expropriation**, **attachment**, **sequestration**, **distress**, **execution** or **analogous process** in the Republic includes *vyvlastnenie*, *exekúcia* and *výkon rozhodnutia*;

- (f) **winding up, administration or dissolution** in the Republic includes *likvidácia, zrušenie s likvidáciou, zrušenie bez likvidácie bez právneho nástupcu, konkurzné konanie, konkurz, reštrukturalizačné konanie, reštrukturalizácia* and *nútená správa*;
- (g) a **receiver, trustee, administrator, administrative receiver, compulsory manager or similar officer** in the Republic includes *likvidátor, konkurzný správca* (including *predbežný správca*), *reštrukturalizačný správca, nútený správca* and *súdny exekútor*;
- (h) a **moratorium** in the Republic includes *reštrukturalizačné konanie* and *reštrukturalizácia*; and
- (i) **constitutional documents** of a company established in the Republic include *spoločenská zmluva, zakladateľská listina, zakladateľská zmluva, zriaďovacia listina, štatút* and *stanovy*.

2. FACILITY

2.1. Facility

Subject to the terms of this Agreement, the Lenders make available to the Company a revolving credit facility in an aggregate amount equal to the Total Commitments.

2.2. Additional Commitments

- (a) Subject to the other provisions of this Clause 2.2, the Company may, at any time, request an increase in the amount of the Total Commitment (an **Additional Commitment**) in a euro amount of EUR10,000,000 (or greater amounts which are equal to the aggregate of EUR10,000,000 as increased by increments of EUR5,000,000 or EUR10,000,000) which, when aggregated with any amount of any previous increase in accordance with any Additional Commitment Request, does not exceed EUR40,000,000, by delivering a duly completed Additional Commitment Request to the Facility Agent. The Company may deliver more than one Additional Commitment Request.
- (b) The Facility Agent shall only accept an Additional Commitment Request if (i) at the time it is delivered, no Default is continuing or would result from the Additional Commitment being made available or utilised and (ii) an Additional Commitment Request Notification has been submitted. No Additional Commitment Request may be submitted later than the date falling 12 months after the date of this Agreement and prior to the expiration of the Acceptance Period.
- (c) Prior to the submission of an Additional Commitment Request the Company must offer the Lenders then party to this Agreement the option to participate pro rata to their existing Commitments in the proposed Additional Commitment, by submitting an Additional Commitment Request Notification to the Facility Agent and specifying a period of no less than 20 Business Days for accepting the offer (the **Acceptance Period**).
- (d) Each Lender shall have the right (but not the obligation) to confirm to the Company, by responding to the Facility Agent in the Acceptance Period, whether it intends to participate in the Additional Commitment and, if applicable, the maximum amount of its participation in the Additional Commitment it is willing to make available.
- (e) In the event that:
 - (i) one or more Lenders notifies the Company, by responding to the Facility Agent, that it does not wish to provide all or any part of any Additional Commitment;

- (ii) a Lender imposes conditions on its agreement to provide all or any part of the Additional Commitment which are not acceptable to the Company (including any proposals made by such Lender in relation to fees); or
- (iii) a Lender has failed to notify the Facility Agent within the period referred to in paragraph (c) above that it wishes to provide all or any part of the Additional Commitment,

then the Additional Commitment offered to that Lender shall be at the discretion of the Company offered to:

- (A) the Lenders who have during the Acceptance Period agreed to provide all or any part of the Additional Commitment on terms acceptable to the Company; and/or
- (B) one or more Additional Lenders selected by the Company (each of which shall not be a member of the Group or an Affiliate of the Company).
- (f) Subject to paragraph (h) below, the Total Commitments shall increase by the amount of the relevant Additional Commitment on the date (the **Additional Commitment Effective Date**) specified by the Company in the relevant Additional Commitment Request (or such later date as the Company and the Facility Agent shall agree) and provided that, on or before such date, the Facility Agent confirms to the Company, the relevant Additional Commitment Lenders and all other Finance Parties that:
 - (i) it has received the Additional Commitment Request signed by the proposed Additional Commitment Lenders which may be Existing Lenders and/or Additional Lenders; and
 - (ii) it has completed all necessary “know your customer” or other similar identification checks under all applicable laws and regulations required in relation to those Additional Commitment Lenders or, in the case of Existing Lenders, confirmed that no additional “know your customer” or other similar identification checks are required.
- (g) In this paragraph (g):
 - (A) **Loan Outstandings** means, in relation to a Lender, immediately prior to the Additional Commitment Effective Date, its participation in each Loan then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender); and
 - (B) **Total Loan Outstandings** means the aggregate of all Loan Outstandings immediately prior to the Additional Commitment Effective Date.
 - (ii) On the Additional Commitment Effective Date each Lender (including any Additional Commitment Lender) shall promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Loan Outstandings) their claims in respect of amounts outstanding to them under the Facility to the extent necessary to ensure that after such transfers the Loan Outstandings of each Lender bear the same proportion to the Total Loan Outstandings as such Lender’s Commitment bears to the Total Commitments.

- (iii) Any Break Costs incurred by any Lender as a result of the operation of this paragraph (g) must be paid by the Company in accordance with Clause 26.3 (Break Costs).
 - (iv) Any transfer of rights and obligations relating Loan Outstandings made pursuant to this paragraph (g) shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Loan Outstandings.
 - (v) All calculations to be made pursuant to this paragraph (g) shall be made by the Facility Agent based upon information provided to it by the Lenders and (if necessary) the Facility Agent's Spot Rate of Exchange which currently applies to the outstanding Loans.
- (h) An increase in the Total Commitments shall not take effect if any Default is continuing on the Additional Commitment Effective Date.
 - (i) The Company shall not require the consent of any Finance Party (other than the relevant Additional Commitment Lenders) to increase the Total Commitments in accordance with this Clause 2.2.
 - (j) On and from the Additional Commitment Effective Date, the Facility will be increased by the amount of the Additional Commitment and each Additional Commitment Lender shall become a Lender subject to the terms and conditions set out in this Agreement.
 - (k) All terms and conditions applicable to the Total Commitment (including the Final Maturity Date and Margin) will apply to the Additional Commitment, other than in respect of any fees that may be agreed between the relevant Lender and the Company in respect of an Additional Commitment.
 - (l) The Company must within 15 days after receipt of the relevant invoice pay each Finance Party the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with any provision of any Additional Commitment under this Clause 2.2.
 - (m) The Guarantor acknowledges and agrees:
 - (i) the authority of the Company to agree, implement and establish an Additional Commitment in accordance with this Agreement;
 - (ii) that the guarantee and indemnity given by it in Clause 16 (Guarantee and indemnity) will, subject only to any applicable limitations on such guarantee and indemnity set out in Clause 16 (Guarantee and indemnity), not be released or impaired in any way and will continue in full force and effect and will extend to include the Additional Commitment and any other obligations arising under or in respect of the Additional Commitment; and
 - (iii) if for any reason the guarantee given by it is released or impaired or does not continue in full force and effect, the Guarantor will, promptly following a request by the Facility Agent, execute such deeds and other agreements and otherwise take such action as the Facility Agent may require (acting reasonably) to ensure that the guarantee given by it continues in full force and effect or is reinstated to the same extent.

2.3. Increase

- (a) The Company may by giving prior notice to the Facility Agent by no later than the date falling 5 Business Days after:
 - (i) the receipt of the notice given in accordance with paragraph (a)(A) of Clause 8.1 (Mandatory prepayment - illegality); or
 - (ii) the giving of the notice given in accordance with paragraph (a) of Clause 8.6 (Right of repayment and cancellation of a single Lender),
- 1. request that the Commitments relating to the Facility be increased (and the Commitments relating to the Facility shall be so increased) in an aggregate amount in euro of up to the amount of the Commitments relating to the Facility so cancelled as follows:
 - (iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an **Increase Lender**) each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
 - (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (vi) the Commitments of the other Lenders shall continue in full force and effect; and
 - (vii) any increase in the Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the Facility Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (b) The Facility Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
- (c) The Facility Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.
- (d) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Facility Agent has authority to execute on its behalf any amendment or

waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.

- (e) The Company shall promptly on demand pay the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.3.
- (f) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Facility Agent (for its own account) a fee in an amount equal to the fee which would be payable under paragraph (d) of Clause 29.2 (Assignments and transfers by Lenders) if the increase was a transfer pursuant to Clause 29.3 (Procedure for transfer by way of novations) and if the Increase Lender was a New Lender.
- (g) The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a letter between the Company and the Increase Lender setting out that fee. A reference in this Agreement to a Fee Letter shall include any letter referred to in this paragraph (g).
- (h) Neither the Facility Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (i) Clause 28.4 (Limitation of responsibility of Existing Lenders) shall apply *mutatis mutandis* in this Clause 2.3 in relation to an Increase Lender as if references in that Clause to:
 - (i) an **Existing Lender** were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the **New Lender** were references to that **Increase Lender**; and
 - (iii) a **re-transfer** and **re-assignment** were references to respectively a **transfer** and **assignment**.

2.4. Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several.
- (b) Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents.
- (c) No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (d) The rights of a Finance Party under or in connection with the Finance Documents are separate and independent rights and they include any debt owing to that Finance Party under the Finance Documents.
- (e) Any debt arising under the Finance Documents to a Finance Party is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (f) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt,

any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Obligor. Any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document is a debt owing to that Finance Party by that Obligor.

- (f) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.5. Obligators' Agent

- (a) The Guarantor by its execution of this Agreement irrevocably appoints the Company (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Guarantor, without further reference to or the consent of the Guarantor; and
 - (ii) each Finance Party to give any notice, demand or other communication to the Guarantor pursuant to the Finance Documents to the Company,

and in each case the Guarantor shall be bound as though the Guarantor itself had given the notices and instructions (including, without limitation, any Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligators' Agent or given to the Obligators' Agent under any Finance Document on behalf of the Guarantor or in connection with any Finance Document (whether or not known to the Guarantor) shall be binding for all purposes on the Guarantor as if the Guarantor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligators' Agent and the Guarantor, those of the Obligators' Agent shall prevail.

3. PURPOSE

3.1. Loans

Each Loan may be used for the Company's general corporate purposes.

3.2. No obligation to monitor

No Finance Party is bound to monitor or verify the utilisation of the Facility.

4. CONDITIONS PRECEDENT

4.1. Conditions precedent documents

- (a) A Request may not be given until the Facility Agent has notified the Company and the Lenders that it has received all of the documents and evidence set out in Schedule 2 (Conditions precedent documents) in form and substance satisfactory to the Facility Agent. The Facility Agent must give this notification to the Company and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2. Further conditions precedent

The obligations of each Lender to participate in any Loan are subject to the further conditions precedent that:

- (a) if there are any borrowings under the Existing Facility outstanding or to be outstanding on the date of the Request or the Utilisation Date, such outstanding borrowings are repaid or prepaid in whole by the Company on or before the Utilisation Date in accordance with the terms of the Existing Facility Agreement;
- (b) if there are any commitments of the lenders under the Existing Facility unutilised on the date of the Request or the Utilisation Date, such unutilised commitments are irrevocably cancelled in whole by the Company on or before the Utilisation Date in accordance with the terms of the Existing Facility Agreement;
- (c) on both the date of the Request and the Utilisation Date for that Loan the Repeating Representations are correct in all material respects;
- (d) in relation to any Loan to be utilised after the first Measurement Date, the Company complied with the obligations under Clause 20 (Financial covenants) as of the Measurement Date immediately preceding the date of the Request and the Utilisation Date;
- (e) no less than USD150,000,000 (or its equivalent in any other currency) has been utilised by the Company under and pursuant to the terms of the Intercompany Loan Agreement; and
- (f) on both the date of the Request and the Utilisation Date for that Loan no Default or, in the case of a Rollover Loan, no Event of Default is continuing or would result from the Loan.

4.3. Drawstop

A Request may not be made in any case where the Company is in default with any payment obligation (or payment obligations in aggregate) under any Financial Indebtedness in an amount equal to or in excess of €500,000 or its equivalent in other currencies (a **Drawstop Event**). Following a Drawstop Event, no further Requests may be made until the Facility Agent notifies the Company in writing that it may submit a Request. The Facility Agent shall so notify the Company promptly after the Facility Agent receives evidence reasonably satisfactory to the Majority Lenders that such default or defaults: (i) are no longer continuing; or (ii) are waived in accordance with the terms of the relevant Financial Indebtedness; or (iii) a combination of (i) and (ii), whereby, following

such waivers (if any), such default or defaults (if any) are in aggregate in an amount less than €500,000 or its equivalent in any other currency.

4.4. Maximum number of Loans

Unless the Facility Agent agrees, a Request may not be given if, as a result, there would be more than ten Loans outstanding.

5. UTILISATION

5.1. Giving of Requests

- (a) The Company may borrow a Loan by giving to the Facility Agent a duly completed Request.
- (b) Unless the Facility Agent otherwise agrees, the latest time for receipt by the Facility Agent of a duly completed Request is 11.00 a.m. one Business Day before the Rate Fixing Day for the proposed borrowing.
- (c) Each Request is irrevocable unless otherwise agreed by the Facility Agent upon the approval of the Majority Lenders.

5.2. Completion of Requests

A Request will not be regarded as having been duly completed unless:

- (a) the Utilisation Date is a Business Day falling within the Availability Period;
- (b) the amount of the Loan requested is:
 - (i) a minimum of €10,000,000 and an integral multiple of €500,000 or an amount which complies with Clause 6 (Optional Currency);
 - (ii) the maximum undrawn amount available under the Facility on the proposed Utilisation Date; or
 - (iii) such other amount as the Facility Agent may agree; and
- (c) the proposed currency and Term comply with this Agreement.

Only one Loan may be requested in a Request.

5.3. Advance of Loan

- (a) The Facility Agent must promptly notify each Lender of the details of the requested Loan and the amount of its participation in that Loan.
- (b) The amount of each Lender's participation of the requested Loan will be its Pro Rata Share on the proposed Utilisation Date.
- (c) No Lender is obliged to participate in a Loan if, as a result:
 - (i) its participation in the Loans would exceed its Commitment; or
 - (ii) the Loans would exceed the Total Commitments.

- (d) If the conditions set out in this Agreement have been met, each Lender must make its participation in the requested Loan available to the Facility Agent for the Company through its Facility Office on the Utilisation Date.

6. OPTIONAL CURRENCY

6.1. General provisions on Optional Currency

In this Clause:

141. **Facility Agent's Spot Rate of Exchange** means:

- (a) the Facility Agent's spot rate of exchange; or
- (b) (if the Facility Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Facility Agent (acting reasonably),

for the purchase of the Optional Currency in the London foreign exchange market with euros as of noon on a particular day.

142. **euro amount** of a Loan or part of a Loan means:

- (a) if the Loan is denominated in euros, its amount; or
- (b) if the Loan is denominated in the Optional Currency, its equivalent in euros calculated on the basis of the Facility Agent's Spot Rate of Exchange one Business Day before the Rate Fixing Day for that Term.

Optional Currency means US Dollars.

6.2. Selection

- (a) The Company must select the currency of a Loan in its Request.
- (b) The amount of a Loan requested in the Optional Currency must be a minimum amount of the equivalent of €10,000,000 in the Optional Currency and in integral multiples of the equivalent of €500,000 in the Optional Currency.

6.3. Conditions relating to Optional Currency

A Loan may be denominated in the Optional Currency for a Term if the Optional Currency is readily available in the amount required and freely convertible into euros in the wholesale market for that currency on the Rate Fixing Day and the first day of that Term.

6.4. Revocation of currency

- (a) Notwithstanding any other term of this Agreement, if before 9.30 a.m. on any Rate Fixing Day the Facility Agent receives notice from a Lender that:
 - (i) the Optional Currency is not readily available to it in the Relevant Market in the amount and for the period required; or
 - (ii) participating in a Loan in the Optional Currency might contravene any law or regulation applicable to it,

the Facility Agent must give notice to the Company to that effect promptly and in any event before noon on that day.

- (b) In this event:
 - (i) that Lender must participate in the Loan in euros; and
 - (ii) the participation of that Lender in the Loan and any other similarly affected Lender(s) will be treated as a separate Loan denominated in euros during that Term.
- (c) Any part of a Loan treated as a separate Loan under this Clause 6.4 will not be taken into account for the purposes of any limit on the number of Loans outstanding at any one time.
- (d) A Loan will still be treated as a Rollover Loan if it is not denominated in the same currency as the maturing Loan by reason only of the operation of this Clause 6.4.

6.5. Optional Currency equivalents

The equivalent in euros of a Loan or part of a Loan in the Optional Currency for the purposes of calculating:

- (a) whether any limit under this Agreement has been exceeded;
- (b) the amount of a Loan;
- (c) the participation of a Lender in a Loan;
- (d) the amount of any repayment or prepayment of a Loan; or
- (e) the undrawn amount of a Lender's Commitment,

is its euro amount.

6.6. Notification

The Facility Agent must notify the Lenders and the Company of the relevant euro amount (and the applicable Facility Agent's Spot Rate of Exchange) promptly after they are ascertained.

7. REPAYMENT

- (a) The Company must repay each Loan made to it in full on its Maturity Date.
- (b) Where the Maturity Date for an outstanding Loan coincides with the Utilisation Date for a new Loan to be denominated in the same currency as the outstanding Loan, the Facility Agent will apply the new Loan in or towards repayment of the outstanding Loan so that:
 - (i) where the amount of the outstanding Loan exceeds the amount of the new Loan, the Company will only be required to repay the excess;
 - (ii) where the amount of the outstanding Loan is exactly the same as the amount of the new Loan, the Company will not be required to make any payment in respect of the principal of the outstanding Loan;

- (iii) where the amount of the new Loan exceeds the amount of the outstanding Loan, the Company will not be required to make any payment and the excess will be advanced to the Company,

provided that nothing in this paragraph (b) shall have the effect or be deemed to have the effect of converting the whole of the Loan or any part of it into a term loan.

- (c) Subject to the other terms of this Agreement, any amounts repaid under paragraph (a) of this Clause 7 may be re-borrowed.

8. PREPAYMENT AND CANCELLATION

8.1. Mandatory prepayment - illegality

- (a) If at any time:
 - (i) it is necessary under the laws and constitution of the Republic;
 - (A) in order to enable any Lender to enforce its rights under the Finance Documents; or
 - (B) by reason only of the execution, delivery and performance of this Agreement by any Lender,that any Lender should be licensed, qualified or otherwise entitled to carry on business in the Republic;
- (ii) a Lender is or will be deemed to be resident, domiciled or carrying on business in or subject to the laws of the Republic by reason only of the execution, delivery, performance and/or enforcement of any Finance Document;
- (iii) in any proceedings taken in the Republic in respect of any Finance Document or for the enforcement of any Finance Document, the choice of English law as the governing law of the Finance Document will not be recognised; or
- (iv) it is or becomes unlawful in any applicable jurisdiction for a Lender to give effect to any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan,

and the occurrence of any of the foregoing causes a Lender (acting reasonably) to believe it is materially prejudiced thereby then:

- (A) the relevant Lender must notify the Company (through the Facility Agent) accordingly; and
- (B) the Company shall prepay that Lender's participation in all the Loans on the date specified in paragraph (b) of this Clause 8.1, together with all other amounts payable by it to that Lender under the Finance Documents and the Commitment of that Lender shall forthwith be reduced to zero,

except that paragraphs (i) and (ii) of this Clause 8.1 do not apply to any Lender acting through its Facility Office or having a permanently established office or branch in the Republic.

- (b) The date for repayment or prepayment of a Lender's participation in a Loan will be:
 - (i) the last day of the current Term of that Loan; or

- (ii) if earlier, the date specified by the Lender in the notification under paragraph (a)(iv)(A) of this Clause 8.1 and which must not be earlier than the last day of any applicable grace period allowed by law.

8.2. **Mandatory prepayment - change of control**

- (a) The Company shall, within one Business Day after the occurrence of a Change of Control notify such to the Facility Agent, and the Facility Agent shall promptly notify each Lender thereof. Such notice shall describe in reasonable detail the facts and circumstances giving rise thereto and the date of such Change of Control. Each Lender may, by notice to the Company and the Facility Agent (a **Prepayment Notice**) given not later than ten days after the date of such Change of Control has been notified to the relevant Lender, terminate its Commitment and declare any amounts payable by the Company under the Finance Documents for its account to be, and such amounts shall become, due and payable without presentment, demand, protest or other notice of any kind (all of which are hereby waived by the Company) in each case on the Business Day following the date of delivery of the Prepayment Notice or such later date as may be designated by the relevant Lender in its Prepayment Notice.
- (b) A Lender that gives a Prepayment Notice may, in its absolute discretion, set out in the Prepayment Notice the conditions on which it may be willing to waive its rights arising as a result of the relevant Change of Control to terminate its Commitment, declare any amounts payable by the Company under the Finance Documents for its account to be due and payable and receive such amounts and the date by which such conditions must be met (a **Prepayment Waiver**). A Lender whose Prepayment Notice sets out any such conditions must notify the Company and the Facility Agent promptly upon being satisfied either (i) that (A) such conditions have been met and (B) its Prepayment Waiver has become effective or (ii) that (A) such conditions have not been met by the relevant date and (B) the date on which the termination of its Commitment will become effective and on which the amounts payable by the Company under the Finance Documents for its account will be deemed to be declared to be, and such amounts shall then become, due and payable without presentment, demand, protest or other notice of any kind (all of which are hereby waived by the Company).
- (c) For purposes of this Clause 8.2, the following terms have the following meanings:

A **Change of Control** shall occur if:

- (i) any “person” (as such term is used in Sections 13 (d) and 14(d) of the U.S. Securities Exchange Act of 1934, as amended, hereinafter, the “Exchange Act”) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for the purposes of this paragraph (i) such person shall be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of either the aggregate ordinary Voting Power or the aggregate equity value represented by the issued and outstanding Equity Interests of U. S. Steel;
- (ii) the adoption of a plan relating to the liquidation or dissolution of U. S. Steel;
- (iii) the merger or consolidation of U. S. Steel with or into another entity, or the merger of another entity with or into U. S. Steel, other than a merger or consolidation transaction in which holders of Equity Interests representing 100% of the ordinary Voting Power represented by the Equity Interests in U. S. Steel immediately prior to

such transaction own directly or indirectly at least a majority of the ordinary Voting Power represented by the Equity Interests (or other securities into which such securities are converted as part of such merger or consolidation transaction) in the surviving person resulting from such merger or consolidation transaction, and in substantially the same proportion as before the transaction;

- (iv) the sale of all or substantially all the assets of U. S. Steel (determined on a consolidated basis) to another person; or
 - (v) the Company after the date of this Agreement ceases to be directly or indirectly beneficially wholly owned by U. S. Steel, unless such cessation:
 - (A) was approved in advance in writing by Facility Agent acting on the instructions of, subject to paragraph (c) below, the Majority Lenders; or
 - (B) results from a Permitted Merger.
- (d)
- (i) Following any approval referred to in paragraph (b)(v)(A) above, any Lender that is unable to satisfy its know your customer requirements may, by notice to the Company and the Facility Agent (a **Change of Control KYC Notice**) given not later than ten days after the date of such approval notify the Company that it is unable to satisfy its know your customer requirements, terminate its Commitment and declare any amounts payable by the Company under the Finance Documents for its account to be, and such amounts shall become, due and payable without presentment, demand, protest or other notice of any kind (all of which are hereby waived by the Company) in each case on the Business Day following the date of delivery of the Change of Control KYC Notice or such later date as may be designated by the relevant Lender in its Change of Control KYC Notice.
 - (ii) A Lender that gives a Change of Control KYC Notice may, in its absolute discretion, set out in the Change of Control KYC Notice the conditions on which it may be willing to defer terminating its Commitment, declaring any amounts payable by the Company under the Finance Documents for its account to be due and payable and receive such amounts and the date by which such conditions must be met (a **Change of Control KYC Notice Waiver**). A Lender whose Change of Control KYC Notice sets out any such conditions must notify the Company and the Facility Agent promptly upon being satisfied either (i) that (A) such conditions have been met and (B) its Change of Control KYC Notice Waiver has become effective or (ii) that (A) such conditions have not been met by the relevant date and (B) the date on which the termination of its Commitment will become effective and on which the amounts payable by the Company under the Finance Documents for its account will be deemed to be declared to be, and such amounts shall then become, due and payable without presentment, demand, protest or other notice of any kind (all of which are hereby waived by the Company).

Equity Interests means: (i) shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a person; or (ii) any warrants, options or other rights to acquire such shares or interests.

Voting Power as applied to the stock of any corporation means the total voting power represented by all outstanding Voting Stock of such corporation.

Voting Stock as applied to the stock of any corporation means stock of any class or classes (however designated) having ordinary voting power for the election of the directors of such corporation, other than stock having such power only by reason of the happening of a contingency.

8.3. Voluntary prepayment

- (a) The Company may, by giving not less than ten Business Days' prior notice to the Facility Agent, prepay any Loan at any time in whole or in part.
- (b) A prepayment of part of a Loan must be in a minimum amount of €5,000,000 and an integral multiple of €250,000 (or its equivalent in the Optional Currency).
- (c) A prepayment of all or part of a Loan must be on an Interest Payment Date.

8.4. Automatic cancellation

The Commitment of each Lender will be automatically cancelled at the close of business on the last day of the Availability Period.

8.5. Voluntary cancellation

- (a) The Company may, by giving not less than five Business Days' prior notice to the Facility Agent, cancel the unutilised amount of the Total Commitments in whole or in part.
- (b) Partial cancellation of the Total Commitments must be in a minimum amount of €10,000,000 and an integral multiple of €500,000.
- (c) Any cancellation in part will be applied against the Commitment of each Lender pro rata.

8.6. Right of repayment and cancellation of a single Lender

- (a) If:
 - (i) the Company is, or will be, required to pay to a Lender:
 - (A) a Tax Payment; or
 - (B) an Increased Cost; or
 - (ii) any FATCA Protected Lender notifies the Facility Agent of a FATCA Event pursuant to Clause 8.8 (Mandatory repayment and cancellation of FATCA Protected Lenders),

the Company may, while the requirement or FATCA Event continues, give notice to the Facility Agent requesting repayment and cancellation in respect of that Lender.

- (b) After notification under paragraph (a) of this Clause 8.6:
 - (i) the Company must repay or prepay that Lender's participation in each Loan on the date specified in paragraph (c) of this Clause 8.6; and
 - (ii) the Commitment of that Lender will be immediately cancelled.
- (c) The date for repayment or prepayment of a Lender's participation in a Loan will be:

- (i) the last day of the Term for that Loan; or
- (ii) if earlier, the date specified by the Company in its notification.

8.7. Right of repayment and cancellation of a Specified Lender

- (a) If any Lender becomes a Specified Lender:
 - (i) it must notify the Company (through the Facility Agent) immediately; and
 - (ii) until the Lender ceases to be a Specified Lender, the Company may, if all Lenders other than the relevant Specified Lender have given their prior consent (such consent not to be unreasonably withheld or delayed) give notice to the Facility Agent requesting repayment or prepayment and cancellation in respect of that Specified Lender; provided, however, that:
 - (A) receipt of the notice referred to in paragraph (a)(i) of this Clause 8.7 shall not be a condition precedent to the giving of notice by the Company pursuant to this paragraph (ii); and
 - (B) the Company may notify the Facility Agent of a repayment or prepayment and cancellation and repayment in respect of a Specified Lender pursuant to this Clause 8.7 without the prior consent of the Lenders otherwise required under this paragraph (ii) up to an aggregate amount of €50,000,000, if no Default is continuing:
 - I. on the date of delivery of the repayment or prepayment and cancellation notice to the Facility Agent; or
 - II. date of making the repayment or prepayment (if any).
- (b) The Facility Agent shall as soon as practicable after receipt of a notice under paragraph (a)(i) of this Clause 8.7, notify all the Lenders.
- (c) After notice under paragraph (a)(ii) of this Clause 8.7:
 - (i) the Company must repay or prepay that Specified Lender's participation in each Loan on the date specified in paragraph (d) of this Clause 8.7; and
 - (ii) the Commitment of that Specified Lender will be immediately cancelled.
- (d) The date for repayment or prepayment of the Specified Lender's participation in a Loan will be:
 - (i) the last day of the Term for that Loan; or
 - (ii) if earlier, the date specified by the Company in its notification under paragraph (a)(ii) of this Clause 8.7.

8.8. Mandatory repayment and cancellation of FATCA Protected Lenders

If on the date falling six months before the earliest FATCA Application Date for any payment by a Party to a FATCA Protected Lender (or to the Facility Agent for the account of that Lender), that Lender is not a FATCA Exempt Party and, in the opinion of that Lender (acting reasonably), that Party will, as a consequence, be required to make a FATCA Deduction from a payment to that

Lender (or to the Facility Agent for the account of that Lender) on or after that FATCA Application Date (a **FATCA Event**):

- (a) that Lender shall, reasonably promptly after that date, notify the Facility Agent of that FATCA Event and the relevant FATCA Application Date;
- (b) if, on the date falling one month before such FATCA Application Date, that FATCA Event is continuing and that Lender has not been repaid pursuant to Clause 8.6 (Right of repayment and cancellation of a single Lender):
 - (i) that Lender may, at any time between one month and two weeks before such FATCA Application Date, notify the Facility Agent;
 - (ii) upon the Facility Agent notifying the Company, the Commitment of that Lender will be immediately cancelled; and
 - (iii) the Company shall repay that Lender's participation in the Loans on the last day of the Term for each Loan occurring after the Facility Agent has notified the Company or, if earlier, the last Business Day before the relevant FATCA Application Date.

8.9. Re-borrowing of Loans

Any voluntary prepayment of a Loan under Clause 8.3 (Voluntary prepayment) may be re-borrowed on the terms of this Agreement. Any other prepayment of a Loan may not be re-borrowed.

8.10. Miscellaneous provisions

- (a) Any notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date(s) and the affected Loans and Commitments. The Facility Agent must notify the Lenders promptly of receipt of any such notice.
- (b) All prepayments under this Agreement must be made with accrued interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment except for Break Costs.
- (c) The Majority Lenders may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.
- (d) No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may subsequently be reinstated.

8.11. Application of prepayments

Any prepayment of a Loan pursuant to Clause 8.3 (Voluntary prepayment) shall be applied pro rata to each Lender's participation in that Loan.

9. INTEREST

9.1. Calculation of interest

The rate of interest on each Loan for its Term is the percentage rate per annum equal to the aggregate of the applicable:

- (a) Margin; and
- (b) IBOR.

9.2. Payment of interest

Except where it is provided to the contrary in this Agreement, the Company must pay accrued interest on each Loan made to it on the last day of each Term and also, if the Term is longer than six months, on the dates falling at six-month intervals after the first day of that Term (each an **Interest Payment Date**).

9.3. Interest on overdue amounts

- (a) If an Obligor fails to pay any amount payable by it under the Finance Documents, it must immediately on demand by the Facility Agent pay interest on the overdue amount from its due date up to the date of actual payment, both before, on and after judgment.
- (b) Interest on an overdue amount is payable at a rate determined by the Facility Agent to be two per cent. per annum above the rate that would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount. For this purpose, the Facility Agent may (acting reasonably):
 - (i) select successive Terms of any duration of up to three months; and
 - (ii) determine the appropriate Rate Fixing Day for that Term.
- (c) Notwithstanding paragraph (b) of this Clause 9.3, if the overdue amount is a principal amount of a Loan and becomes due and payable before the last day of its current Term, then:
 - (i) the first Term for that overdue amount will be the unexpired portion of that Term; and
 - (ii) the rate of interest on the overdue amount for that first Term will be one per cent. per annum above the rate then payable on that Loan.

After the expiry of the first Term for that overdue amount, the rate on the overdue amount will be calculated in accordance with paragraph (b) of this Clause 9.3.

- (d) Interest (if unpaid) on an overdue amount will be compounded with that overdue amount at the end of each of its Terms but will remain immediately due and payable.

9.4. Notification of rates of interest

The Facility Agent must promptly notify each relevant Party of the determination of a rate of interest under this Agreement.

9.5. Acknowledgement

The Company acknowledges and confirms for the benefit of each Slovak Finance Party that it has been informed about the amount of the annual percentage rate of interest of the Loan and on the fees that the Company shall pay under the Finance Documents in compliance with section 37(2) of the Slovak Banking Act.

10. TERMS

10.1. Selection

- (a) Each Loan has one Term only.
- (b) The Company must select the Term for a Loan in the relevant Request.
- (c) Subject to the following provisions of this Clause, each Term for a Loan will be one week or one, two, three or six months.

10.2. No overrunning the Final Maturity Date

If a Term would otherwise overrun the Final Maturity Date determined under this Agreement for any Lender, it will be shortened so that it ends on that Final Maturity Date in which case the Company will have no obligation to pay Break Costs or other costs arising from the shortening.

10.3. Notification

The Facility Agent must notify each relevant Party of the duration of each Term promptly after ascertaining its duration.

11. CHANGES TO THE CALCULATION OF INTEREST

11.1. Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for IBOR for the Term of a Loan, the applicable IBOR shall be the Interpolated Screen Rate for a period equal in length to the Term of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for IBOR for (i) the currency of a Loan or (ii) the Term of a Loan and it is not possible to calculate the Interpolated Screen Rate, the applicable IBOR shall be the Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Term of that Loan.
- (c) *Cost of funds*: If paragraph (b) of this Clause 11.1 applies but no Reference Bank Rate is available for the relevant currency or Term there shall be no IBOR for that Loan and Clause 11.4 (Cost of funds) shall apply to that Loan for that Term.

11.2. Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) of this Clause 11.2, if IBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.

- (b) If at or about noon on the Rate Fixing Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Term.

11.3. Market disruption

If before close of business in London on the Rate Fixing Day for the relevant Term the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 30 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select then Clause 11.4 (Cost of funds) shall apply to that Loan for the relevant Term.

11.4. Cost of funds

- (a) If this Clause 11.4 applies, the rate of interest on each Lender's participation of the relevant Loan for the relevant Term shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Term, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 11.4 applies and the Facility Agent or the Company so requires, the Facility Agent and the Company shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) of this Clause 11.4 shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.

11.5. Notification to Company

If Clause 11.4 (Cost of funds) applies the Facility Agent shall, as soon as is practicable, notify the Company.

12. TAXES

12.1. Gross-up

All payments by an Obligor under the Finance Documents shall be made without any Tax Deduction, except to the extent that an Obligor is required by law to make payment subject to any Taxes. If any Relevant Tax or amounts in respect of any Relevant Tax must be deducted from any amounts payable or paid by an Obligor, or paid or payable by the Facility Agent to a Lender, under the Finance Documents, that Obligor shall, subject to Clause 12.4 (Exception to gross-up), pay such additional amounts as may be necessary to ensure that the relevant Lender receives a net amount equal to the full amount which it would have received had payment not been made subject to Relevant Tax.

12.2. Tax receipts

All Taxes required by law to be deducted or withheld by an Obligor from any amounts paid or payable under the Finance Documents shall be paid by that Obligor when due and that Obligor shall, within 15 days of receipt of evidence of the payment being made, deliver the same to the Facility Agent.

12.3. Reimbursement of tax credit

If an Obligor pays a Tax Payment under Clause 12.1 (Gross-up) for the account of a Lender, and the Lender effectively obtains, or could have effectively obtained by taking reasonable action (in which case the Lender shall be treated as actually having obtained), a refund of any Tax, or credit against any Tax, by reason of that Tax Payment (a **Tax Credit**), then the Lender shall reimburse to that Obligor such amount as the Lender shall reasonably determine to be the proportion of the Tax Credit as will leave the Lender (after that reimbursement) in no better or worse position than it would have been in if the Tax Payment had not been required. Notwithstanding the foregoing, a Lender may choose not to make or to limit the amount or alter the timing of any Tax Credit if to do otherwise would result in a material adverse effect to the Lender or on its relationship with the relevant Tax authority. Upon reasonable request from an Obligor, the Lender shall provide that Obligor with a certification concerning whether or not a Tax Credit was obtained or was attempted to be obtained by the Lender as well as reasonable detail concerning the amount of the Tax Credit. No Finance Party is obliged to disclose any information regarding its Tax affairs or computations to any other person.

12.4. Exception to gross-up

An Obligor is not required to pay an additional amount for the account of a Lender under Clause 12.1 (Gross-up):

- (a) to the extent that the obligation to pay the additional amount would not have arisen but for the failure by that Lender to provide (within a reasonable period after being requested to do so by an Obligor or the Facility Agent and at the cost of that Obligor) any form, certificate or other documentation:
 - (i) the provision of which would have relieved (in whole or in part) that Obligor from the relevant withholding obligation; and
 - (ii) which it is fully within the power of the Lender to provide;
- (b) if that Lender has not complied with its obligations under paragraph (a) of Clause 12.5 (Tax confirmation) for a period of 90 days from the date that Lender became aware that it could not give the confirmation referred to in paragraph (a) of Clause 12.5 (Tax confirmation); or
- (c) the confirmation provided by that Lender under paragraph (a) of Clause 12.5 (Tax confirmation) is incorrect when made.

12.5. Tax confirmation

- (a) Each Lender (other than a Lender with its Facility Office situated in the Republic) confirms to each Obligor that on the date of this Agreement (or if it only subsequently becomes a Party to this Agreement, on that date) under the terms of a double taxation treaty between the jurisdiction in which that Lender is resident and the Republic payments due to it under the Finance Documents may be made without deduction or withholding on account of any Tax imposed or levied by the Republic (or any political subdivision or taxing authority of the Republic) under the laws of the Republic, as interpreted and applied at that time.
- (b) If a Lender becomes aware that it could not, on any particular day, give the confirmation referred to in paragraph (a) of this Clause 12.5, it shall promptly but in any event within 90 days, notify such to that Obligor (through the Facility Agent).

- (c) Each Lender shall, as soon as reasonably practicable upon an Obligor's request, provide that Obligor with its tax residence certificate.

12.6. Stamp taxes

The Company must pay and indemnify each Finance Party against any stamp duty, registration or other similar Tax payable in connection with the entry into, performance or enforcement of any Finance Document, except for any such Tax payable in connection with the entry into a Transfer Certificate.

12.7. Value added taxes

- (a) Any amount (including costs, fees and expenses) payable under a Finance Document by an Obligor is exclusive of any value added tax or similar tax that might be chargeable in connection with that amount. If any such value added tax or similar tax is chargeable, that Obligor must pay (in addition to and at the same time as it pays that amount) an amount equal to the amount of that value added tax or similar tax.
- (b) The obligation of an Obligor under paragraph (a) of this Clause 12.7 will be reduced to the extent that the Finance Party is entitled to repayment or a credit in respect of the relevant value added tax or similar tax.

12.8. FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment and, in addition, shall notify the Obligors, the Facility Agent and the other Finance Parties.

13. INCREASED COSTS

13.1. Increased Costs

- (a) Except as hereinafter provided in this Clause, the Company must pay to a Finance Party the amount of any Increased Cost incurred by that Finance Party or its Holding Company as a result of:
 - (i) the introduction of, or any change in, or any change in the interpretation, or application of, any law or regulation;
 - (ii) compliance with any law or regulation made after the date of this Agreement; or
 - (iii) the implementation or application of or compliance with Basel III or CRR/CRD IV or any other law or regulation which implements Basel III or CRR/CRD IV (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Holding Companies).

Each Finance Party agrees to notify the Company promptly upon becoming aware that this Clause 13.1 applies.

- (b) In this Agreement:

Basel III means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee in December 2010, each as amended, supplemented or restated;
- (ii) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee relating to Basel III.

Basel Committee means the Basel Committee on Banking Supervision.

CRR/CRD IV means:

- (i) Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

13.2. Exceptions

The Company need not make any payment for an Increased Cost to the extent that the Increased Cost is:

- (a) compensated for under another Clause or would have been but for an exception to that Clause;
- (b) a tax on the overall net income of a Finance Party or its Holding Company;
- (c) attributable to a FATCA Deduction required to be made by a Party;
- (d) attributable to a Finance Party or its Holding Company wilfully failing to comply with any law or regulation; or
- (e) attributable to the failure of the relevant Finance Party or its Holding Company to notify the Company of that increased cost within 45 days of becoming aware of it.

13.3. Claims

- (a) A Finance Party intending to make a claim for an Increased Cost must notify the Facility Agent of the circumstances giving rise to and the amount of the claim, following which the Facility Agent will promptly notify the Company.

- (b) Each Finance Party must, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Cost.

14. MITIGATION

14.1. Mitigation

If circumstances arise that would, or would on the giving of notice, result in:

- (a) any additional amounts becoming payable under Clause 12 (Taxes); or
- (b) any amount becoming payable under Clause 13 (Increased Costs); or
- (c) any prepayment or cancellation under Clause 8.1 (Mandatory prepayment - illegality); or
- (d) a Finance Party incurring any cost of complying with the minimum reserve requirements of its supervising and regulating entity,

then, without limiting the obligations of each Obligor under this Agreement and without prejudice to the terms of Clauses 12 (Taxes), 13 (Increased Costs) and 8.1 (Mandatory prepayment - illegality), the relevant Lender shall, in consultation with the relevant Obligor, take such reasonable steps as may be open to it to mitigate or remove the relevant circumstance, including changing its Facility Office to one in another jurisdiction or the transfer of its rights and obligations under this Agreement to another person, unless to do so might (in the reasonable opinion of the Lender) be materially prejudicial to it.

15. PAYMENTS

15.1. Place

Unless a Finance Document specifies that payments under it are to be made in another manner, all payments by a Party (other than the Facility Agent) under the Finance Documents must be made to the Facility Agent to its account at such office or bank:

- (a) in the principal financial centre of the country of the relevant currency; or
- (b) in the case of euro, in the principal financial centre of such Participating Member State or London, as specified by the Facility Agent,

as it in each case may notify to that Party for this purpose by not less than ten Business Days' prior notice.

15.2. Funds

Payments under the Finance Documents to the Facility Agent must be made for value on the due date at such times and in such funds as the Facility Agent may acting reasonably specify to the Party concerned as being customary at the time for the settlement of transactions in the relevant currency in the place for payment.

15.3. Distribution

- (a) Each payment received by the Facility Agent under the Finance Documents for another Party must, except as hereinafter provided, be made available by the Facility Agent to that

Party by payment (as soon as practicable after receipt) to its account with such office or bank:

- (i) in the principal financial centre of the country of the relevant currency; or
- (ii) in the case of euro, in the principal financial centre of a Participating Member State or London,

as it may notify to the Facility Agent for this purpose by not less than ten Business Days' prior notice.

- (b) The Facility Agent may apply any amount received by it for an Obligor in or towards payment (as soon as practicable after receipt) of any amount due from an Obligor under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied.
- (c) Where a sum is paid to the Facility Agent under this Agreement for another Party, the Facility Agent is not obliged to pay that sum to that Party until it has established that it has actually received it. The Facility Agent may assume that the sum has been paid to it, and, in reliance on that assumption, make available to that Party a corresponding amount. If it transpires that the sum has not been received by the Facility Agent, that Party must immediately on demand by the Facility Agent refund any corresponding amount made available to it together with interest on that amount from the date of payment to the date of receipt by the Facility Agent at a rate calculated by the Facility Agent to reflect its cost of funds.

15.4. Currency

- (a) Unless a Finance Document specifies that payments under it are to be made in a different manner, the currency of each amount payable under the Finance Documents is determined under this Clause 15.4.
- (b) Interest is payable in the currency in which the relevant amount in respect of which it is payable is denominated pursuant to this Agreement.
- (c) A repayment or prepayment of any principal amount is payable in the currency in which that principal amount is denominated pursuant to this Agreement on its due date.
- (d) Amounts payable in respect of Taxes, fees, costs and expenses are payable in the currency in which they are incurred.
- (e) Each other amount payable under the Finance Documents is payable in euros.

15.5. No set-off or counterclaim

All payments made by the Company under the Finance Documents must be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.

15.6. Business Days

- (a) If a payment under the Finance Documents is due on a day that is not a Business Day, the due date for that payment will instead be the next Business Day.

- (b) During any extension of the due date for payment of any principal under this Agreement interest is payable on that principal at the rate payable on the original due date.

15.7. Impaired Agent

- (a) If, at any time, the Facility Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Facility Agent in accordance with Clause 15.2 (Funds) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Agency Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 15.7 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Facility Agent in accordance with Clause 23.18 (Resignation of the Facility Agent), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Facility Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 15.3 (Distribution).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent that it has:
 - (i) not given an instruction pursuant to paragraph (d) above; and
 - (ii) been provided with the necessary information by that Recipient Party,give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

15.8. Partial payments

- (a) If the Facility Agent receives a payment insufficient to discharge all the amounts then due and payable by the Company under the Finance Documents, the Facility Agent must apply

that payment towards the obligations of the Company under the Finance Documents in the following order:

- (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Administrative Parties under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest or fee due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal amount due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent must, if so directed by all the Lenders, vary the order set out in subparagraphs (a)(ii) to (a)(iv) of this Clause 15.8.
- (c) This Clause 15.8 will override any appropriation made by the Company.

15.9. Bankruptcy proceeds in respect of a Qualified Related-Party Receivable

- (a) If the Facility Agent receives any proceeds from a bankruptcy trustee of the relevant bankrupt person (*úpadca*) (including an Obligor) which proceeds shall be applied towards discharge of the Obligors' obligations under the Finance Documents, the Facility Agent shall not be obliged to pay the Pro Rata Share in such proceeds to a Lender which is a creditor of a Qualified Related-Party Receivable (such Lender in this Clause as the **qualified impaired Lender** and such unpaid Pro Rata Share in this Clause as the **qualified Pro Rata Share**), to the extent to which such proceeds were not received by the Facility Agent towards full or partial repayment of the relevant Qualified Related-Party Receivable owed to the qualified impaired Lender.
- (b) The qualified Pro Rata Share received by the Facility Agent and not paid to the qualified impaired Lender pursuant to paragraph (a) of this Clause 15.9 shall be distributed among other Lenders (other than the qualified impaired Lender) according to their Pro Rata Shares, provided that when calculating such Pro Rata Shares, the qualified impaired Lender's participation in the outstanding Loans or the undrawn Commitments shall be disregarded.

15.10. Timing of payments

If a Finance Document does not provide for when a particular payment is due, that payment will be due 30 days after receipt by the Company of a claim (accompanied by, if available, separate invoices) signed on behalf of the relevant Finance Party specifying the amount due, the provision of the Finance Document under which the Company's liability to pay arises and setting out in reasonable detail a calculation of the amount due.

15.11. Disruption to Payment Systems etc.

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Company that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or

administration of the Facility as the Facility Agent may deem necessary in the circumstances;

- (b) the Facility Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) of this Clause 15.11 if, in its opinion (acting reasonably), it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) of this Clause 15.11 but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 28 (Amendments and waivers);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 15.11; and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) of this Clause 15.11.

16. GUARANTEE AND INDEMNITY

16.1. Guarantee and indemnity

The Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by the Company of all the Company's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever the Company does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of the Company not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 16 if the amount claimed had been recoverable on the basis of a guarantee.

16.2. Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

16.3. Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 16 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.4. Waiver of defences

The obligations of the Guarantor under this Clause 16 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 16 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

16.5. Immediate recourse

The Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Guarantor under this Clause 16. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

16.6. Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 16.

16.7. Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 16:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 16.1 (Guarantee and indemnity);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligor under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 15 (Payments).

16.8. Additional Security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

17. LEVERAGE CONDITION

17.1. Release in respect of Leverage Condition

- (a) In this Clause 17.1:

Leverage Condition means, in respect of any Measurement Period, the ratio of Net Debt to EBITDA has been equal to or less than 3.50:1 for the immediately preceding Measurement Period.

- (b) If:
- (i) the Company has delivered a request to the Facility Agent to release all or part of the Transaction Security (the **Release Request**);
 - (ii) no Event of Default is continuing at the date of the Release Request or on the date the release is expressed to become effective; and
 - (iii) the Release Request is made during a Measurement Period ending after 30 June 2021 and in respect of which the Leverage Condition is satisfied,

the Facility Agent shall confirm satisfaction of such conditions to the Security Agent, in accordance with clause 10 (Release of Security on satisfaction of Leverage Condition) of the Intercreditor Agreement.

- (c) Following any Measurement Period in respect of which the Leverage Condition has been satisfied and provided the Company is in compliance with its obligations to deliver a Compliance Certificate in accordance with Clause 19.3 (Compliance Certificate), the Facility Agent is not entitled to give instructions to the Security Agent to enforce the Transaction Security.

18. REPRESENTATIONS AND WARRANTIES

18.1. Representations and warranties

Each Obligor, or where so stated, the relevant Obligor, makes the representations and warranties set out in this Clause 18 to each Finance Party.

18.2. Status

- (a) It is a limited liability company duly organised and validly existing under the laws of the Republic.
- (b) It has the power to own its property and Assets.
- (c) It has power to carry on its business as it is now being conducted.

18.3. Powers and authority

It has the power to enter into and perform, and has taken all necessary action to authorise, the execution, delivery and performance of the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents and no limit on its powers will be exceeded as a result of the granting of the Transaction Security.

18.4. Legal validity

- (a) Each Finance Document to which it is a party:
 - (i) constitutes, or when executed will constitute, its legal, valid and binding obligation enforceable in accordance with its terms; and

- (ii) is in proper form for its enforcement in the Republic if accompanied by a certified Slovak translation,

save that enforcement of its obligations under the Finance Documents may be affected by insolvency, bankruptcy and similar laws affecting the rights of creditors generally.

- (b) Subject to the Legal Reservations, each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

18.5. Non-conflict

- (a) The execution, delivery and performance of the Finance Documents to which it is or will be a party by it and the granting of the Transaction Security will not:
 - (i) violate in any respect any provision of:
 - (A) any applicable law or regulation of the Republic or any order of any governmental, judicial or public body or authority in the Republic binding on it; or
 - (B) the laws and documents incorporating and constituting it; or
 - (C) any mortgage, agreement or other financial undertaking or instrument to which it is a party to or which is binding upon it or any Assets of it; or
 - (ii) to the best of its knowledge result in the creation or imposition of any Security Interest on any Assets of it pursuant to the provisions of any mortgage, agreement or other undertaking or instrument to which it is a party or which is binding upon it.
- (b) The Guarantor represents that it has received fair consideration (*primerané protiplnenie*) for the purposes of Section 67j of the Slovak Commercial Code in respect of the guarantee and indemnity given by it under this Agreement.

18.6. No default

The Company represents that no Default is continuing.

18.7. Authorisations

The Company represents that all authorisations and other requirements of governmental, judicial and public bodies and authorities required by any member of the Group or advisable:

- (a) in connection with the execution, delivery, performance, validity and enforceability of the Finance Documents; or
- (b) to make the Finance Documents to which it is a party admissible in evidence in the Republic,

have been obtained or effected and are in full force and effect,

except for, in each case relating to the Transaction Security, any authorisation referred to in Clause 18.12 (No filing or stamp taxes), which authorisations will be obtained or effected in accordance with the terms of the relevant Transaction Security Document.

18.8. Litigation

The Company represents that, except to the extent as disclosed in writing to the Facility Agent:

- (a) there is no litigation, arbitration or administrative proceedings relating to any member of the Group that is material to it, the same are not current or pending or, to the knowledge of it, threatened; and
- (b) no litigation, arbitration or administrative proceedings are current or pending or, to the knowledge of it, threatened, which would reasonably be expected to have a material adverse effect on the ability of the Obligors taken together to perform their obligations under the Finance Documents, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security or the rights or remedies of any Finance Party under any of the Finance Documents.

18.9. Title

The Company represents that, except to the extent disclosed in writing to the Facility Agent, it has and the Guarantor has, valid leases or good and marketable title to all its material Fixed Assets which are reflected in the most recent audited consolidated financial statements of the Group delivered to the Facility Agent under Clause 18.18 (Financial statements), subject to any disposal permitted under Clause 21.7 (Disposals) and to no Security Interest securing Financial Indebtedness over such Fixed Assets, except any Permitted Security Interest.

18.10. Borrowing and guarantee limits

- (a) The Company represents that the borrowing of the full amount available under this Agreement will not cause any limit on its borrowing or other powers or on the exercise of such powers by its executives whether imposed by its articles of association or similar document or by statute, regulation, or agreement, to be exceeded.
- (b) The Guarantor represents that the guaranteeing of all amounts guaranteed by it under this Agreement will not cause any limit on its guaranteeing or other powers or on the exercise of such powers by its executives whether imposed by its articles of association or similar document or by statute, regulation, or agreement, to be exceeded.

18.11. Taxes on payments

All amounts payable by it under the Finance Documents may be made without any Tax Deduction.

18.12. No filing or stamp taxes

The Company represents that under the laws of the Republic it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except for registration of the Transaction Security in accordance with the terms of the relevant Transaction Security Document and Slovak law and the related fees, which registrations and fees will be made and paid promptly after the date of the relevant Transaction Security Document.

18.13. Immunity

Subject to any general provisions of law with respect to immunity of certain assets from attachment and from execution, referred to in any legal opinion required under this Agreement, it is not entitled to claim immunity from suit, attachment, enforcement or other legal process in the Republic.

18.14. Governing law and enforcement

- (a) The Company represents that subject to the Legal Reservations, the choice of English law as the governing law of the Finance Documents will be recognised and enforced in the Republic.
- (b) The Company represents that subject to the Legal Reservations, any judgment obtained in England in relation to a Finance Document will be recognised and enforced in the Republic.

18.15. Solvency

- (a) It is not insolvent (*v úpadku*); and
- (b) it has not taken any action nor, so far as it is aware have any steps been taken or legal proceedings been started or threatened against it for winding-up, dissolution, reorganisation, or bankruptcy the enforcement of any encumbrance over its assets or for the appointment of a receiver, administrative receiver or administrator, trustee or similar officer of it or of any or all of its assets or revenues.

18.16. Information

- (a) The Company represents that all factual information provided in writing by an officer of any member of the Group, U. S. Steel or any Subsidiary of U. S. Steel to the Finance Parties in connection with the Finance Documents was true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given by that person.
- (b) The Company represents that nothing was omitted from the information referred to in paragraph (a) of this Clause 18.16 that, if disclosed, would make that information untrue or misleading in any material respect.
- (c) The Company represents that nothing has occurred since the date of the information referred to in paragraph (a) of this Clause 18.16 that, if disclosed, would make that information untrue or mislead in any material respect.

18.17. No notarial deed

The Company represents that no member of the Group has created any notarial deed (as referred to in section 45(2) of the Slovak Act No. 233/1995 Coll. as amended or section 274(e) of the Slovak Act No. 99/1963 Coll., in its wording up to 31 August 2005 respectively) in relation to any Financial Indebtedness.

18.18. Financial statements

The Company represents that the financial statements most recently delivered to the Facility Agent (which, at the date of this Agreement, are the audited consolidated financial statements of the Company for the year ended 31 December 2017 and the unaudited unconsolidated balance sheets and income statements of the Guarantor for the year ended 31 December 2017):

- (a) have been prepared in accordance with accounting principles and practices generally accepted in its jurisdiction of incorporation, consistently applied; and
- (b) fairly present their consolidated financial condition as at the date to which they were drawn up,

except, in each case, as disclosed to the contrary in those financial statements.

18.19. Slovak Banking Act

- (a) It represents that it is not a person having any special relationship (*osobitný vzťah*) as defined in the Slovak Banking Act, to any Slovak Finance Party.
- (b) When making any payment under or in connection with any Finance Document, it will use solely the funds owned by it.
- (c) It is entering into each Finance Document as a principal and not as agent and, in its own name on its own account.

18.20. Slovak Public Sector Partners Act

It is duly registered as a public sector partner (*partner verejného sektora*) in the register of public sector partners (*register partnerov verejného sektora*) in accordance with the Slovak Public Sector Partners Act.

18.21. ERISA

The Company represents that:

- (a) each Plan of it and of each ERISA Affiliate of it complies in all material respects with all applicable requirements of law and regulation;
- (b) no Reportable Event has occurred with respect to any Plan, and no steps have been taken to terminate any Plan; and
- (c) neither it nor any of its ERISA Affiliates has had a complete or partial withdrawal from any Multiemployer Plan (as defined by ERISA) or initiated any steps to do so.

18.22. Margin Regulations

The Company represents that neither it nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

18.23. Centre of Main Interests

Its Centre of Main Interests is situated in its jurisdiction of incorporation and it has no Establishment in any other jurisdiction.

18.24. Material adverse change

The Company represents that since 31 December 2017, there has not been any material adverse change in its or in the Guarantor's business, Assets, regulation or financial condition that would reasonably be expected to have a material adverse effect on the ability of the Obligors taken as a

whole to perform their obligations under the Finance Documents, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security or the rights or remedies of any Finance Party under any of the Finance Documents.

18.25. Anti-Corruption Laws and Sanctions

- (a) The Company represents that it has implemented and maintains in effect policies and procedures designed to ensure compliance by it, its Subsidiaries and their respective directors, officers, employees and agents with applicable Anti-Corruption Laws and Sanctions.
- (b) The Company represents that it, its Subsidiaries and their respective officers and employees and to the knowledge of it its directors and agents, are in compliance with applicable Anti-Corruption Laws and Sanctions in all material respects.
- (c) The Company represents that none of:
 - (i) it, any Subsidiary or to the knowledge of it or such Subsidiary any of their respective directors, officers or employees; or
 - (ii) to the knowledge of it, its agents or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby,

is a Sanctioned Person.

- (d) The Company represents that no Loan, use of proceeds or other transaction contemplated by the Finance Documents will violate any Anti-Corruption Law or Sanctions applicable to it or its Subsidiaries.
- (e) In relation to each Lender that notifies the Facility Agent to this effect (each a **Restricted Lender**), this Clause 18.25 shall only apply for the benefit of that Restricted Lender to the extent that it would not result in any violation of, conflict with or liability under section 7 of the German Foreign Trade Regulation (*Aussenwirtschaftsverordnung*), Council Regulation (EC) No 2271/96 of 22 November 1996 or any similar applicable anti-boycott law or regulation.

18.26. Ranking

The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security Interest.

18.27. Legal and beneficial ownership

The Company is the sole legal and beneficial owner of the respective assets over which it purports to grant Transaction Security free from any claims, third party rights or competing interests.

18.28. Trade Receivables

The Common Currency Amount (as defined in the Intercreditor Agreement) of all Trade Receivables governed by a law other than the law of Slovakia and not otherwise subject to Transaction Security is not more than 50% of the aggregate Common Currency Amount (as defined in the Intercreditor Agreement) of all Trade Receivables at that time.

18.29. Times for making representations and warranties

- (a) It makes the representations and warranties set out in this Clause on the date of this Agreement.
- (b) Unless a representation and warranty made by it is expressed to be given at a specific date, each representation and warranty made by it is deemed to be repeated by it on the date of each Request, each Additional Commitment Request Notification, each Additional Commitment Request and the first day of each Term, except that the representations and warranties in:
 - (i) Clauses 18.5(a)(i)(C) and (ii) (Non-conflict), 18.7 (Authorisations) 18.8(a) (Litigation), 18.11 (Taxes on payments), 18.12 (No filing or stamp taxes), 18.15 (Insolvency), 18.21 (ERISA), paragraphs (a), (b), (d) and (e) of Clause 18.25 (Anti-Corruption Laws and Sanctions) shall not be repeated by it; and
 - (ii) Clause 18.28 (Trade Receivables) shall be deemed to only be repeated by it on the date of each one Month anniversary of the First Effective Date up to and including the anniversary falling six Months after the First Effective Date.
- (c) When the representation and warranty in Clause 18.6 (No default) is repeated on a Request for a Rollover Loan or the first day of a Term for a Loan (other than the first Term for that Loan), the reference to a Default will be construed as a reference to an Event of Default.
- (d) When a representation and warranty is repeated, it is applied to the circumstances existing at the time of repetition.

19. INFORMATION COVENANTS

19.1. Duration

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is or may be outstanding under any Finance Document.

19.2. Financial Information

The Company shall furnish to the Facility Agent:

- (a) the annual audited consolidated financial statements of the Company including the report of independent auditors and accompanying notes for each of its financial years as soon as practicable (and in any event within 180 days after the end of each of its financial years), such financial statements:
 - (i) to be prepared in accordance with the IFRS consistently applied;
 - (ii) to be audited by an internationally recognised firm of accountants;
 - (iii) to give a true and fair view of the financial condition of the Company and the result of its operations for the period ended on the date to which such financial statements were prepared; and
 - (iv) signed by the chief financial officer (or equivalent), or by two senior officers of the Company;

- (b) the annual audited unconsolidated financial statements of the Guarantor, prepared for each of its financial years as soon as practicable (and in any event within 180 days after the end of each of its financial years), such financial statements:
 - (i) to be prepared in accordance with accounting principles and practices generally accepted in its jurisdiction of incorporation, consistently applied;
 - (ii) to be audited by an internationally recognised firm of accountants;
 - (iii) to give a true and fair view of the financial condition of the Guarantor and the result of its operations for the period ended on the date to which such financial statements were prepared; and
 - (iv) signed by the chief financial officer (or equivalent), or by two senior officers of the Guarantor;
- (c) the annual unaudited consolidated balance sheet and profit and loss statements of the Group to be prepared in accordance with USGAAP consistently applied, annually, i.e. for each of its financial years as soon as practicable (and in any event within 120 days after the end of each of its financial years) certified by the chief financial officer (or equivalent) of the Company;
- (d) the semi-annual unaudited consolidated balance sheet, profit and loss statement and cash flow statement of the Group to be prepared in accordance with USGAAP, as soon as practicable (and in any event within 45 days after the end of each half of its financial years);
- (e) the quarterly unaudited consolidated balance sheet and cash flow statement of the Group to be prepared in accordance with USGAAP consistently applied for the first three quarters (i.e. each of the quarterly periods ending on 31 March, 30 June, and 30 September each year) of each financial year, whereas, for the avoidance of doubt:
 - (i) balance sheet and cash flow statement submitted for the quarter ending on 31 March shall contain financial data for the period starting on 1 January of the given financial year and ending on 31 March of the given financial year;
 - (ii) balance sheet and cash flow statement submitted for the quarter ending on 30 June shall contain financial data for the period starting on 1 January of the given financial year and ending on 30 June of the given financial year; and
 - (iii) balance sheet and cash flow statement submitted for the quarter ending on 30 September shall contain financial data for the period starting on 1 January of the given financial year and ending on 30 September of the given financial year,
 as soon as practicable (and in any event within 60 days after the end of the relevant quarter) certified by the chief financial officer (or equivalent) of the Company;
- (f) the unaudited consolidated profit and loss statement of the Group to be prepared in accordance with USGAAP consistently applied for each of 12-month periods ending on 31 March, 30 June, and 30 September each year, whereas, for the avoidance of doubt:
 - (i) profit and loss statement submitted for the rolling 12 months period ending on 31 March shall contain financial data for the period starting on 1 April of the previous financial year and ending on 31 March of the given financial year;

- (ii) profit and loss statement submitted for the rolling 12 months period ending on 30 June shall contain financial data for the period starting on 1 July of the previous financial year and ending on 30 June of the given financial year; and
- (iii) profit and loss statement submitted for the rolling 12 months period ending on 30 September shall contain financial data for the period starting on 1 October of the previous financial year and ending on 30 September of the given financial year,

as soon as practicable (and in any event within 60 days after the end of the relevant period) certified by the chief financial officer (or equivalent) of the Company;

- (g) together with the financial statements referred to in paragraph (a) of this Clause 19.2, a certificate of the Company signed by the chief financial officer (or equivalent) of the Company certifying that no Event of Default has occurred (or, if it has, specifying it and the steps being taken to remedy it); and
- (h) as soon as practicable (and in any event within 60 days after the end of the relevant quarter), a certificate of the Company signed by the chief financial officer (or equivalent) of the Company listing the following information, unless already included in the financial statements furnished under paragraph (a) or (e) of this Clause 19.2 or otherwise available to the Finance Parties:
 - (i) the average production capacity (in percentage) which the Company used in the quarter for which such certificate is furnished to the Facility Agent; and
 - (ii) the average selling prices of steel which the Company realised in the quarter for which such certificate is furnished to the Facility Agent;

the identity of all its Subsidiaries:

- (A) whose total assets in aggregate together with total assets of any other Subsidiaries (being the total of fixed assets and current assets) (consolidated in the case of a Subsidiary which itself has one or more Subsidiaries) represent not less than 7.5 per cent, of the Company's total consolidated fixed assets: and/or
- (B) whose gross revenues together with gross revenues of any other Subsidiaries (being gross revenues less internal revenues (excluding exceptionals), before operating expenses and depreciation) (consolidated in the case of a Subsidiary which itself has one or more Subsidiaries) represent not less than 7.5 per cent, of the consolidated gross revenues of the Group (being gross revenues (excluding exceptionals) before operating expenses and depreciation on a consolidated basis as shown in the Latest Accounts).

19.3. Compliance Certificate

- (a) The Company must supply to the Facility Agent a duly completed Compliance Certificate with each set of semi-annual unaudited consolidated financial statements of the Group for the periods ending on 30 June and 31 December each year delivered to the Facility Agent under paragraph (d) of Clause 19.2 (Financial Information). For the avoidance of doubt, the obligation to supply the duly completed Compliance Certificate applies irrespective of whether a Loan is then outstanding.
- (b) A Compliance Certificate must be signed by the chief financial officer (or equivalent) of the Company.

19.4. Information - miscellaneous

- (a) The Company shall furnish to the Facility Agent from time to time with reasonable promptness, such further information regarding the business and financial condition of each Obligor as the Facility Agent may reasonably request.
- (b) Each Obligor shall promptly notify the Facility Agent of any material business or financial event, including any litigation, arbitration, administrative or other proceedings being commenced, which would reasonably be expected to adversely affect its ability to perform its obligations under the Finance Documents, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security or the rights or remedies of any Finance Party under any of the Finance Documents.
- (c) Each Obligor shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against it, which would reasonably be expected to materially adversely affect its ability to perform its obligations under the Finance Documents, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security or the rights or remedies of any Finance Party under any of the Finance Documents.
- (d) Subject to paragraph (e) of this Clause 19.4, each Obligor must promptly on the request of any Finance Party supply to that Finance Party any documentation or other evidence that is reasonably requested by that Finance Party (whether for itself, on behalf of any Finance Party or any prospective new Lender) to enable a Finance Party or prospective new Lender to carry out and be satisfied with the results of all applicable know your customer requirements.
- (e) Each Obligor is only required to supply any information under paragraph (d) of this Clause 19.4, if the necessary information is not already available to the relevant Finance Party and the requirement arises as a result of:
 - (i) the introduction of any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of the Obligor (or of a Holding Company of the Obligor) or any change in the composition of shareholders of the Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by the Lender of any of its rights and/or obligations under this Agreement to a person that is not a Lender before that assignment or transfer.
- (f) Each Lender must promptly on the request of the Facility Agent supply to the Facility Agent any documentation or other evidence that is reasonably required by the Facility Agent to carry out and be satisfied with the results of all know your customer requirements.
- (g) The Company shall make its appropriate executives and employees available for a conference call with the Finance Parties. Such call (except following any Measurement Period in respect of which the Leverage Condition has been satisfied) shall be held after the end of each quarter ending on 31 March, 30 June, 30 September, and 31 December each

year, as promptly as practicable but no later than the date falling 15 days after each of the following conditions is satisfied:

- (i) U. S. Steel issues its report on Form 10-Q for each such quarter or Form 10-K for each such year; and
- (ii) the financial information required to be delivered under paragraph (d) of Clause 19.2 (Financial Information) is delivered.

This conference call shall be preceded by the sending of an information deck in regard to the topic to be presented on the call and shall address the financial performance of the Company for the quarter most recently ended and include information regarding sales, capacity utilization, average realized price, operating income, depreciation, interest expense, operating cash flow, capex, cash balances inventory, EBITDA, liquidity (cash, available committed lines), gross debt in respect of loan agreements and receivables.

19.5. Access

The Company shall ensure that, if the Facility Agent reasonably suspects an Event of Default is continuing or may occur, permit the Facility Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Facility Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk (subject to such persons complying with mandatory safety rules) and cost of the Company to the premises, assets, books, accounts and records of each member of the Group, for the purposes of determining the location of the Inventory subject to the Transaction Security.

19.6. Notification of Default

Each Obligor must notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

19.7. Slovak banking regulations

- (a) Subject to paragraph (b) of this Clause 19.7, in case of any change to:
 - (i) the amount of an Obligor's registered capital; or
 - (ii) the participation interest(s) in an Obligor; or
 - (iii) the voting rights attached to any and all participation interest(s) in an Obligor,

that Obligor must supply to the Facility Agent a list of its participants reflecting the situation after such change, promptly after the effectiveness of such change but in each case no later than within five Business Days after the effectiveness of such change.

- (b) An Obligor is not obliged to supply the list of participants under paragraph (a) of this Clause 19.7 if any such change concerns a participant (*spoločník*) holding:
 - (i) a participation interest not exceeding 10 per cent. of the registered capital of that Obligor; or
 - (ii) voting rights not exceeding 10 per cent. of all voting rights in that Obligor.

(c) For the purposes of this Clause, a **list of participants** means a list of persons (whether individuals or legal entities) holding:

(i) a participation interest exceeding 10 per cent. of the registered capital of an Obligor;
or

(ii) voting rights exceeding 10 per cent. of all voting rights in an Obligor,

containing:

(A) in case of individuals, the name, family name, business name, identification number or birth certificate number, permanent address or place of business (if different from the permanent address) of that participant; and

(B) in case of legal entities, the business name, the legal form, identification number and the registered seat of that participant.

19.8. FATCA Information

(a) Subject to paragraph (c) of this Clause 19.8, each Party shall, within ten Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Exempt Party; or

(B) not a FATCA Exempt Party; and

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

(b) If a Party confirms to another Party pursuant to paragraph (a)(i) of this Clause 19.8 that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

(c) Neither paragraph (a) nor paragraph (b) of this Clause 19.8 shall oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any fiduciary duty; or

(iii) any duty of confidentiality.

(d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) of this Clause 19.8 (including, for the avoidance of doubt, where paragraph (c) of this Clause 19.8 applies), then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party until such

time as the Party in question provides the requested confirmation, forms, documentation or other information.

20. FINANCIAL COVENANTS

20.1. Definitions

In this Agreement:

Cash and Cash Equivalents means, at any time:

- (a) cash in hand or on deposit with any acceptable bank;
- (b) certificates of deposit, maturing within 30 days after the relevant date of calculation, issued by an acceptable bank;
- (c) any investment in marketable obligations issued or guaranteed by the government of an agreed country or by an instrumentality or agency of those governments having an equivalent credit rating which:
 - (i) matures within 30 days after the date of the relevant calculation; and
 - (ii) is not convertible to any other security;
- (d) open market commercial paper not convertible to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued in an agreed country;
 - (iii) which matures within 30 days after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by S&P or Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (e) investments accessible within 30 days in money market funds which:
 - (i) have a credit rating of either A-1 or higher by S&P or Fitch or P-1 or higher by Moody's; and
 - (ii) invest substantially all their assets in securities of the types described in paragraphs (b) to (d); or
- (f) any other debt, security or investment approved by the Majority Lenders,

in each case, to which any member of the Group is beneficially entitled at that time and which is capable of being applied against Financial Indebtedness of the Group. For this purpose an **acceptable bank** is a commercial bank or trust company which has a rating of A or higher by S&P or Fitch or A2 or higher by Moody's or a comparable rating from a nationally recognised credit rating agency for its long-term unsecured and non-credit enhanced debt obligations or has been approved by the Majority Lenders; and

an **agreed country** is the United States of America or any member state of the European Economic Area which has a rating of A or higher by S&P or Fitch or A2 or higher by Moody's for its long-term unsecured and non-credit enhanced debt obligations.

EBITDA means, in relation to a Measurement Period, operating profit of the Group before taxation after (a) adding back any losses or expenses from any unusual, extraordinary or otherwise non-recurring items, (b) adding back any amount attributable to the depreciation or amortization of the Assets of the Group for that Measurement Period and (c) excluding income or gains from any unusual, extraordinary or otherwise non-recurring items.

Measurement Date means 30 June and 31 December each year, with the first Measurement Date being 31 December 2018.

Measurement Period means a period of 12 consecutive calendar months ending on a Measurement Date.

Net Debt means at any time the Financial Indebtedness of the Group (excluding any Short-term Derivative Transactions and Subordinated Intercompany Indebtedness) less the aggregate amount of Cash and Cash Equivalents at that time.

Short-term Derivative Transactions means interest rate or currency swaps, forward foreign exchange transactions, financial or commodity futures transactions, commodity swaps or other derivative transactions concluded for a tenor of 18 months or less related to operations and transactions in the normal course of business of the relevant member of the Group.

Subordinated Intercompany Indebtedness means Financial Indebtedness owed by the Company to any of its Affiliates which is subject to subordination undertaking for the benefit of the Finance Parties in the form and substance acceptable to Majority Lenders.

Total Assets means, as at any Measurement Date, the aggregate (without duplication) of the total assets of the Group as reported in the financial statements delivered by the Company to the Facility Agent under paragraph (d) of Clause 19.2 (Financial Information) in respect of the Measurement Period ending on that Measurement Date.

Total Stockholders' Equity means, as at any Measurement Date, the amount of total stockholders equity attributable to the Group and minority interests as reported in the financial statements delivered by the Company to the Facility Agent under paragraph (d) of Clause 19.2 (Financial Information) in respect of the Measurement Period ending on that Measurement Date.

20.2. Interpretation

- (a) Except as provided to the contrary in this Agreement, an accounting term used in this Clause is to be construed in accordance with USGAAP.
- (b) Any amount in a currency other than euro is to be taken into account at its euro equivalent calculated on the basis of:
 - (i) the European Central Bank rate of exchange for the purchase of the relevant currency in the London foreign exchange market with euros as of 3 p.m. on the day the relevant amount falls to be calculated; or
 - (ii) if the amount is to be calculated on the last day of a financial period of the Company, the relevant rates of exchange used by the Company in, or in connection with, its financial statements for that period.

- (c) No item may be credited or deducted more than once in any calculation under this Clause.

20.3. Leverage

- (a) Subject to paragraph (b) below and Clause 20.5 (Exceeded Leverage Period), the Company must ensure that the Net Debt to EBITDA ratio does not, in respect of each Measurement Period specified in column 1 below exceed the ratio set out in column 2 below opposite that Measurement Period:

Column1 (Relevant Period)	Column 2 (Ratio)
Measurement Period ending on 30 June 2021	6.50:1
Each Measurement Period ending after 30 June 2021	3.50:1

- (b) If the Leverage Condition is satisfied, the Company must ensure that, subject to Clause 20.5 (Exceeded Leverage Period), the Net Debt to EBITDA ratio does not, in respect of each Measurement Period exceed the ratio of 3.50:1.

20.4. Gearing

The Company must ensure that the aggregate amount of (a) Subordinated Intercompany Indebtedness and (b) its Total Stockholders' Equity is not lower than 40 per cent. of its Total Assets on any Measurement Date.

20.5. Exceeded Leverage Period

- (a) In respect of each Measurement Period ending after 30 June 2021, no Event of Default shall occur in respect of non-compliance with Clause 20.3 (Leverage) if on any Measurement Date Net Debt exceeds 3.5 times EBITDA for the Measurement Period ending on that Measurement Date but does not on that Measurement Date exceed 4 times EBITDA for that Measurement Period (an **Exceeded Leverage Period**), provided such event occurs no more than three times during the term of this Agreement and only in respect of no more than three consecutive Measurement Dates.
- (b) During the Exceeded Leverage Period the Margin shall be increased by 0.10 per cent. per annum.

20.6. Testing

The financial covenants set out in Clauses 20.3 (Leverage) and 20.4 (Gearing) shall be tested by reference to each of the unaudited consolidated balance sheet, profit and loss statement and cash flow statements delivered pursuant to paragraph (d) of Clause 19.2 (Financial Information) and/or each Compliance Certificate delivered pursuant to Clause 19.3 (Compliance Certificate).

21. GENERAL COVENANTS

21.1. Authorisations

Each Obligor shall obtain and promptly renew from time to time all authorisations as may be required under any applicable law or regulation to enable it to perform its obligations under the Finance Documents, or required for the validity or enforceability of any Finance Document, shall comply with the terms of the same and will ensure the availability and transferability of sufficient foreign exchange to enable it to comply with its obligations under the Finance Documents.

21.2. Compliance with laws

- (a) Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.
- (b) Without limiting the generality of paragraph (a) above, each Obligor shall, to the extent required by law or regulation including without limitation legal regulations, in particular the Slovak Public Sector Partners Act, ensure that it is at all times duly registered as a public sector partner (*partner verejného sektora*) in the register of public sector partners (*register partnerov verejného sektora*) in accordance with the Slovak Public Sector Partners Act.

21.3. Corporate existence

- (a) Each Obligor shall maintain its corporate existence and its right to carry on its operations and will acquire, maintain and renew all rights, licences, concessions, contracts, powers, privileges, leases, lands, sanctions and franchises necessary or useful for the conduct of its operations except, in each case, where the failure to do so would not reasonably be expected to materially adversely affect that Obligor's ability to perform its obligations under the Finance Documents, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security or the rights or remedies of any Finance Party under any of the Finance Documents.
- (b) No Obligor shall:
 - (i) change its name; or
 - (ii) change its financial year end from 31 December.

21.4. Insurance

The Company shall procure that, in respect of it and the Guarantor, it or U.S. Steel shall effect and maintain such insurance over and in respect of its Assets and business covering such risks and in such amounts as U.S. Steel maintains from time to time with respect to other (in respect of the Company) similar steel-making facilities and (in respect to the Guarantor) comparable facilities of Group members, as applicable, owned by U.S. Steel, subject to such deductibles and other forms of self-insurance as from time to time are generally applicable to such other (in respect of the Company) steel-making facilities and (in respect to the Guarantor) facilities of Group members, as applicable, provided such coverage is available to that Obligor on similar or better terms.

21.5. Pari passu

Each Obligor shall procure that its obligations under the Finance Documents do and will constitute its direct, unconditional, unsecured, unsubordinated and general obligations and do and will rank at least *pari passu* with all other present and future unsecured and unsubordinated Financial Indebtedness issued, created or assumed by it other than amounts which are afforded priority by applicable law.

21.6. Negative pledge

No Obligor shall create, assume or permit to exist any Security Interest over all or any of its Assets to secure Financial Indebtedness other than a Permitted Security Interest.

21.7. Disposals

- (a) Except as provided in paragraph (b) of this Clause 21.7, no Obligor shall, either in a single transaction or in a series of transactions, whether related or not and whether voluntary or involuntary, sell, transfer, grant or lease or otherwise dispose of (in each case whether conditionally or otherwise) any of its Fixed Assets, Inventory or Trade Receivables other than Permitted Disposals.
- (b) Notwithstanding paragraph (a) of this Clause 21.7, throughout the life of the Facility, Fixed Assets having an aggregate book value not exceeding 10 per cent. of all Fixed Assets (as shown in or included for the purposes of the audited consolidated financial statements for the year ended 31 December 2017) may be disposed of where the disposal is on arm's length commercial terms.

21.8. Mergers

No Obligor shall, without the prior written consent of the Facility Agent acting on the instructions of the Majority Lenders, enter into any merger or other arrangement of a similar nature other than a Permitted Merger.

21.9. Change of business

Except with the prior written consent of the Facility Agent acting on the instructions of the Majority Lenders, no Obligor shall make or threaten to make any substantial change in its business as conducted on the date of this Agreement.

21.10. Borrowing

- (a) Subject to paragraph (b) of this Clause 21.10, no Obligor shall, and the Company shall procure that no member of the Group shall incur any Financial Indebtedness other than:
 - (i) Financial Indebtedness not exceeding €600,000,000 (or its equivalent) in aggregate (including amounts borrowed under the Finance Documents);
 - (ii) Financial Indebtedness upon terms approved by the Facility Agent acting on the instructions of the Majority Lenders;
 - (iii) currency and commodity hedging used only to mitigate the risks relating to fluctuations in currencies and commodity prices, provided each such hedging arrangement is entered into for a period no longer than 18 months;
 - (iv) for the avoidance of doubt, operating lease obligations;
 - (v) for the avoidance of doubt, trade payables and other contractual obligations to suppliers and customers in the ordinary course of trading;
 - (vi) debt subordinated to the Loans under a subordination agreement in form and substance satisfactory to the Facility Agent acting on the instructions of Majority Lenders;
 - (vii) in respect of Permitted Factoring Arrangements; and
 - (viii) any refinancing of any of the foregoing up to the same principal amount.

- (b) The obligation under paragraph (a) of this Clause 21.10 shall apply only until the Company delivers to the Facility Agent the first Compliance Certificate in accordance with Clause 19.3 (Compliance Certificate) which confirms that the Company complies with its obligations under Clause 20 (Financial covenants).

21.11. Environmental compliance

Except to the extent disclosed in writing to the Facility Agent, each Obligor shall comply with applicable Environmental Law except where failure to do so would not reasonably be expected to have a material adverse effect on the ability of that Obligor to perform its obligations under the Finance Documents, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security or the rights or remedies of any Finance Party under any of the Finance Documents. For this purpose, **Environmental Law** means:

- (a) all environmental authorisations applicable to that Obligor; and
- (b) all other applicable environmental laws, rules and regulations concerning the protection of human health or the environment or the transportation of any substance capable of causing harm to man or any other living organism or the environment or public health or welfare, including hazardous, toxic, radioactive or dangerous waste.

21.12. No notarial deed

The Company shall not and the Company shall procure that no other member of the Group will, create any notarial deed (as referred to in section 45(2) of the Slovak Act No. 233/1995 Coll., as amended) in relation to any Financial Indebtedness.

21.13. No Margin Stock

No Obligor may:

- (a) extend credit for the purpose, directly or indirectly, of buying or carrying Margin Stock; or
- (b) use any Loan or allow any Loan to be used, directly or indirectly, to buy or carry Margin Stock or for any other purpose in violation of the Margin Regulations.

21.14. Centre of Main Interests

No Obligor may cause or allow its registered office or Centre of Main Interests to be in, or maintain an Establishment in, any jurisdiction other than its jurisdiction of incorporation.

21.15. Anti-Corruption Law

- (a) The Company shall not (and the Company shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach Anti-Corruption Law.
- (b) The Company shall (and the Company shall ensure that each other member of the Group will):
 - (i) conduct its businesses in compliance in all material respects with applicable Anti-Corruption Laws and shall ensure it, each member of the Group and their respective officers and employees and their directors and agents are in compliance in all material respects with applicable Anti-Corruption Laws; and

- (ii) implement and maintain policies and procedures designed to promote and achieve compliance by it, each other member of the Group and their respective directors, officers, employees and agents with applicable Anti-Corruption Laws.

21.16. Sanctions

- (a) The Company may not and shall procure that no member of the Group shall:
 - (i) request any Loan, nor use, lend, contribute or otherwise make available any part of the proceeds of any Loan or other transaction contemplated by this Agreement, directly or indirectly:
 - (A) for the purpose of financing any trade, business or other activities involving, or for the benefit of, any Sanctioned Person;
 - (B) in any other manner that would reasonably be expected to result in any person being in breach of any Sanctions or becoming a Sanctioned Person; or
 - (C) in any other manner that would violate any Anti-Corruption Law or Sanctions applicable to the Company or any member of the Group;
 - (ii) fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Sanctioned Person, or from any action which is in breach of any Sanctions; or
 - (iii) engage in any other activity, transaction or conduct that results in any person being in breach of any Sanctions or becoming a Sanctioned Person.
- (b) In relation to each Restricted Lender, this Clause 21.16 shall only apply for the benefit of that Restricted Lender to the extent that it would not result in any violation of, conflict with or liability under section 7 of the German Foreign Trade Regulation (*Aussenwirtschaftsverordnung*), Council Regulation (EC) No 2271/96 of 22 November 1996 or any similar applicable anti-boycott law or regulation.

21.17. Intercompany Loan Repayment

The Company shall not repay any amounts due under the Intercompany Loan Agreement, except:

- (a) for any payments of interest due in accordance with its terms; or
- (b) where approved in writing by the Facility Agent (acting on the instructions of the Lenders).

21.18. Conditions subsequent

The Company shall procure that the Facility Agent receives all of the documents and other evidence listed in the table below in form and substance satisfactory to the Facility Agent no later than the date specified in that table opposite the relevant document or other evidence. The Facility Agent shall notify the Company and the Lenders promptly upon being so satisfied.

	Documents and other evidence	Deadline date
1.	Evidence that the Company has outstanding Financial Indebtedness under the terms of the Intercompany Loan Agreement in an amount of no less than US\$150,000,000.	No later than 31 December 2019.
2.	The Slovak Receivables Pledge.	The date falling 30 days after the First Effective Date
3.	The Slovak Inventory Pledge.	The date falling 30 days after the First Effective Date
4.	Confirmations and extracts (<i>potvrdenia</i> and <i>úradné výpisy</i>) from the Slovak central notarial registry of pledges evidencing that the Transaction Security under each of the Slovak Receivables Pledge and the Slovak Inventory Pledge has been duly registered and that there is no other Security Interest registered in relation to trade receivables or inventory subject to the Transaction Security in the Slovak central notarial registry of pledges.	The date falling 30 days after the First Effective Date
5.	The following legal opinions, each addressed to the Finance Parties: (a) a legal opinion of a legal adviser to the Company in the Republic, substantially in the form of Schedule 7 (Form of Legal opinion of legal adviser to the Company in respect of Transaction Security); and (b) a legal opinion of Allen & Overy Bratislava, s.r.o., legal advisers to Commerzbank Aktiengesellschaft as Mandated Lead Arranger in relation to the laws of the Republic, substantially in the form of the opinion issued as conditions precedent to the Credit Agreement.	The date falling 30 days after the First Effective Date
6.	Evidence that each of the Bilateral Loan Agreements has been amended (if necessary to give effect to the below requirements) to lengthen its final maturity to fall on a date no earlier than 30 June 2021.	The date falling 45 days after the First Effective Date.

22. DEFAULT

22.1. Events of Default

Each of the events set out in Clauses 22.2 (Non-payment) to 22.10 (Repudiation) (both inclusive) is an Event of Default (whether or not caused by any reason whatsoever outside the control of an Obligor or any other person).

22.2. Non-payment

An Obligor does not pay on the due date any amount payable by it under the Finance Documents at the place at and in the currency in which it is expressed to be payable and (if the failure to pay is caused solely by technical or administrative error or a Disruption Event) it is not remedied within five Business Days of its due date.

22.3. Breach of other obligations

- (a) Subject to paragraph (b) of this Clause 22.3, an Obligor fails to comply with any of its obligations under the Finance Documents (other than those referred to in Clause 22.2 (Non-payment), 22.4 (Misrepresentation) in respect of a misrepresentation under Clause 18.25 (Anti-Corruption Laws and Sanctions), 21.15 (Anti-Corruption Law) or 21.16 (Sanctions)) and the failure to comply (if it is capable of remedy) remains unremedied for 30 days after the earlier of:
 - (i) the day when the Facility Agent gives that Obligor notice of the failure to comply; and
 - (ii) the day when that Obligor became aware of the failure to comply.
- (b) A failure by an Obligor to comply with any of its obligations under Clause 20 (Financial covenants) at any Measurement Date shall not be considered an Event of Default if on that Measurement Date no Loan was outstanding.

22.4. Misrepresentation

Any representation, warranty or statement made or repeated in the Finance Documents or in any written certificate or statement delivered, made or issued by or on behalf of an Obligor under the Finance Documents or in connection with the Finance Documents shall at any time be incorrect in any respect when so made or repeated or deemed to be made or repeated and the circumstances giving rise to such misrepresentation would reasonably be expected to have a material adverse effect on the ability of an Obligor to perform its obligations under the Finance Documents, the validity or enforceability of, or the effectiveness or ranking of any Transaction Security or the rights or remedies of any Finance Party under any of the Finance Documents.

22.5. Insolvency/enforcement

- (a) Any action is taken by an Obligor or one of its Affiliates for the dissolution or termination of existence or liquidation of that Obligor;
- (b) an application by an Obligor for bankruptcy (*konkurz*), restructuring (*reštrukturalizácia*) or moratorium, or an arrangement with creditors of an Obligor is entered into, or any other proceeding or arrangement by which the Assets of an Obligor are submitted to the control of its creditors occurs or is entered into;
- (c) an Obligor is adjudged bankrupt pursuant to a final non-appealable order;
- (d) there is appointed a liquidator, trustee, administrator, receiver or similar officer of an Obligor or a receiver of all or substantially all of the Assets of an Obligor;
- (e) all or substantially all of the Assets of an Obligor are attached or distrained upon or the same become subject at any time to any order of a court or other process and such attachment, distraint, order or process shall remain in effect and shall not be discharged within thirty days;
- (f) an Obligor becomes insolvent (*v úpadku*) or is declared insolvent by a competent governmental or judicial authority or admits in writing its inability to pay its debts as they fall due;

- (g) a moratorium is made or declared in respect of all or any Financial Indebtedness of an Obligor; or
- (h) an Obligor becomes a “company in crisis (*spoločnosť v kríze*)” for the purposes of section 67a of the Slovak Commercial Code.

22.6. Cessation of business

An Obligor ceases or threatens to cease to carry on the whole or a substantial part of its business, save as permitted by Clause 21.7 (Disposals) and Clause 21.8 (Mergers).

22.7. Revocation of authorisation

- (a) Any authorisation or other requirement of any governmental, judicial or public body or authority necessary to enable an Obligor under any applicable law or regulation to perform its obligations under the Finance Documents or for its businesses or required for the validity or enforceability of the Finance Documents shall be modified, revoked, withdrawn or withheld in any material respect or shall fail to remain in full force and effect for more than 30 days.
- (b) An Obligor fails to comply with any authorisation or other requirement set out in paragraph (a) of this Clause 22.7.

22.8. Expropriation

All or any substantial part of the Assets of an Obligor are seized or expropriated by any authority.

22.9. Unlawfulness

At any time it is unlawful for an Obligor to perform such of its obligations under the Finance Document as are, in the reasonable opinion of the Majority Lenders, material or any Transaction Security ceases to be effective.

22.10. Repudiation

An Obligor repudiates a Finance Document or any of the Transaction Security in writing.

22.11. Cross acceleration

- (a) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (b) No Event of Default will occur under paragraph (a) above if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraph (a) above is less than EUR50,000,000 (or its equivalent in any other currency or currencies).

22.12. Acceleration

If an Event of Default is continuing, the Facility Agent may, and must if so instructed by the Majority Lenders:

- (a) by notice to the Company:

- (i) cancel all or any part of the Total Commitments; and/or
- (ii) declare that all or part of any amounts outstanding under the Finance Documents are:
 - (A) immediately due and payable; and/or
 - (B) payable on demand by the Facility Agent acting on the instructions of the Majority Lenders.
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

Any notice given under this Clause 22.12 will take effect in accordance with its terms.

23. THE ADMINISTRATIVE PARTIES AND THE REFERENCE BANKS

23.1. Appointment of the Facility Agent

- (a) Each Finance Party (other than the Facility Agent) appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

23.2. Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

23.3. Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

23.4. No fiduciary duties

- (a) Nothing in any Finance Document constitutes an Administrative Party as a trustee or fiduciary of any other person.
- (b) No Administrative Party shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

23.5. Individual position of an Administrative Party

- (a) If it is also a Lender, each Administrative Party has the same rights and powers under the Finance Documents as any other Lender and may exercise those rights and powers as though it were not an Administrative Party.

- (b) Each Administrative Party may retain any profits or remuneration it receives under the Finance Documents or in relation to any other business it carries on with an Obligor or its related entities:

23.6. Business with the Group

The Facility Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

23.7. Rights and discretions

- (a) The Facility Agent may:

rely on

- (i) any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
- (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.2 (Non-payment));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be necessary.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents through its officers, employees and agents.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

23.8. Instructions

- (a) The Facility Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- (g) Notwithstanding anything to the contrary in any Finance Document, when instructions are required from Lenders, following the occurrence of an Insolvency Event, the following participations of the Lenders shall not be taken into account for voting purposes and shall be disregarded:
 - (i) each participation in the outstanding Loans or an undrawn Commitment of a Lender which is an Insolvency Related Party of an Obligor; and
 - (ii) each participation in any outstanding Loan to the extent that such participation constitutes a Qualified Related-Party Receivable.
- (h) In connection with any amendment, waiver, determination or direction relating to any term of Clause 18.25 (Anti-Corruption Laws and Sanctions) of which a Restricted Lender does not have the benefit, the Commitment of that Restricted Lender will be excluded for the purpose of determining whether the consent of the Majority Lenders has been obtained or whether the determination of the Majority Lenders has been made.

23.9. Compliance

Each Administrative Party may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation or be otherwise actionable at the suit of any person, and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

23.10. Responsibility for documentation

Neither the Facility Agent nor an Administrative Party is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Arranger, an Obligor or any other person in or in connection with any Finance Document agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or

- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

23.11. Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security, other than by reason of its gross negligence or wilful misconduct; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Facility Agent) arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the relevant Administrative Party) may take any proceedings against any officer, employee or agent of an Administrative Party in respect of any claim it might have against an Administrative Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of an Administrative Party may rely on this Clause.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or

- (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the Facility Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent's liability, any liability of the Facility Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

23.12. No duty to monitor

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

23.13. Information

- (a) Subject to paragraph (b) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (b) Paragraph (a) above shall not apply to any Transfer Certificate.
- (c) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.

23.14. Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Facility Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent

appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of the Information Memorandum and any other information provided by the Facility Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security Interest affecting the Charged Property.

23.15. Confidentiality

- (a) In acting as agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.
- (c) The Facility Agent is not obliged to disclose to any person any confidential information supplied to it by or on behalf of a member of the Group which was supplied to it solely for the purpose of evaluating whether any waiver or amendment is required in respect of any term of the Finance Documents.
- (d) Each Obligor irrevocably authorises the Facility Agent to disclose to the other Finance Parties any information that, in its opinion, is received by it in its capacity as the Facility Agent.

23.16. Lenders' indemnity to the Facility Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).

23.17. Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

23.18. Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates acting through an office as successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Facility Agent may resign by notice to the Lenders and the Company, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) The person(s) appointing a successor Facility Agent must, if practicable, consult with the Company prior to the appointment.
- (e) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (f) above) but shall remain entitled to the benefit of Clause 26.2 (Other indemnities) and this Clause 23 (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) After consultation with the Company, the Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above.
- (i) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is two months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under Clause 19.8 (FATCA Information) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

- (ii) the information supplied by the Facility Agent pursuant to Clause 19.8 (FATCA Information) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Facility Agent notifies the Company and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) the Company or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and the Company or that Lender, by notice to the Facility Agent, requires it to resign.

- (j) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 23 and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.

23.19. Relationship with the Lenders

- (a) The Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.5 (Electronic communication)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 37.2 (Addresses for notices) and paragraph (a)(iii) of Clause 37.5 (Electronic communication) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

23.20. Facility Agent's management time

Any amount payable to the Facility Agent under Clause 26.2 (Other indemnities), Clause 27 (Expenses) and Clause 23.16 (Lenders' indemnity to the Facility Agent) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under Clause 25 (Fees).

23.21. Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 23.21 subject to Clause 1.3 (Third party rights) and the provisions of the Third Parties Act.

23.22. Third party Reference Banks

A Reference Bank which is not a Party may rely on Clause 23.21 (Role of Reference Banks), Clause 28.3 (Other exceptions) and Clause 32 (Confidentiality of Funding Rates and Reference Bank Quotations) subject to Clause 1.3 (Third party rights) and the provisions of the Third Parties Act.

23.23. Notice period

Where this Agreement specifies a minimum period of notice to be given to the Facility Agent, the Facility Agent may, in its discretion, accept a shorter notice period.

24. EVIDENCE AND CALCULATIONS

24.1. Accounts

Accounts maintained by a Finance Party in connection with this Agreement are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

24.2. Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under the Finance Documents will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

24.3. Calculations

Any interest or fee accruing under this Agreement accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or otherwise, depending on what the Facility Agent determines is market practice in the Relevant Market.

25. FEES

25.1. Facility Agent's fee

The Company must pay to the Facility Agent for its own account an agency fee in the amount and manner agreed in the Fee Letter between the Facility Agent and the Company.

25.2. Participation fee

The Company must pay to the Facility Agent for the Arrangers a participation fee in the amount and manner agreed in the Fee Letter between the Facility Agent and the Company.

25.3. Commitment fee

- (a) The Company must pay to the Facility Agent for each Lender a commitment fee computed at the rate of 35 per cent. of the margin per annum set out in paragraph (a) of the definition of "Margin" (subject to Clause 20.5 (Exceeded Leverage Period)) on the daily unutilised, uncanceled amount of each Lender's Commitment.
- (b) Accrued commitment fee is payable quarterly in arrears during the Availability Period, on the last day of the Availability Period and on the date the relevant Lender's Commitment is cancelled in full.

26. INDEMNITIES AND BREAK COSTS

26.1. Currency indemnity

- (a) If a Finance Party receives an amount in respect of an Obligor's liability under the Finance Documents (other than by reason of the Facility Agent not performing its obligations under this Agreement) or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the contractual currency) in which the liability is expressed to be payable under the relevant Finance Document:
 - (i) each Obligor shall indemnify that Finance Party as an independent obligation against any loss or liability arising out of or as a result of the conversion;
 - (ii) if the amount received by that Finance Party, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency, the Obligor concerned shall pay to that Finance Party an amount in the contractual currency equal to the deficit; and
 - (iii) that Obligor shall pay to the Finance Party concerned any exchange costs and taxes payable in connection with any such conversion.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.
- (c) Any amount payable by an Obligor shall be paid to the Facility Agent for the relevant Finance Party within ten Business Days of demand by the relevant Finance Party.

26.2. Other indemnities

- (a) Each Obligor must indemnify each Finance Party against any loss or liability which that Finance Party incurs as a consequence of:

- (i) the occurrence of any Event of Default;
- (ii) Clause 22.12 (Acceleration);
- (iii) any failure by an Obligor to pay any amount due under a Finance Document on its due date, including any resulting from any distribution or redistribution of any amount among the Lenders under this Agreement;
- (iv) (other than by reason of negligence or default by that Finance Party) a Loan not being made after a Request has been delivered for that Loan; or
- (v) a Loan (or part of a Loan) not being prepaid in accordance with this Agreement.

Each Obligor's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document or any Loan.

- (b) Each Obligor must indemnify the Facility Agent against any loss or liability incurred by the Facility Agent as a result of:
 - (i) investigating any event which the Facility Agent reasonably believes to be a Default; or
 - (ii) acting or relying on any notice that the Facility Agent reasonably believes to be genuine, correct and appropriately authorised.

26.3. Break Costs

- (a) The Company must pay to each Lender, within ten Business Days of demand by the relevant Lender, its Break Costs as compensation if any part of a Loan is prepaid.
- (b) Break Costs are the amount (if any) reasonably determined by the relevant Lender by which:
 - (i) the interest (excluding the Margin) which that Lender would have received for the period from the date of receipt of any part of its participation in a Loan to the last day of the applicable Term for that Loan if the principal received had been paid on the last day of that Term;

exceeds

- (ii) the amount which that Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the appropriate interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Term.
- (c) Each Lender must promptly supply to the Facility Agent for the Company details of the amount of any Break Costs claimed by it under this Clause 26.3.

27. EXPENSES

27.1. Initial costs

- (a) The Company must pay to or reimburse on demand the Facility Agent the amount of all reasonable and documented costs and expenses (including legal fees) incurred by the Facility Agent and the Arrangers in connection with the negotiation, preparation, printing, entry into

and syndication of this Agreement and any other document referred to therein, and regardless of whether the Company utilises the facility under this Agreement.

- (b) In relation to the negotiation, preparation, printing, and entry into of the Finance Documents up until the date of this Agreement, there shall be a cap on legal fees as agreed between Commerzbank Aktiengesellschaft, pobočka zahraničnej banky, Bratislava as a Mandated Lead Arranger and the Company.

27.2. Subsequent costs

The Company must pay to or reimburse on demand the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with:

- (a) the negotiation, preparation, printing and entry into of any Finance Document (other than a Transfer Certificate) executed after the date of this Agreement; and
- (b) any amendment, waiver or consent requested by or on behalf of the Company or specifically allowed by this Agreement.

27.3. Enforcement costs

The Company must pay to each Finance Party the amount of all costs and expenses (including reasonable legal fees) reasonably incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

28. AMENDMENTS AND WAIVERS

28.1. Procedure

- (a) Except as provided in this Clause, any term of the Finance Documents may be amended or waived with the agreement of the Company and the Majority Lenders. The Facility Agent may effect, on behalf of any Finance Party, an amendment or waiver allowed under this Clause.
- (b) The Facility Agent must promptly notify the other Parties of any amendment or waiver effected by it under paragraph (a) of this Clause 28.1. Any such amendment or waiver is binding on all the Parties.
- (c) If an amendment or waiver is proposed or to be agreed with the effect after the FATCA Application Date, no such amendment or waiver may be made before the date falling ten Business Days after the terms of that amendment or waiver have been notified by the Facility Agent to the Lenders, unless each Lender is a "FATCA Protected Lender". The Facility Agent shall notify the Lenders reasonably promptly of any amendments or waivers proposed by the Company.

28.2. Exceptions

- (a) Subject to Clause 28.4 (Replacement of Screen Rate), an amendment or waiver of any term of any Finance Document which relates to:
 - (i) the definition of **Majority Lenders** in Clause 1.1 (Definitions);
 - (ii) Clause 2.4 (Finance Parties' rights and obligations), Clause 8.1 (Mandatory prepayment - illegality), Clause 8.2 (Mandatory prepayment - change of control),

Clause 8.11 (Application of prepayments), this Clause 28, Clause 29 (Changes to the Parties), Clause 40 (Governing law) or Clause 41.1 (Jurisdiction);

- (iii) an extension of the date of payment of any amount to a Lender under the Finance Documents;
- (iv) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fee or other amount payable to a Lender under the Finance Documents;
- (v) a change in currency of payment of any amount under the Finance Documents;
- (vi) an increase in any Commitment (other than in respect of an Additional Commitment), or an extension of, any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (vii) a term of a Finance Document which expressly requires the consent of each Lender;
- (viii) the right of a Lender to assign or transfer its rights or obligations under the Finance Documents; or
- (ix) the nature or scope of:
 - (A) the guarantee and indemnity granted under Clause 16 (Guarantee and indemnity); or
 - (B) the Charged Property,

may only be made with the consent of all the Lenders.

(b)

- i. If the Facility Agent or a Lender reasonably believes that an amendment or waiver may constitute a “material modification” for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the Facility Agent or that Lender (as the case may be) notifies the Company and the Facility Agent accordingly, that amendment or waiver may, subject to paragraph (b)(ii) of this Clause 28.2, not be effected without the consent of the Facility Agent or that Lender (as the case may be).
 - ii. The consent of a Lender shall not be required pursuant to paragraph (b)(i) of this Clause 28.2 if that Lender is a FATCA Protected Lender.
- (c) An amendment or waiver that relates to Clause 18.25 (Anti-Corruption Laws and Sanctions) may only be made with the consent of the Majority Lenders and all Restricted Lenders.
 - (d) An amendment or waiver that relates to the rights or obligations of an Administrative Party may only be made with the consent of that Administrative Party.
 - (e) A Fee Letter may be amended or waived with the agreement of the Administrative Party that is a party to that Fee Letter and the Company.

28.3. Other exceptions

An amendment or waiver which relates to the rights or obligations of the Facility Agent or an Arranger or a Reference Bank (each in their capacity as such) may not be effected without the consent of the Facility Agent, an Arranger or that Reference Bank, as the case may be.

28.4. Replacement of Screen Rate

- (a) Subject to Clause 28.3 (Other exceptions), any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark; and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders and the Obligors).

- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) of this Clause 28.4 within 15 Business Days (or such longer time period in relation to any request which the Company and the Facility Agent may agree) of that request being made:
 - (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

(c) In this Clause:

Relevant Nominating Body means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

Replacement Benchmark means a benchmark rate which is:

- (i) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (A) the administrator of that Screen Rate ; or
 - (B) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) below;

- (ii) in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to that Screen Rate; or
- (iii) in the opinion of the Majority Lenders and the Obligors, an appropriate successor to a Screen Rate.

28.5. Change of currency

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Facility Agent (acting reasonably and after consultation with the Company) determines is necessary to reflect the change.

28.6. Waivers and remedies cumulative

The rights of each Finance Party under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

29. CHANGES TO THE PARTIES

29.1. Assignments and transfers by the Obligors

No Obligor may assign or transfer any of its rights and obligations under the Finance Documents without the prior consent of all the Lenders.

29.2. Assignments and transfers by Lenders

- (a) Subject to paragraph (b) of this Clause 29.2, a Lender (the **Existing Lender**) may, with the consent of the Company (such consent not to be unreasonably withheld or delayed), at any time assign or transfer (including by way of novation) any of its rights and obligations under the Finance Documents to another person (the **New Lender**). The Company will be deemed to have given its consent ten Business Days after the Company is given notice of the request unless consent is expressly refused by the Company within that time.
- (b) No consent shall be required from the Company if:
 - (i) an Event of Default has occurred and is continuing; or
 - (ii) if the proposed New Lender is an Affiliate of the Existing Lender or another Lender.
- (c) A transfer of obligations will be effective only if either:
 - (i) the obligations are novated in accordance with the following provisions of this Clause; or
 - (ii) the New Lender confirms to the Facility Agent and the Company in form and substance satisfactory to the Facility Agent that it is bound by the terms of the Finance Documents as a Lender. On the transfer becoming effective in this manner the Existing Lender will be released from its obligations under the Finance Documents to the extent that they are transferred to the New Lender.
- (d) Unless the Facility Agent otherwise agrees, the New Lender must pay to the Facility Agent for its own account, on or before the date any assignment or transfer occurs, a fee of €3,000.
- (e) Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under this Agreement.

29.3. Procedure for transfer by way of novations

- (a) In this Clause 29.3:
 - 159. **Transfer Date** means, for a Transfer Certificate, the later of:
 - (i) the proposed Transfer Date specified in that Transfer Certificate; and
 - (ii) the date on which the Facility Agent executes that Transfer Certificate.
- (b) A novation is effected if:
 - (i) the Existing Lender and the New Lender deliver to the Facility Agent a duly completed Transfer Certificate; and
 - (ii) the Facility Agent executes it.

The Facility Agent must execute as soon as reasonably practicable a Transfer Certificate delivered to it and which appears on its face to be in order.

- (c) Each Party (other than the Existing Lender and the New Lender) irrevocably authorises the Facility Agent to execute any duly completed Transfer Certificate on its behalf.

- (d) On the Transfer Date:
 - (i) the New Lender will assume the rights and obligations of the Existing Lender expressed to be the subject of the novation in the Transfer Certificate in substitution for the Existing Lender; and
 - (ii) the Existing Lender will be released from those obligations and cease to have those rights.
- (e) The Facility Agent must, as soon as reasonably practicable after it has executed a Transfer Certificate, send a copy of that Transfer Certificate to the Company.
- (f) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

29.4. Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the financial condition of an Obligor; or
 - (ii) the legality, validity, effectiveness, enforceability, adequacy, accuracy, completeness or performance of:
 - (A) any Finance Document or any other document;
 - (B) any statement or information (whether written or oral) made in or supplied in connection with any Finance Document, or
 - (C) any observance by an Obligor of its obligations under any Finance Document or other document,

and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of an Obligor and its related entities and the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement; and
 - (ii) has not relied exclusively on any information supplied to it by the Existing Lender in connection with any Finance Document.
- (c) Nothing in any Finance Document requires an Existing Lender to:
 - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause; or

- (ii) support any losses incurred by the New Lender by reason of the non-performance by an Obligor of its obligations under any Finance Document or otherwise.

29.5. Costs resulting from change of Lender or Facility Office

If:

- (a) a Lender assigns or transfers any of its rights and obligations under the Finance Documents or changes its Facility Office; and
- (b) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to pay a Tax Payment or an Increased Cost,

then, unless the assignment, transfer or change is made by a Lender to mitigate any circumstances giving rise to the Tax Payment, Increased Cost or right to be prepaid and/or cancelled by reason of illegality, that Obligor need only pay that Tax Payment or Increased Cost to the same extent that it would have been obliged to if no assignment, transfer or change had occurred.

29.6. Changes to the Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent must (in consultation with the Company) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

29.7. Security over Lenders' rights

- (a) In addition to the other rights provided to Lenders under this Clause 29 and subject to paragraph (b) of this Clause 29.7, each Lender may at any time charge, assign or otherwise create Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including:
 - (i) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
 - (ii) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security Interest shall:

- (A) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or
 - (B) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.
- (b) A Lender may proceed pursuant to paragraph (a) of this Clause 29.7:
 - (i) without consulting with, or obtaining consent from, the Company, if the charge, assignment, or other form of Security Interest over the rights of the Lender is created:

- (A) in favour of a federal reserve or central bank; or
- (B) in connection with receipt by the Lender or any of its Affiliates of public aid or other form of state or international subsidy in favour of:
 - I. any government, governmental entity or agency, regulatory agency, international or public institution or other similar entity; or
 - II. any entity or institution appointed for this purpose by any institution specified in paragraph (b)I of this Clause 29.7 by any such person for this purpose; or
- (ii) with the consent of the Company (such consent not to be unreasonably withheld or delayed) in case other than pursuant to paragraph (b)(i)(B)I of this Clause 29.7.

29.8. Replacement of a Specified Lender

- (a) Subject to paragraph (b) of this Clause 29.8, at any time a Lender has become and continues to be a Specified Lender, the Company may, by giving 10 Business Days' prior written notice to the Facility Agent and to such Specified Lender, replace such Specified Lender by requiring such Specified Lender to (and such Lender shall) transfer pursuant to Clause 29.2 (Assignments and transfers by Lenders) all (and not part only) of its rights and obligations under this Agreement to:
 - (i) another Lender selected by the Company that is not a Specified Lender; or
 - (ii) any other bank, financial institution, trust, fund or other entity, selected by the Company and acceptable to all Finance Parties (other than the Specified Lender that is to be replaced pursuant to this Clause 29.8),

(the entity pursuant to paragraph (a)(i) or (a)(ii) of this Clause 29.8 shall be referred to as a **Replacement Lender**), which Replacement Lender confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Specified Lender (including the assumption of the transferring Specified Lender's participations or unfunded participations, as the case may be, on the same basis as the transferring Specified Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) Any transfer of rights and obligations of a Specified Lender pursuant to this Clause 29.8 shall be subject to the following further conditions:
 - (i) if the Specified Lender to be replaced pursuant to this Clause 29.8 is also the Facility Agent, the Company may require such Facility Agent to resign pursuant to paragraph (b) of Clause 23.18;
 - (ii) finding of a suitable Replacement Lender is the responsibility of the Company and neither the Facility Agent nor the Specified Lender shall have any obligation to the Company to find a Replacement Lender;
 - (iii) no fee under paragraph (d) of Clause 29.2 (Assignments and transfers by Lenders) shall be payable to for any transfer of rights and obligations of a Specified Lender under this Clause 29.8;

- (iv) the transfer must take place no later than 30 Business Days after the notice referred to in paragraph (a) of this Clause 29.8; and
- (v) in no event shall the Specified Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Specified Lender pursuant to the Finance Documents prior to the replacement pursuant to paragraph (a) of this Clause 29.8 becoming effective.

30. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

30.1. Prohibition on Debt Purchase Transactions by Affiliates of the Company

The Company shall procure that none of its Affiliates enters into any Debt Purchase Transaction or be a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of “Debt Purchase Transaction” without the prior written consent of the Majority Lenders.

30.2. Disenfranchisement on Debt Purchase Transactions entered into by Affiliates of the Company

- (a) For so long as an Affiliate of the Company:
 - (i) beneficially owns a Commitment; or
 - (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

- (A) the Majority Lenders; or
- (B) whether:
 - I. any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
 - II. the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Affiliate of the Company or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (a)(ii)(A) and (a)(ii)(B) of this Clause 30.2 (unless in the case of a person not being an Affiliate of the Company it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Facility Agent in writing if it knowingly enters into a Debt Purchase Transaction with an Affiliate of the Company (a **Notifiable Debt Purchase Transaction**), such notification to be substantially in the form set out in Part 1 of Schedule 10 (Forms of Notifiable Debt Purchase Transaction Notice).
- (c) A Lender shall promptly notify the Facility Agent if a Notifiable Debt Purchase Transaction to which it is a party:

- (i) is terminated; or
- (ii) ceases to be with an Affiliate of the Company,

such notification to be substantially in the form set out in Part 2 of Schedule 10 (Forms of Notifiable Debt Purchase Transaction Notice).

- (d) Each Affiliate of the Company that is a Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Facility Agent or, unless the Facility Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) in its capacity as Lender, unless the Facility Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Facility Agent or one or more of the Lenders.

30.3. Company's Affiliates' notification to other Lenders of Debt Purchase Transactions

Any Affiliate of the Company which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 pm on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Facility Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Facility Agent shall promptly disclose such information to the Lenders.

31. DISCLOSURE OF INFORMATION

31.1. Confidential Information

- (a) Each Finance Party must keep all Confidential Information confidential and not disclose it to anyone, save to the extent permitted by Clause 31.2 (Disclosure of Confidential Information) and Clause 31.3 (Disclosure to numbering service providers).
- (b) Each Finance Party must ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2. Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party considers appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there is no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:

- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent and, in each case to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or an Obligor and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) of this Clause 31.2 applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (b)(i) or (b)(ii) of this Clause 31.2;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security Interests (or may do so) pursuant to paragraph (b)(i) of Clause 29.7 (Security over Lenders' rights);
- (viii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security Interests (or may do so) pursuant to paragraph (b)(ii) of Clause 29.7 (Security over Lenders' rights);

in each case, such Confidential Information as that Finance Party considers appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) of this Clause 31.2, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there is no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) and (b)(viii) of this Clause 31.2, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) of this Clause 31.2, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive

information except that there is no requirement to inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) of this Clause 31.2 applies to provide administration or settlement services in respect of one or more of the Finance Documents including in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or an Obligor;
- (e) to any person processing data for or on behalf of the Finance Party, who agreed with the Finance Party to maintain the confidentiality of the Confidential Information;
- (f) Confidential Information to the operator of the common register of banking information (*spoločný register bankových informácií*) created and operated pursuant to section 92a of the Slovak Banking Act;
- (g) who is a Party; and
- (h) with the consent of the Company.

31.3. Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or an Obligor the following information:
 - (i) name of the Obligor;
 - (ii) Obligor's country of domicile and place of incorporation;
 - (iii) date of this Agreement and the first Utilisation Date;
 - (iv) Clause 40 (Governing law);
 - (v) date of each amendment and restatement of this Agreement;
 - (vi) amounts of, and name of the Facility;
 - (vii) identity of the Administrative Parties;
 - (viii) amount of Total Commitments and currency of the Facility;
 - (ix) type of syndication;
 - (x) ranking of the Facility;

- (xi) purpose of the Facility;
- (xii) Final Maturity Date;
- (xiii) changes to any of the information previously supplied pursuant to paragraphs (a)(i) to (a)(xii) of this Clause 31.3; and
- (xiv) such other information agreed between such Finance Party and the Company;

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or an Obligor by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Facility Agent must notify each Obligor and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or an Obligor; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or an Obligor by such numbering service provider.

31.4. Entire agreement

This Clause:

- (a) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information; and
- (b) supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.5. Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

31.6. Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause.

31.7. Continuing obligations

The obligations in this Clause are continuing and, in particular, will survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by an Obligor under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) if a Finance Party otherwise ceases to be a Finance Party, the Final Maturity Date.

32. CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

32.1. Confidentiality and disclosure

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) of this Clause 32.1.
- (b) The Facility Agent may disclose:
 - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Company pursuant to Clause 9.4 (Notification of rates of interest); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the

relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Facility Agent's obligations in this Clause 32 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 9.4 (Notification of rates of interest) **provided that** (other than pursuant to paragraph (b)(i) of this Clause 32.1) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

32.2. Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 32.1 (Confidentiality and disclosure) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 32.

32.3. No Event of Default

No Event of Default will occur under Clause 22.3 (Breach of other obligations) by reason only of an Obligor's failure to comply with this Clause 32.

33. SET-OFF

- (a) A Finance Party may set off any matured obligation owed to it by an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation (whether or not matured) owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation

is unliquidated or unascertained, the Finance Party may set off in an amount estimated by it in good faith to be the amount of that obligation.

- (b) Each Obligor agrees to and confirms a Lender's rights of banker's lien and set-off under applicable law and nothing herein shall be deemed a waiver or prohibition of such right. Each Finance Party agrees to exercise such rights only after an Obligor's failure to pay following proper demand and to promptly notify the relevant Obligor after any such set off and application; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

34. PRO RATA SHARING

34.1. Redistribution

If any amount owing by an Obligor under this Agreement to a Finance Party (the **recovering Finance Party**) is discharged by payment, set-off or any other manner other than in accordance with this Agreement (a **recovery**), then:

- (a) the recovering Finance Party must, within three Business Days, supply details of the recovery to the Facility Agent;
- (b) the Facility Agent must calculate whether the recovery is in excess of the amount which the recovering Finance Party would have received if the recovery had been received and distributed by the Facility Agent under this Agreement; and
- (c) the recovering Finance Party must pay to the Facility Agent an amount equal to the excess (the **redistribution**).

34.2. Effect of redistribution

- (a) The Facility Agent must treat a redistribution as if it were a payment by an Obligor under this Agreement and distribute it among the Finance Parties, other than the recovering Finance Party, accordingly.
- (b) When the Facility Agent makes a distribution under paragraph (a) of this Clause 34.2, the recovering Finance Party will be subrogated to the rights of the Finance Parties that have shared in that redistribution.
- (c) If and to the extent that the recovering Finance Party is not able to rely on any rights of subrogation under paragraph (b) of this Clause 34.2, the relevant Obligor will owe the recovering Finance Party a debt that is equal to the redistribution, immediately payable and of the type originally discharged.
- (d) If:
 - (i) a recovering Finance Party must subsequently return a recovery, or an amount measured by reference to a recovery, to an Obligor; and
 - (ii) the recovering Finance Party has paid a redistribution in relation to that recovery,

each Finance Party, on the request of the Facility Agent, must reimburse the recovering Finance Party all or the appropriate portion of the redistribution paid to that Finance Party, together with interest for the period while it held the redistribution. In this event, the subrogation in paragraph (b) of this Clause 34.2 will operate in reverse to the extent of the reimbursement.

34.3. Exceptions

Notwithstanding any other term of this Clause, a recovering Finance Party need not pay a redistribution to the extent that:

- (a) it would not, after the payment, have a valid claim against an Obligor in the amount of the redistribution and in the same quality and ranking (whether in case of the Insolvency Event or otherwise); or
- (b) it would be sharing with another Finance Party any amount which the recovering Finance Party has received or recovered as a result of legal or arbitration proceedings, where:
 - (i) the recovering Finance Party notified the Facility Agent of those proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those proceedings but did not do so or did not take separate legal or arbitration proceedings as soon as reasonably practicable after receiving notice of them.

35. SEVERABILITY

If a term of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of the Finance Documents.

36. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

37. NOTICES

37.1. Giving of notices

- (a) All notices or other communications under or in connection with the Finance Documents shall be given in writing and, unless otherwise stated, may be made by letter or facsimile.
- (b) Except as provided in this Clause 37, any such notice will be deemed to be given as follows:
 - (i) if by letter, when delivered personally or on actual receipt; and
 - (ii) if by facsimile, when received in legible form.

However, a notice given in accordance with this Clause 37.1 but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

37.2. Addresses for notices

(a) The address and facsimile number of the Company are:

U. S. Steel Košice, s.r.o.
Vstupný areál U. S. Steel
044 54 Košice
Slovak Republic
Attention: GM Credit and Banking
Fax: +421 55 673 7704
E-mail: mzupcanova@sk.uss.com; milanjusko@sk.uss.com

and copied to:

United States Steel Corporation
600 Grant Street, 61st Floor
Pittsburgh, PA 15219
United States of America
Attention: Treasurer and Chief Risk Officer
Fax: +1 412 433 1167
E-mail: asjahn@uss.com; agcosnotti@uss.com

or such other as the Company may notify to the Facility Agent by not less than five Business Days' notice.

(b) The address and facsimile number of the Guarantor are:

Ferroenergy s.r.o. U. S. Steel Košice, s.r.o.
Vstupný areál U. S. Steel
044 54 Košice
Slovak Republic
Attention: Director Financing and Economy
Fax: +421 675 4785
E-mail: egrecner@sk.uss.com; mharakal@sk.uss.com

and copied to:

United States Steel Corporation
600 Grant Street, 61st Floor
Pittsburgh, PA 15219
United States of America
Attention: Treasurer and Chief Risk Officer
Fax: +1 412 433 1167
E-mail: asjahn@uss.com; agcosnotti@uss.com

or such other as the Guarantor may notify to the Facility Agent by not less than five Business Days' notice.

(c) The address and facsimile number of the Facility Agent are:

Commerzbank Finance & Covered Bond S.A.
Postal address: P.O. Box 321, 2013 Luxembourg

Office address: 25, rue Edward Steichen, 2540 Luxembourg
Attention: Christina Meiers / Aurélie Casagrande
Fax: +352 477911 3902
E-mail: Christina.Meiers@commerzbank.com;
Aurelie.Casagrande@commerzbank.com

or such other as the Facility Agent may notify to the other Parties by not less than five Business Days' notice.

37.3. Communication through the Facility Agent

All formal communication under the Finance Documents to or from an Obligor must be sent through the Facility Agent.

37.4. Communication when Facility Agent is Impaired Agent

If the Facility Agent is an Impaired Agent the parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (while the Facility Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Facility Agent shall be varied so that communications may be made and notices given to or by the relevant parties directly. This provision shall not operate after a replacement Facility Agent has been appointed.

37.5. Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 37.5.

37.6. Use of websites

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the **Website Lenders**) who accept this method of communication by posting this information onto an electronic website designated by the Company and the Facility Agent (the **Designated Website**) if:
 - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Company and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Company and the Facility Agent.
- (b) If any Lender (a **Paper Form Lender**) does not agree to the delivery of information electronically then the Facility Agent shall notify the Company accordingly and the Company shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.
- (c) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Facility Agent.
- (d) The Company shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
- (e) If the Company notifies the Facility Agent under paragraph (d)(i) or paragraph (d)(v) of this Clause 37.6, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

38. LANGUAGE

- (a) Any notice given in connection with a Finance Document must be in English.
- (b) Any other document provided in connection with a Finance Document must be:

- (i) in English; or
- (ii) (unless the Facility Agent otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

39. CONTRACTUAL RECOGNITION OF BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

In this Clause:

Bail-In Action means the exercise of any Write-down and Conversion Powers.

Bail-In Legislation means:

- (i) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (ii) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

EEA Member Country means any member state of the European Union, Iceland, Liechtenstein and Norway.

EU Bail-In Legislation Schedule means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

Resolution Authority means any body which has authority to exercise any Write-down and Conversion Powers.

Write-down and Conversion Powers means:

- (i) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (ii) in relation to any other applicable Bail-In Legislation:
 - (A) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person 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; and
 - (B) any similar or analogous powers under that Bail-In Legislation.

40. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

41. ENFORCEMENT

41.1. Jurisdiction

- (a) The English courts have jurisdiction to settle any dispute including a dispute relating to non-contractual obligations arising out of or in connection with any Finance Document.
- (b) References in this Clause to a dispute in connection with a Finance Document include any dispute as to the existence, validity or termination of that Finance Document.

41.2. Service of process

Without prejudice to any other mode of service, each Obligor:

- (a) irrevocably appoints The London Law Agency Limited, The Old Exchange, 12 Compton Road, Wimbledon, London SW19 7QD, England as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document;
- (b) agrees to maintain such an agent for service of process in England for so long as any amount is outstanding under this Agreement;
- (c) agrees that failure by the process agent to notify an Obligor of the process will not invalidate the proceedings concerned;
- (d) consents to the service of process relating to any such proceedings by the delivery a copy of the process at its address for the time being applying under Clause 37.2 (Addresses for notices); and

- (e) agrees that if the appointment of any person mentioned in paragraph (a) of this Clause 41.2 ceases to be effective, each Obligor shall immediately appoint a further person in England to accept service of process on its behalf in England and, failing such appointment within 15 days, the Facility Agent is entitled to appoint such a person by notice to the relevant Obligor.

41.3. Forum convenience and enforcement abroad

Each Obligor:

- (a) waives objection to the English courts on grounds of inconvenient forum or otherwise as regards proceedings in connection with a Finance Document; and
- (b) agrees that a judgment or order of an English court in connection with a Finance Document is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

41.4. Waiver of immunity

Each Obligor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Finance Party against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

41.5. Waiver of trial by jury

Each party waives any right it may have to a jury trial of any claim or cause of action in connection with any finance document or any transaction contemplated by any finance document. This agreement may be filed as a written consent to trial by court.

41.6. Alternative forms of dispute resolution

Each Slovak Finance Party in accordance with section 93b of the Slovak Banking Act hereby informs each Obligor that:

- (a) if a Slovak Finance Party and an Obligor enter into an arbitration agreement, any disputes between these Parties arising from or in connection with this Agreement subject to such arbitration agreement may be, in addition to a complaints procedure or court proceedings, resolved in arbitration proceedings pursuant to the Slovak Act No. 244/2002 Coll. on arbitration proceedings; and
- (b) if a Slovak Finance Party and an Obligor enter into an agreement to resolve disputes in mediation, any disputes between these Parties arising from or in connection with this Agreement subject to such agreement on mediation may be resolved in mediation pursuant to the Slovak Act No. 420/2004 Coll. on mediation.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

AMENDMENT NO. 3 TO FIFTH AMENDED AND RESTATED CREDIT AGREEMENT

This Amendment No. 3 (this “**Amendment**”), dated as of July 23, 2021 is entered into by and among United States Steel Corporation (the “**Borrower**”), U.S. Steel Seamless Tubular Operations, LLC (“**USSSTO**”), United States Steel International, Inc. (“**USSI**”), U.S. Steel Oilwell Services, LLC (“**USSOS**”), U. S. Steel Tubular Products, Inc. (“**USSTP**”), USS-UPI, LLC (formerly known as USS-POSCO Industries) (“**UPI**” and, together with USSSTO, USSI, USSOS and USSTP, the “**Subsidiary Guarantors**”; the Subsidiary Guarantors together with the Borrower, the “**Credit Parties**”), JPMorgan Chase Bank, N.A., as Administrative Agent (the “**Administrative Agent**”) and Collateral Agent (the “**Collateral Agent**”), each LC Issuing Bank and the Lenders party hereto with respect to (i) the Fifth Amended and Restated Credit Agreement, dated as of October 25, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the “**Credit Agreement**”) among the Borrower, the Lenders from time to time party thereto (the “**Lenders**”), the LC Issuing Banks from time to time party thereto, the Administrative Agent, the Collateral Agent, and the other parties from time to time party thereto, (ii) the Second Amended and Restated Borrower Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the “**Borrower Security Agreement**”), dated as of October 25, 2019 between the Borrower and the Collateral Agent and (iii) the Second Amended and Restated Subsidiary Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the “**Subsidiary Security Agreement**” and, together with the Borrower Security Agreement, the “**Security Agreements**”), dated as of October 25, 2019, between the Subsidiary Guarantors and the Collateral Agent.

WHEREAS, pursuant to Section 9.02(b) of the Credit Agreement, the Borrower has requested that each Lender Party affected by the amendments to the provisions of the Credit Agreement and the Security Agreements set forth herein (the “**Specified Lender Parties**”) consent to such amendments; and

WHEREAS, each Specified Lender Party has agreed upon the terms and subject to the conditions set forth herein, to amend such provisions of the Credit Agreement and the Security Agreements as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto (which constitute the Specified Lender Parties), intending to be legally bound hereby, agree as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, capitalized terms which are defined in the Credit Agreement are used herein as therein defined.

SECTION 2. Amendments. Effective as of the Amendment No. 3 Effective Date, the Credit Agreement is hereby amended as follows:

(a) References Generally. References in the Credit Agreement and each Security Agreement (including references to the Credit Agreement as amended hereby) to “this Agreement” (and indirect references such as “hereunder”, “hereby”, “herein” and “hereof”) shall be deemed to be references to the Credit Agreement or such Security Agreement as amended hereby, as applicable.

(b) 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 the pages of the Credit Agreement attached as Exhibit A hereto.

(c) The table of Commitments set forth in the Commitment Schedule of the Credit Agreement is hereby amended and restated in its entirety in the form attached as Schedule I hereto.

(d) The Credit Agreement is hereby amended to add a new Schedule 1.01(c) in the form attached as Exhibit B hereto.

(e) Each of the Borrower Security Agreement and the Subsidiary Security Agreement are hereby amended as follows:

(i) Section 1 of each Security Agreement is hereby amended by changing the dollar amount in the definition of "Earn Out Condition" from \$200,000,000 to \$175,000,000.

(ii) Section 1 of each Security Agreement is hereby amended by changing the dollar amount in the definition of "Sweep Period" from \$200,000,000 to \$175,000,000.

SECTION 3. Effectiveness. This Amendment shall become effective on the first date (the "**Amendment No. 3 Effective Date**") on which the Administrative Agent (or its counsel) shall have received executed signature pages to this Amendment from the Administrative Agent, each other Specified Lender Party, the Borrower and the Subsidiary Guarantors.

SECTION 4. Effect of Amendment. Except as expressly set forth herein, this Amendment shall not (a) by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent or the Collateral Agent under the Credit Agreement or any other Loan Document or (b) alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the 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. Nothing herein shall be deemed to entitle any Credit Party to consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document in similar or different circumstances. This Amendment shall constitute a Loan Document for purposes of the Credit Agreement and the other Loan Documents. From and after the Amendment No. 3 Effective Date, all references to the Credit Agreement in any other Loan Document and all references in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement shall, unless expressly provided otherwise, refer to the Credit Agreement as amended by this Amendment.

SECTION 5. Representations and Warranties. The Borrower hereby represents and warrants as of the date hereof that the following statements are true and correct:

(a) the representations and warranties of the Borrower contained in Section 3 of the Credit Agreement are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date in which case they shall be true and correct as of such earlier date; and

(b) no Default or Event of Default has occurred and is continuing.

SECTION 6. Miscellaneous Provisions. The provisions of Sections 9.01, 9.02, 9.03, 9.07, 9.08, 9.10 and 9.11 of the Credit Agreement shall apply to like effect, *mutatis mutandis*, to this Amendment. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. This Amendment may be executed in any number of counterparts and by different parties

hereto on separate counterparts, each of which when taken together shall constitute a single instrument. Any signature to this Amendment may be delivered by facsimile, electronic mail (including “.pdf”) or any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signature and Records Act or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law. For the avoidance of doubt, the foregoing also applies to any amendment, extension or renewal of this Amendment. Each of the parties hereto represents and warrants to the other parties that, to the extent it executes this Amendment through electronic means, it has the corporate capacity and authority to so execute this Amendment through electronic means and there are no restrictions on doing so in such party’s constitutive documents.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

UNITED STATES STEEL CORPORATION,
as the Borrower

By: /s/ Arne Jahn
Name: Arne Jahn
Title: Vice President – Treasurer and Chief
Risk Officer

**U.S. STEEL SEAMLESS TUBULAR
OPERATIONS, LLC,** as a Credit Party

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

**UNITED STATES STEEL
INTERNATIONAL, INC.,** as a Credit Party

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

U. S. STEEL OILWELL SERVICES, LLC, as
a Credit Party

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

U.S. STEEL TUBULAR PRODUCTS, INC., as
a Credit Party

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

USS-UPI, LLC, as a Credit Party

By: /s/ Cory Anderson
Name: Cory Anderson
Title: Secretary & General Counsel

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent and Collateral Agent

By: /s/ James Shender
Name: James Shender
Title: Executive Director

JPMORGAN CHASE BANK, N.A.,
as a Lender and LC Issuing Bank

By: /s/ James Shender

Name: James Shender

Title: Executive Director

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

By: /s/ Matthew Bourgeois

Name: Matthew Bourgeois

Title: Senior Vice President

Bank of America, N.A., as a LC Issuing
Bank

By: /s/ Matthew Bourgeois

Name: Matthew Bourgeois

Title: Senior Vice President

**WELLS FARGO BANK, NATIONAL
ASSOCIATION,**

as a Lender

By: /s/ Roberto M. Ruiz

Name: Roberto M. Ruiz

Title: Authorized Signatory

By: _____

Name:

Title:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION,**

as an LC Issuing Bank

By: /s/ Roberto M. Ruiz

Name: Roberto M. Ruiz

Title: Authorized Signatory

By: _____

Name:

Title:

BARCLAYS BANK PLC,

as a Lender

By: /s/ Craig Malloy

Name: Craig Malloy

Title: Director

By: _____

Name:

Title:

BARCLAYS BANK PLC,

as an LC Issuing Bank

By: /s/ Craig Malloy

Name: Craig Malloy

Title: Director

By: _____

Name:

Title:

BMO Harris Bank, N.A., as a Lender and as
an LC Issuing Bank

By: /s/ Quinn Heiden

Name: Quinn Heiden

Title: Managing Director

By: _____

Name:

Title:

**PNC BANK, NATIONAL
ASSOCIATION,**

as a Lender

By: /s/ Joseph McElhinny

Name: Joseph McElhinny

Title: Vice President

By: _____

Name:

Title:

**PNC BANK, NATIONAL
ASSOCIATION,**

as an LC Issuing Bank

By: /s/ Joseph McElhinny

Name: Joseph McElhinny

Title: Vice President

By: _____

Name:

Title:

TRUIST BANK,

as a Lender

By: /s/ JC Fanning

Name: JC Fanning

Title: Director

TRUIST BANK,
as an LC Issuing Bank

By: /s/ JC Fanning

Name: JC Fanning

Title: Director

FIFTH THIRD BANK, NATIONAL
ASSOCIATION as a Lender

By: /s/ Jason Rockwell

Name: Jason Rockwell

Title: Vice President

**CREDIT SUISSE AG, CAYMAN ISLANDS
BRANCH,**

as a Lender

By: /s/ Judith Smith

Name: Judith Smith

Title: Authorized Signatory

By: /s/ Jessica Gavarkovs

Name: Jessica Gavarkovs

Title: Authorized Signatory

**CREDIT SUISSE AG, CAYMAN ISLANDS
BRANCH,**

as an LC Issuing Bank

By: /s/ Judith Smith

Name: Judith Smith

Title: Authorized Signatory

By: /s/ Jessica Gavarkovs

Name: Jessica Gavarkovs

Title: Authorized Signatory

CITIBANK N.A.,

as a Lender

By: /s/ Brendan Mackay

Name: Brendan Mackay

Title: Vice President & Director

CITIBANK N.A.,
as an LC Issuing Bank

By: /s/ Brendan Mackay

Name: Brendan Mackay

Title: Vice President & Director

GOLDMAN SACHS BANK USA,
as a Lender

By: /s/ Dan Martis

Name: Dan Martis

Title: Authorized Signatory

**MORGAN STANLEY SENIOR
FUNDING, INC.,**

as a Lender

By: /s/ Rikin Pandya

Name: Rikin Pandya

Title: Vice President

By: _____

Name:

Title:

MORGAN STANLEY BANK, N.A.,
as a Lender

By: /s/ Rikin Pandya

Name: Rikin Pandya

Title: Vice President

By: _____

Name:

Title:

MORGAN STANLEY BANK, N.A.,
as an LC Issuing Bank

By: /s/ Rikin Pandya

Name: Rikin Pandya

Title: Vice President

By: _____

Name:

Title:

CITIZENS BANK, N.A.,

as a Lender

By: /s/ Terrance Broderick

Name: Terrance Broderick

Title: Senior Vice President

CITIZENS BANK, N.A.,

as an LC Issuing Bank

By: /s/ Terrance Broderick

Name: Terrance Broderick

Title: Senior Vice President

ING CAPITAL LLC,
as a Lender

By: /s/ Jeffrey Chu

Name: Jeffrey Chu

Title: Director

By: /s/ Michael Chen

Name: Michael Chen

Title: Director

ING CAPITAL LLC,
as an LC Issuing Bank

By: /s/ Jeffrey Chu

Name: Jeffrey Chu

Title: Director

By: /s/ Michael Chen

Name: Michael Chen

Title: Director

U.S. Bank National Association,
as a Lender

By: /s/ Andrew Stredde

Name: Andrew Stredde

Title: Vice President

THE HUNTINGTON NATIONAL
BANK, a national banking association, as
a Lender

By: /s/ Roger F. Reeder

Name: Roger F. Reeder

Title: Vice President

Schedule I

Tranche A Commitment

Lender	Commitment
JPMorgan Chase Bank, N.A.	\$192,329,729.74
Bank of America, N.A.	\$142,724,324.32
Wells Fargo Bank, National Association	\$142,724,324.32
Barclays Bank PLC	\$142,724,324.32
BMO Harris Bank, N.A.	\$87,570,945.95
PNC Bank, National Association	\$96,251,891.89
SunTrust Bank	\$96,273,648.65
Fifth Third Bank	\$96,273,648.65
Credit Suisse AG, Cayman Islands Branch	\$84,416,216.22
Citibank, N.A.	\$97,785,743.24
Goldman Sachs Bank USA	\$97,785,743.24
Morgan Stanley Bank, N.A.	\$52,216,216.22
Morgan Stanley Senior Funding, Inc.	\$25,672,972.97
Citizens Bank, N.A.	\$77,889,189.19
ING Capital LLC	\$77,889,189.19
U.S. Bank National Association	\$52,477,297.30
The Huntington National Bank	\$46,994,594.59
Total	\$1,610,000,000.00

Tranche B Commitment

Lender	Commitment
JPMorgan Chase Bank, N.A.	\$14,000,000.00
Bank of America, N.A.	\$11,200,000.00
Wells Fargo Bank, National Association	\$11,200,000.00
Barclays Bank PLC	\$11,200,000.00
BMO Harris Bank, N.A.	\$18,083,333.35
PNC Bank, National Association	\$8,773,333.33
SunTrust Bank	\$8,750,000.00
Fifth Third Bank	\$8,750,000.00
Citibank, N.A.	\$7,128,333.33
Goldman Sachs Bank USA	\$7,128,333.33
Morgan Stanley Senior Funding, Inc.	\$7,000,000.00
Citizens Bank, N.A.	\$7,000,000.00
ING Capital LLC	\$7,000,000.00
U.S. Bank National Association	\$3,453,333.33
The Huntington National Bank	\$9,333,333.33
Total	140,000,000.00

Exhibit A

Amended Credit Agreement

[See attached.]

EXHIBIT A
**Conformed to Amendment No. 1, dated as
of September 30, 2020, Amendment No. 2,
dated as of March 26, 2021
and Amendment No. 3, dated as of July 23,
2021**

FIFTH AMENDED AND RESTATED CREDIT AGREEMENT

dated as of
October 25, 2019
among

UNITED STATES STEEL CORPORATION

THE LENDERS PARTY HERETO

THE LC ISSUING BANKS PARTY HERETO and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent and Collateral Agent

JPMORGAN CHASE BANK, N.A.,
BANK OF AMERICA, N.A.,
WELLS FARGO BANK, NATIONAL ASSOCIATION,
and
BARCLAYS BANK PLC,
as Joint Lead Arrangers and Joint Bookrunners

BANK OF AMERICA, N.A.,
WELLS FARGO BANK, NATIONAL ASSOCIATION,
and
BARCLAYS BANK PLC,
as Co-Syndication Agents

BMO HARRIS BANK N.A., CITIBANK, N.A., FIFTH THIRD BANK,
GOLDMAN SACHS BANK USA, PNC BANK, NATIONAL ASSOCIATION,
SUNTRUST BANK, CITIZENS BANK, N.A., CREDIT SUISSE AG,
CAYMAN ISLANDS BRANCH, ING CAPITAL LLC and MORGAN
STANLEY BANK, N.A.,
as Co-Documentation Agents

J.P. MORGAN SECURITIES LLC and ING CAPITAL LLC
as Joint Sustainability Structuring Agents

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FIFTH AMENDED AND RESTATED CREDIT AGREEMENT dated as of October 25, 2019 among UNITED STATES STEEL CORPORATION, the LENDERS party hereto, the LC ISSUING BANKS party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent.

WHEREAS, the Borrower (as defined in Section 1.01), the lenders party thereto (the “**Existing Lenders**”), the letter of credit issuing banks party thereto and JPMorgan Chase Bank, N.A., as administrative agent, are parties to the Fourth Amended and Restated Credit Agreement dated as of February 26, 2018 (as amended or otherwise modified prior to the date hereof, the “**Existing Credit Agreement**”); and

WHEREAS, the parties hereto desire to amend and restate the Existing Credit Agreement as provided in this Agreement (as defined in Section 1.01), subject to the terms and conditions set forth in Section 4.01 hereof;

NOW, THEREFORE, the Existing Credit Agreement is amended and restated in its entirety as follows:

Article 1.

Definitions

Section 1.01. . *Defined Terms.* As used in this Agreement, the following terms have the following meanings:

“**2020 Notes**” means the Borrower’s Senior Notes due April 1, 2020 or any refinancing thereof to a maturity date earlier than the 91st day after the Stated Termination Date.

“**2021 Notes**” means the Borrower’s Senior Secured Notes due July 1, 2021 or any refinancing thereof to a maturity date earlier than the 91st day after the Stated Termination Date.

“**Account Debtor**” means any Person obligated on a Receivable.

“**Additional Lender**” has the meaning set forth in Section 2.15(b).

“**Additional Senior Secured Debt**” means any Debt constituting obligations for borrowed money or obligations evidenced by bonds, debentures, notes or similar instruments, in each case to the extent (a) incurred after the Effective Date, (b) having a stated maturity date that is less than 91 days after the Stated Termination Date and (c) secured by Liens permitted to exist in reliance on Section 6.01(j).

“Adjusted LIBO Rate” ~~has the meaning set forth in Section 2.06(b)-~~ means, with respect to any Group of Term Benchmark Loans for any Interest Period, an interest rate per annum (rounded upward, if necessary, to the next 1/16 of 1%) equal to (a) the London Interbank Offered Rate for such Interest Period multiplied by (b) the Statutory Reserve Adjustment.

“Administrative Agent” means JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the Loan Documents, and its successors in such capacity.

“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” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by or under common Control with such specified Person.

“Agent” means any of the Administrative Agent, the Collateral Agent, the Co-Dokumentation Agents ~~and~~, the Co-Syndication Agents and the Sustainability Structuring Agents, and **“Agents”** means any two or more of the foregoing.

“Aggregate Borrowing Base” means, at any time, the sum of (i) the Tranche A Borrowing Base, *plus* (ii) the Tranche B Borrowing Base, *less* (iii) Availability Reserves, *less* (iv) the Dilution Reserve, *less* (v) the Valuation Reserves, *less* (vi) the aggregate outstanding amount (calculated as the Mark-to-Market Value) of First Secured Derivative Obligations up to a maximum amount of \$200,000,000, *less* (vii) the face amount of all Bi-Lateral Letters of Credit (as defined in the Borrower Security Agreement or any other applicable Security Agreement); *provided, however*, that no reserve shall be duplicative of any factor to the extent that it is already reflected in the calculation of the Aggregate Borrowing Base, the Tranche A Borrowing Base and/or the Tranche B Borrowing Base.

“Aggregate Facility Availability” means, at any time, an amount equal to (i) the lesser of (x) the aggregate amount of the Lenders’ Commitments at such time and (y) the Aggregate Borrowing Base, at such time, *less* (ii) the Total Outstanding Amount at such time.

“Agreement” means this Fifth Amended and Restated Credit Agreement dated as of October 25, 2019, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

“**Amendment No. 1**” means that certain Amendment No. 1 to Fifth Amended and Restated Credit Agreement, Second Amended and Restated Security Agreement and Second Amended and Restated Subsidiary Security Agreement, dated as of September 30, 2020 by and among the Borrower, the Subsidiary Guarantors, the Administrative Agent, the Collateral Agent and the Lenders party thereto.

“**Amendment No. 1 Effective Date**” has the meaning set forth in Amendment No. 1.

“**Ancillary Document**” has the meaning assigned to it in Section 9.07(b).

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

“**Applicable Account Debtor**” has the meaning set forth in Section 5.02(c).

“**Applicable Lending Office**” means, with respect to any Lender, (i) in the case of its Base Rate Loans, its Domestic Lending Office and (ii) in the case of its **EurodollarTerm Benchmark** Loans, its **EurodollarTerm Benchmark** Lending Office.

“**Applicable Rate**” means for any day:

(a) with respect to any Loan that is a Base Rate Tranche A Loan, the applicable rate per annum set forth in the Pricing Schedule in the column below the caption “Base Rate Tranche A Loan Margin” and in the row corresponding to the “Pricing Level” that applies for such day;

(b) with respect to any Loan that is a Base Rate Tranche B Loan, the applicable rate per annum set forth in the Pricing Schedule in the row opposite the caption “Base Rate Tranche B Loan Margin” and in the row corresponding to the “Pricing Level” that applies for such day;

(c) with respect to any Loan that is a **EurodollarTerm Benchmark** Tranche A Loan, the applicable rate per annum set forth in the Pricing Schedule in the column below the caption “**EurodollarTerm Benchmark** Tranche A Loan Margin” and in the row corresponding to the “Pricing Level” that applies for such day; and

(d) with respect to any Loan that is a **EurodollarTerm Benchmark** Tranche B Loan, the applicable rate per annum set forth in the

Pricing Schedule in the column below the caption “~~Eurodollar~~Term Benchmark Tranche B Loan Margin” and in the row corresponding to the “Pricing Level” that applies for such day;

In each case, the “Applicable Rate” will be based on the Average Availability calculated as of the relevant determination date; *provided* that the rates corresponding to Level II of the Pricing Schedule shall be the Applicable Rates during the period commencing on the Effective Date and ending on the last day of the first full fiscal quarter after the Effective Date; *provided further* that, at the option of the Administrative Agent (or at the request of the Required Lenders), if the Borrower fails to deliver consolidated financial statements to the Administrative Agent as and when required by Section 5.01(a)(i) or 5.01(a)(ii), such Applicable Rates will be those set forth in the Pricing Schedule and corresponding to Level II during the period from the expiration of the time specified for such delivery until such financial statements are so delivered.

Notwithstanding the foregoing, effective as of August 1 of each fiscal year (commencing August 1, 2022), each rate per annum specified in the Pricing Schedule 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 5.01(d) for such fiscal year. For the avoidance of doubt, any adjustment to the rates per annum specified in the Pricing Schedule 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.

“**Approved Electronic Platform**” has the meaning assigned to it in Section 8.03(b).

“**Arranger**” means each of JPMorgan Chase Bank, N.A., Bank of America, N.A., Wells Fargo Bank, National Association, and Barclays Bank PLC in its capacity as a joint lead arranger of the credit facility provided under this Agreement.

“**Assignment**” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A-1 or any other form approved by the Administrative Agent.

“Availability Reserves” means, as of any date of determination, such reserves in amounts as the Collateral Agent may from time to time establish (upon five Business Days’ notice to the Borrower in the case of new reserve categories established after the Effective Date and formula changes) and revise (upward or downward) in good faith in accordance with its customary credit policies: (i) to reflect events, conditions, contingencies or risks which, as reasonably determined by the Collateral Agent, do or are reasonably likely to materially adversely affect either (a) the Collateral or its value or (b) the security interests and other rights of the Collateral Agent or any Lender in the Collateral (including the enforceability, perfection and priority thereof), (ii) to reflect the Collateral Agent’s reasonable belief that any collateral report or financial information furnished by or on behalf of the Borrower is or may have been incomplete, inaccurate or misleading in any material respect or (iii) in respect of any state of facts which the Collateral Agent reasonably determines in good faith constitutes a Default or an Event of Default; *provided that*, at any date of determination (unless and until otherwise determined by the Collateral Agent), “Availability Reserves” shall include (a) a reserve in an amount equal to the most current liability (calculated no less than on a quarterly basis) to Outside Processor, Third-Party Warehouseman and Borrower Joint Venture locations holding Eligible Inventory, (b) a reserve for obligations secured by Liens on Collateral for which UCC financing statements (or, in jurisdictions outside the United States, evidence of perfection of Liens) are filed, (c) a reserve for permitted Liens and (d) a reserve for claims secured by purchase money liens. For the avoidance of doubt, “Availability Reserves” shall not include a reserve for any Secured Vendor Financing Obligations (as defined in the Security Agreement).

“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 including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (f) of Section 2.19.

“Average Availability” has the meaning set forth in the Pricing Schedule.

“Average Facility Availability” means, on any day, an amount equal to the quotient of (a) the sum of the end of the day Aggregate Facility Availability for each day during the period of 30 consecutive days ending on (and including) such date, divided by (b) 30 (i.e., the number of days in such period).

“**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~~Affected Financial Institution.

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

“**Bankruptcy Event**” means, with respect to any Person, such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, *provided* that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, *provided, further*, that such ownership interest does not result in or provide such Person 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 permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“**Base Rate**” means, for any day, a rate per annum equal to the highest of (i) the Prime Rate for such day, (ii) the sum of ½ of 1% plus the Federal Funds Rate for such day and (iii) the sum of 1% plus the Adjusted LIBO Rate for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day). If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.19 hereof (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.19(b)), then the Base Rate shall be the greater of clauses (i) and (ii) above and shall be determined without reference to clause (iii) 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 Loan” means a Loan that is a Base Rate Tranche A Loan or a Base Rate Tranche B Loan.

“Base Rate Tranche A Loan” means a Tranche A Loan that bears interest at the Base Rate pursuant to the applicable Notice of Borrowing or Notice of Interest Rate Election or the provisions of Section 2.19.

“Base Rate Tranche B Loan” means a Tranche B Loan that bears interest at the Base Rate pursuant to the applicable Notice of Borrowing or Notice of Interest Rate Election or the provisions of Section 2.19.

“Benchmark” means, initially, with respect to any Term Benchmark Loan, the London Interbank Offered 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 related Benchmark Replacement Date have occurred with respect to the London Interbank Offered 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 (c) of Section 2.19.

“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 SOFR and (b) the related Benchmark Replacement Adjustment;

(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 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 London Interbank Offered 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), (2) or (3) above would be less than zero, the Benchmark Replacement will be deemed to be zero 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:

(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 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, any technical, administrative or operational changes (including changes to the definition of “Base Rate” the definition of “Business Day”, the definition of “Interest Period”, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the 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”, 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);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event”, 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;

(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 2.19(c); 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, 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 2.19 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 2.19.

“**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.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Internal Revenue Code to which Section 4975 of the Internal Revenue Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Big River Acquisition Agreement” means that certain Recapitalization and Equity Purchase Agreement, dated as of September 30, 2019, by and among the Borrower, U.S. Steel Holdco LLC, BRS Stock Holdco LLC, Big River Steel Holdings LLC and the equityholders of Big River Steel Corp. and Big River Steel Holdings LLC, as amended or otherwise modified from time to time.

“Blocked Account” means any and all “Blocked Accounts”, as defined in any Security Agreement.

“Borrower” means United States Steel Corporation, a Delaware corporation, and its successors.

“Borrower Joint Venture” means any joint venture in which the Borrower holds, or acquires after the Effective Date, a direct or indirect equity interest.

“Borrower Security Agreement” means the Second Amended and Restated Security Agreement dated as of the Effective Date, between the Borrower and the Collateral Agent, substantially in the form of Exhibit C-1 hereto.

“Borrower’s Latest Form 10-Q” means the Borrower’s quarterly report on Form 10-Q for the quarter ended June 30, 2019, as filed with the SEC pursuant to the Exchange Act.

“Borrower’s Latest Form 10-K” means the Borrower’s annual report on Form 10-K for the year ended December 31, 2018, as filed with the SEC pursuant to the Exchange Act.

“Borrowing” has the meaning set forth in Section 1.02.

“Borrowing Base Certificate” means a certificate, duly executed and certified as accurate and complete by a Financial Officer of the Borrower, appropriately completed and substantially in the form of Exhibit D together with all attachments and supporting documentation (i) as contemplated thereby, (ii) as outlined on Schedule 1 to Exhibit D and (iii) as reasonably requested by the Collateral Agent.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that, when used in connection with a [Eurodollar Term Benchmark](#) Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Capital Expenditures” means, for any period, the additions to property, plant and equipment and other capital expenditures of the Borrower and its Subsidiaries for the purpose of maintaining or replacing an existing capital asset that are (or would be) set forth as capital expenditures in a consolidated statement of cash flows of the Borrower and its Subsidiaries for such period prepared in accordance with GAAP.

“Capital Lease Obligations” of any Person means obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required under GAAP to be classified and accounted for as capital leases on a balance sheet of such Person; *provided* that all leases of any Person that are or would have been characterized as operating leases in accordance with GAAP as in effect immediately prior to the Effective Date shall continue to be accounted for as operating leases (and not as capital leases) for purposes of this Agreement regardless of any change in GAAP following the date that would otherwise require such leases to be recharacterized as capital leases. The amount of such obligations will be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateral Account” has the meaning specified in the applicable Security Agreement.

“Change in Control” means the occurrence of any of the following:

(a) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for the purposes of this clause (a) such person shall be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the

passage of time), directly or indirectly, of more than 35% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Equity Interests in the Borrower;

(b) individuals who constituted the board of directors of the Borrower at any given time (together with any new directors whose election by such board of directors or whose nomination for election by the shareholders of the Borrower as approved by a vote of a majority of the directors of the Borrower then still in office who were either directors at such time or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of directors then in office;

(c) the adoption of a plan relating to the liquidation or dissolution of the Borrower; or

(d) the merger or consolidation of the Borrower with or into another Person or the merger of another Person with or into the Borrower, or the sale of all or substantially all the assets of the Borrower (determined on a consolidated basis) to another Person, other than a merger or consolidation transaction in which holders of Equity Interests representing 100% of the ordinary voting power represented by the Equity Interests in the Borrower immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) own directly or indirectly at least a majority of the ordinary voting power represented by the Equity Interests in the surviving Person in such merger or consolidation transaction issued and outstanding immediately after such transaction and in substantially the same proportion as before the transaction.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after such date or (c) compliance by any Lender or any LC Issuing Bank (or, for purposes of Section 2.20, by any lending office of such Lender or by such Lender’s or such LC Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after such date; *provided however*, that notwithstanding anything therein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements or directives thereunder or enacted, adopted or issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International

Settlements, the Basel Committee on Banking Regulations and Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued, promulgated or implemented.

“Co-Documentation Agent” means each of BMO Harris Bank N.A., Citibank, N.A., Fifth Third Bank, Goldman Sachs Bank USA, PNC Bank, National Association, SunTrust Bank, Citizens Bank, N.A., Credit Suisse AG, Cayman Islands Branch, ING Capital LLC and Morgan Stanley Bank, N.A., in its capacity as co-documentation agent in respect of this Agreement.

“Co-Syndication Agent” means each of Bank of America, N.A., Wells Fargo Bank, National Association, and Barclays Bank PLC, in its capacity as syndication agent in respect of this Agreement.

“Collateral” means any and all “Collateral”, as defined in any Security Document.

“Collateral Access Agreement” means an agreement substantially in the form of Exhibit F-1 or Exhibit F-2.

“Collateral Agent” means JPMorgan Chase Bank, N.A., in its capacity as collateral agent for the Secured Parties under the Loan Documents, and its successors in such capacity.

“Collateral and Guarantee Requirement” means the requirement that:

(a) the Administrative Agent (i) shall have received a counterpart of the applicable Security Agreement duly executed and delivered by JPMorgan Chase Bank, N.A., as Collateral Agent, and (ii) shall have received from each Credit Party a counterpart of the applicable Security Agreement duly executed and delivered on behalf of such Credit Party;

(b) with respect to each Subsidiary Guarantor, (i) the Administrative Agent shall have received a Subsidiary Guarantee Agreement duly executed and delivered on behalf of such Subsidiary Guarantor, and (ii) the conditions set forth in clauses (b) and (c) of Section 4.01 shall have been satisfied with respect to such Subsidiary Guarantor;

(c) all documents and instruments, including UCC financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be

created by the Security Documents and perfect or record such Liens to the extent, and with the priority, required by the Security Documents, shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or recording;

(d) each Credit Party shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of all Security Documents to which it is a party, the performance of its obligations thereunder and the granting of the Liens granted by it thereunder; and

(e) each Credit Party shall have taken all other action required under the Security Documents to perfect, register and/or record the Liens granted by it thereunder.

“**Commitment**” means, with respect to any Lender, the aggregate of such Lender’s Tranche A Commitment (if any) and its Tranche B Commitment (if any).

“**Commitment Schedule**” means the Commitment Schedule attached hereto.

“**Communications**” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Credit Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any LC Issuing Bank by means of electronic communications pursuant to Section 8.03, including through an Approved Electronic Platform.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Cash Interest Expense**” means, for any period, the amount by which: (a) interest expense on Debt (including imputed interest expense in respect of Capital Lease Obligations) of the Borrower and its Subsidiaries during such period (other than any such amounts that are non-cash) exceeds (b) interest income of the Borrower and its Subsidiaries for such period (other than any such amounts that are non-cash), in each case, determined on a consolidated basis in accordance with GAAP.

“**Consolidated EBITDA**” means, for any period, net income (or net loss) (before discontinued operations) plus the sum of (a) Consolidated Interest Expense, (b) provision for income tax expense, (c) depreciation expense, (d)

amortization expense, (e) any losses or expenses from any unusual, extraordinary or otherwise non-recurring items, (f) aggregate foreign exchange losses, and (g) the aggregate amount of all non-cash compensation charges incurred during such period arising from the grant or issuance of stock options or other equity awards, and minus (x) the sum of the amounts for such period of any provision for income tax benefits and any income or gains from any unusual, extraordinary or otherwise non-recurring items, and (y) aggregate foreign exchange gains; in each case determined on a consolidated basis for the Borrower and its Subsidiaries in accordance with GAAP and in the case of items (a) through (f) and items (x) through (y), to the extent such amounts were included in the calculation of net income. For the purpose of calculating Consolidated EBITDA for any period, if during such period the Borrower or any Subsidiary shall have made an acquisition or a disposition of an operating business, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such acquisition or disposition, as the case may be, occurred on the first day of such period.

“Consolidated Fixed Charges” means, for any period, the sum of (a) Consolidated Cash Interest Expense for such period, (b) the aggregate amount of scheduled principal payments required to be made during the succeeding period of 12 consecutive months in respect of Long-Term Debt of the Borrower and its Subsidiaries (except payments required to be made by the Borrower or any Subsidiary to the Borrower or any Subsidiary), (c) Restricted Payments made in cash during such period (other than any Restricted Payments made pursuant to any Share Repurchase Program that, as of the applicable date of determination, has terminated or otherwise matured) and (d) if during such period any outstanding Debt of the Excluded Subsidiary is Guaranteed by the Borrower or any Subsidiary, the amounts which would have been included in (a) and (b) for such period in respect of such Debt if the Excluded Subsidiary were a Subsidiary (but only to the extent that such Debt is Guaranteed by the Borrower or any Subsidiary).

“Consolidated Interest Expense” means, for any period, the amount by which:

- (a) the sum of (i) the interest expense (including imputed interest expense in respect of Capital Lease Obligations) of the Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP, and (ii) any interest accrued during such period, in respect of Debt of the Borrower or any Subsidiary, that is required under GAAP to be capitalized rather than included in consolidated interest expense for such period, *exceeds*

(b) the interest income of the Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Tangible Assets” means, as of the time of determination, the aggregate amount of assets of the Borrower and its consolidated 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 prepared by the Borrower in accordance with GAAP contained in an annual report on Form 10-K or a quarterly report on Form 10-Q timely filed or any amendment thereto (and not subsequently disclaimed as not being reliable by the Borrower) pursuant to the Exchange Act by the Borrower prior to the time as of which “Consolidated Net Tangible Assets” is being determined.

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“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.

“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).

“Covered Party” has the meaning assigned to it in Section 9.17.

“Credit Exposure” means, with respect to any Lender at any time, (a) with respect to all Commitments and/or Loans, (i) the amount of such Lender’s Commitments if in existence at such time or (ii) the sum of the aggregate outstanding principal amount of such Lender’s Loans and the amount of its LC Exposure at such time if such Lender’s Commitments are not then in existence,

(b) with respect to Tranche A Commitments and/or Tranche A Loans, (i) the amount of such Lender's Tranche A Commitments if in existence at such time or (ii) the sum of the aggregate outstanding principal amount of such Lender's Tranche A Loans and the amount of its LC Exposure at such time if such Lender's Tranche A Commitments are not then in existence and (c) with respect to Tranche B Commitments and/or Tranche B Loans, (i) the amount of such Lender's Tranche B Commitments if in existence at such time or (ii) the sum of the aggregate outstanding principal amount of such Lender's Tranche B Loans at such time if such Lender's Tranche B Commitments are not then in existence.

“Credit Parties” means the Borrower and the Subsidiary Guarantors.

“Daily Simple SOFR” means, for any day, 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.

“Debt” of any Person means, without duplication:

(a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind (other than unspent cash deposits held in escrow by or in favor of such Person, or in a segregated deposit account controlled by such Person, in each case in the ordinary course of business to secure the performance obligations of, or damages owing from, one or more third parties),

(b) all obligations of such Person evidenced by bonds, debentures, notes, or similar instruments,

(c) all obligations of such Person on which interest charges are customarily paid (other than obligations where interest is levied only on late or past due amounts),

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person,

(e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business),

(f) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Debt secured thereby has been assumed,

(g) all Guarantees by such Person of Debt of others,

(h) all Capital Lease Obligations of such Person,

(i) all unpaid obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (other than cash collateralized letters of credit to secure the performance of workers' compensation, unemployment insurance, other social security laws or regulations, bids, trade contracts, leases, environmental and other statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, obtained in the ordinary course of business),

(j) all capital stock of such Person which is required to be redeemed or is redeemable at the option of the holder if certain events or conditions occur or exist or otherwise, and

(k) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances.

The Debt of any Person shall include the Debt of any other entity (including any partnership in which such Person is a general partner) to the extent that such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except (a) to the extent that contractual provisions binding on the holder of such Debt provide that such Person is not liable therefor, and (b) in the case of general partnerships where the interest is held by a Subsidiary with no other significant assets.

Notwithstanding the foregoing, the term "Debt" will exclude obligations that are no longer outstanding under the applicable indenture or instruments therefor.

Notwithstanding the foregoing, in connection with the purchase by the Borrower or any Subsidiary of any business, the term "Debt" will exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing; *provided* that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid when due.

“**Default**” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“**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.

“**Defaulting Lender**” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund all or any portion of its Loans, (ii) fund all or any portion of its participations in Letters of Credit or (iii) pay over to the Administrative Agent or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i), such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s reasonable determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with all or any portion of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s reasonable determination that a condition precedent (specifically identified and including the particular default, if any) to funding under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after written request by the Administrative Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund Loans and participations in then outstanding Letters of Credit under this Agreement, *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s receipt of such certification in form and substance reasonably satisfactory to it, or (d) other than via an Undisclosed Administration, has become the subject of a Bankruptcy Event or a Bail-In Action or has a Parent that has become the subject of a Bankruptcy Event or a Bail-In Action.

“**Departing Lender**” means any lender party to the Existing Credit Agreement but not listed in the Commitment Schedule.

“**Derivative Obligations**” has the meaning specified in Section 1 of the Borrower Security Agreement.

“**Designated Lender**” means, with respect to any Designating Lender, an Eligible Designee designated by it pursuant to Section 9.05(a) as a Designated Lender for purposes of this Agreement.

“Designating Lender” means, with respect to each Designated Lender, the Lender that designated such Designated Lender pursuant to Section 9.05(a).

“Dilution Factors” means, without duplication of any reduction to the balance of any Receivable, 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 Receivables of the Borrower or any other Credit Party in a manner consistent with the Borrower’s or such other Credit Party’s then current and historical accounting practices.

“Dilution Ratio” means, at any time, the amount (expressed as a percentage), calculated in connection with the delivery of the Borrowing Base Certificate for the calendar month most recently ended, equal to (a) the aggregate amount of the applicable Dilution Factors in respect of Receivables of the Borrower and the other Credit Parties for the twelve calendar month period ended as of the last day of such calendar month divided by (b) total gross invoices of the Borrower and the other Credit Parties for such twelve-calendar-month period.

“Dilution Reserve” means, at any time, a reserve in an amount equal to the product of (a) the excess of (i) the applicable Dilution Ratio at such time over (ii) 5.00%, multiplied by (b) the aggregate amount of Eligible Receivables at such time.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests and/or cash in lieu of fractional shares), pursuant to a sinking fund obligation or otherwise (except as a result of a change in control or asset sale so long as any right of the holders thereof upon the occurrence of a change in control or asset sale event shall be subject to the occurrence of the Repayment Date), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and/or cash in lieu of fractional shares), in whole or in part (except as a result of a change in control or asset sale so long as any right of the holders thereof upon the occurrence of a change in control or asset sale event shall be subject to the occurrence of the Repayment Date), (c) requires the payment of any cash dividend or any other scheduled cash payment constituting a return of capital, in each case, prior to the date that is ninety-one (91) days after the Stated Termination Date or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Equity Interests, in each case of this clause (d), prior to the date that is ninety-one (91) days after the Stated Termination Date; *provided* that if such

Equity Interest is issued to any plan for the benefit of employees of the Borrower or any of its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Equity Interest solely because it may be required to be repurchased by the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“**Dollars**”, “**dollars**” or “**\$**” refers to lawful money of the United States.

“**Domestic Lending Office**” means, as to each Lender, its office, branch or affiliate located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Domestic Lending Office) or such other office, branch or affiliate as such Lender may hereafter designate as its Domestic Lending Office by notice to the Borrower and the Administrative Agent.

“**Domestic Subsidiary**” means each Subsidiary that is not a Foreign Subsidiary.

“**Downgraded Lender**” means any Lender that (a) has a rating that is not an Investment Grade Rating from Moody’s, Fitch, S&P or an investment grade rating from another nationally recognized rating agency or (b) is a Subsidiary of a Person that is the subject of a bankruptcy, insolvency or similar proceeding. For the avoidance of doubt, a Lender that is not rated by Moody’s, Fitch, S&P or another nationally recognized rating agency shall not constitute a Downgraded Lender.

“**Early Opt-in Election**” means, if the then current Benchmark with respect to Dollars is the London Interbank Offered 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 London Interbank Offered Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

“Early Maturity Date” means, with respect to any series of Senior Notes, the date that is 45 days prior to the stated maturity date for such series of Senior Notes set forth in the applicable Senior Notes Documents.

“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.

“Effective Date” means the date on which each of the conditions specified in Section 4.01 is satisfied (or waived in accordance with Section 9.02), which date is October 25, 2019.

“Electronic Signature” means [an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.](#)

“Eligible Designee” means a special purpose corporation, partnership, trust, limited partnership, limited liability company or other business entity that (i) is organized under the laws of the United States, any state thereof or the District of Columbia, (ii) is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and (iii) issues (or the parent of which issues) commercial paper rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody’s.

“Eligible Finished Goods Inventory” means all Finished Goods Inventory that is Eligible Inventory.

“Eligible Inventory” means at any date of determination thereof, the aggregate value (as reflected on the plant level records of the Borrower or any other Credit Party and consistent with the Borrower’s or such other Credit Party’s current and historical accounting practices whereby manufactured items are valued at pre-determined costs and purchased items are valued at rolling average

actual cost) at such date of all Qualified Inventory owned by any Credit Party, adjusted on any date of determination to exclude, without duplication, all Qualified Inventory that is Ineligible Inventory.

“Eligible Investment Grade Receivables” means, at any time, any Eligible Receivables in respect of which the Account Debtor has an Investment Grade Rating.

“Eligible Raw Materials Inventory” means all Raw Materials Inventory that is Eligible Inventory.

“Eligible Receivables” means at any date of determination thereof, the aggregate value (determined on a basis consistent with GAAP and the Borrower’s or any other Credit Party’s then current and historical accounting practices) of all Qualified Receivables of the Borrower or any other Credit Party, net of (x) any amounts in respect of sales, excise or similar taxes included in such Receivables and (y) returns, discounts, claims, credits and allowances of any nature at any time issued, owing, granted, outstanding available or claimed (calculated without duplication of deductions taken pursuant to the exclusion of Ineligible Receivables), adjusted on any date of determination to exclude, without duplication, all Qualified Receivables that are Ineligible Receivables.

“Eligible Semi-Finished Goods Inventory” means all Semi-Finished Goods Inventory that is Eligible Inventory.

“Environmental Laws” means all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or the effects of the environment on health and safety.

“Equity Interests” means (i) shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person or (ii) any warrants, options or other rights to acquire such shares or interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower or any Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code or,

solely for purposes of Section 302 of ERISA and Section 412 of the Internal Revenue Code, is treated as a single employer under Section 414 of the Internal Revenue Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (except an event for which the 30-day notice period is waived); (b) the failure to satisfy the applicable minimum funding standard under Section 412 of the Internal Revenue Code or Section 302 of ERISA with respect to any Plan, whether or not waived; (c) the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA), within the meaning of Title IV of ERISA.

1. **“ESG KPI Annual Report”** means an annual report prepared by the Borrower 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 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.

2. **“ESG KPI Commitment Fee Adjustment”** has the meaning set forth in Section 2.08(a).

3. **“ESG KPI Pricing Adjustment”** has the meaning set forth in the definition of “Applicable Rate”.

“ESG KPI Requirements” means each of the requirements set forth on Schedule 1.01(c).

4. **“ESG KPI Requirements Assurance Provider”** means any assurance provider (or replacement thereof) as designated from time to time by the Borrower 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.

“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.

~~**“Eurodollar Lending Office”** means, as to each Lender, its office, branch or affiliate located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Eurodollar Lending Office) or such other office, branch or affiliate of such Lender as it may hereafter designate as its Eurodollar Lending Office by notice to the Borrower and the Administrative Agent.~~

~~**“Eurodollar Loan”** means a Eurodollar Tranche A Loan or a Eurodollar Tranche B Loan.~~

~~**“Eurodollar Tranche A Loan”** means a Tranche A Loan that bears interest at a Eurodollar Rate pursuant to the applicable Notice of Borrowing or Notice of Interest Rate Election.~~

~~**“Eurodollar Tranche B Loan”** means a Tranche B Loan that bears interest at a Eurodollar Rate pursuant to the applicable Notice of Borrowing or Notice of Interest Rate Election.~~

~~**“Eurodollar Rate”** means a rate of interest determined pursuant to Section 2.06(b) on the basis of an Adjusted LIBO Rate.~~

“Events of Default” has the meaning specified in Article 7.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

“Excluded Capital Expenditures” means, for any period, (a) Financed Capital Expenditure during such period, (b) with respect to periods ending prior to the second anniversary of the Effective Date, any Capital Expenditures in an amount not to exceed \$200,000,000 in the aggregate for such period (or \$400,000,000 in the aggregate for all such periods), in connection with the Revitalization Program (as set forth in a certificate delivered to the Administrative Agent by the Borrower) and (c) Permanently Idled Operations Capital

Expenditures in an amount not to exceed \$200,000,000 in the aggregate for all such periods.

“Excluded Subsidiary” means Chicago Lakeside Development LLC; *provided*, that the foregoing Person shall not constitute an Excluded Subsidiary for purposes of Section 5.08.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.24) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.22, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.22(f) and (d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning set forth in the first recital of this Agreement.

“Existing Letters of Credit” means the letters of credit issued prior to the Effective Date pursuant to the Existing Credit Agreement, as identified on Schedule 2.16.

“Existing Obligations” has the meaning set forth in Section 1.06(a).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental

agreement, treaty or convention among Governmental Authorities and implementing such section of the Code.

“FCA” has the meaning assigned to such term in Section 1.05.

“**Federal Funds Rate**” means, for any day, the rate ~~per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal~~ calculated by the NYFRB based on such day’s federal funds transactions ~~with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so~~ by depositary 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, ~~and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to JPMorgan Chase Bank, N.A. on such day on such transactions as determined by the Administrative Agent by the NYFRB as the effective federal funds rate; provided, further,~~ 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.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System of the United States.

“**Financed Capital Expenditures**” means, for any period, Capital Expenditures during such period to the extent made with proceeds of (w) the issuance of Qualified Equity Interests since January 1, 2016 (without regard to the period in which such Qualified Equity Interests were issued), (x) insurance covering such capital asset, (y) any taking under the power of eminent domain or by condemnation or similar proceeding of such capital asset or (z) Capital Lease Obligations incurred to make such Capital Expenditure or other Debt (other than revolving Debt) incurred to make such Capital Expenditure.

“**Financial Officer**” means the chief financial officer, treasurer, any assistant treasurer, the controller, or any assistant controller of the Borrower.

“**Financing Transactions**” means the execution, delivery and performance by the Borrower of the Loan Documents, the Borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder, and the creation or continuation of Liens pursuant to the Security Documents.

“**Finished Goods Inventory**” means finished goods to be sold by a Credit Party in the ordinary course of business, including plates, finished tubes and

coupling, tin plates and finished sheets, but excluding Semi-Finished Goods Inventory and Raw Materials Inventory.

“**Fiscal Quarter**” means a fiscal quarter of the Borrower.

“**Fiscal Year**” means a fiscal year of the Borrower.

“**Fitch**” means Fitch, Inc.

“**Fixed Charge Coverage Ratio**” means the ratio of (a) (i) Consolidated EBITDA *less* (ii) the sum of (A) any Capital Expenditure (other than any Excluded Capital Expenditure) during such period and (B) income tax expense of the Borrower and its Subsidiaries paid in cash net of any tax refunds received during such period *to* (b) Consolidated Fixed Charges, in each case for the period of the most recent four consecutive Fiscal Quarters for which financial statements have been delivered pursuant to Section 5.01, taken as one accounting period. If during such period of four consecutive Fiscal Quarters, the Borrower or any Subsidiary shall have made an acquisition or a disposition of an operating business, the Fixed Charge Coverage Ratio for such period shall be calculated after giving pro forma effect thereto as if such acquisition or disposition, as the case may be, occurred on the first day of such period.

“**Foreign Lender**” means any Lender that is not a U.S. Person.

“**Foreign Subsidiary**” means a Subsidiary (which may be a corporation, limited liability company, partnership or other legal entity) organized under the laws of a jurisdiction outside the United States, and conducting substantially all its operations outside the United States.

“**GAAP**” means generally accepted accounting principles as in effect from time to time in the United States, applied on a basis consistent (except for changes concurred in by the Borrower’s independent public accountants) with the most recent audited consolidated financial statements of the Borrower and its consolidated Subsidiaries delivered to the Lenders.

“**Governmental Authority**” means the government of the United States, any other nation or, in each case, any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Group of Loans**” or “**Group**” means, at any time, a group of Loans consisting of (i) all Tranche A Loans which are Base Rate Tranche A Loans at such time, (ii) all Tranche B Loans which are Base Rate Tranche B Loans at such time, (iii) all Tranche A Loans which are **Eurodollar Term Benchmark** Tranche A Loans having the same Interest Period at such time and (iv) all Tranche B Loans which are **Eurodollar Term Benchmark** Tranche B Loans having the same Interest Period at such time.

“**Guarantee**” by any Person (the “**guarantor**”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Debt of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Debt, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Debt or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Debt; *provided* that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business.

“**Hazardous Materials**” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other hazardous or toxic materials, substances or wastes of any nature regulated pursuant to any Environmental Law.

“**Hedging Agreement**” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest rate, currency exchange rate or commodity price hedging arrangement.

“**Impacted Interest Period**” has the meaning set forth in the definition of “London Interbank Offered Rate” in Section 2.06.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“**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 Debt incurred to refinance, in whole or in part, such obligations.

“**Ineligible Inventory**” means all Qualified Inventory described in at least one of the following clauses:

(a) Qualified Inventory that is not subject to a perfected first priority Lien in favor of the Collateral Agent or that is subject to any Lien other than the Liens permitted pursuant to Section 6.01; or

(b) Qualified Inventory that is not located at or in transit to property that is either owned or leased by any Credit Party; *provided* that any Qualified Inventory located at or in transit to property that is leased by any Credit Party shall be deemed “Ineligible Inventory” pursuant to this clause (b) unless such Credit Party shall have delivered to the Collateral Agent a Collateral Access Agreement (or, if applicable, a landlord waiver in form and substance satisfactory to the Collateral Agent) with respect to such leased location; and *provided further* that any Qualified Inventory located at or in transit to a Third-Party Location shall not be deemed “Ineligible Inventory” pursuant to this clause (b) on any date of determination if either (A)(i) the value of such Qualified Inventory on such date of determination (as reflected on the plant level records of such Credit Party and consistent with such Credit Party’s current and historical accounting practices whereby manufactured items are valued at pre-determined costs and purchased items are valued at rolling average actual cost) is greater than \$500,000, (ii) such Credit Party shall have delivered to the Collateral Agent a Collateral Access Agreement with respect to such Third-Party Location, (iii) the aggregate number of Third-Party Locations designated by such Credit Party as eligible locations in respect of which Qualified Inventory shall be excluded from “Ineligible Inventory” in reliance on this clause (b) does not exceed 100 on such date of determination and (iv) in the case of any Third-Party Location owned or leased by a Borrower Joint Venture, the terms of the joint venture arrangements in respect of such Borrower Joint Venture are satisfactory to the Collateral Agent and the Lenders or (B) to the extent such Qualified Inventory does not satisfy the conditions described in clause (A), such Qualified Inventory is in an aggregate amount not to exceed \$25,000,000; or

(c) Qualified Inventory that is on consignment and Qualified Inventory subject to a negotiable document of title (as defined in the UCC); or

- (d) Qualified Inventory located on the premises of customers or vendors (other than Outside Processors); or
- (e) Qualified Inventory comprised of Finished Goods Inventory and Semi-Finished Goods Inventory that has been written down pursuant to any Credit Party's existing accounting procedures; *provided* that the scrap value of such Qualified Inventory will be included in the calculation of "Eligible Inventory"; or
- (f) Qualified Inventory that consists of maintenance spare parts; or
- (g) Qualified Inventory that is classified as supplies or sundry in any Credit Party's historical and current accounting records, including, but not limited to, fuel oil, coal chemicals, metal products, miscellaneous, non-LIFO inventory, store supplies, cleaning mixtures, lubricants and the like; or
- (h) Qualified Inventory that is billed not shipped Inventory; or
- (i) Qualified Inventory considered non-conforming, which shall mean, on any date, all inventory classified as "non-prime" or "seconds" or other "off-spec" Inventory, to the extent that such Qualified Inventory exceeds 3% of Total Qualified Inventory; *provided* that only the amount in excess of 3% shall be deemed ineligible, and further provided that the scrap value of such Qualified Inventory in excess of 3% of Total Qualified Inventory shall be included in the calculation of Eligible Inventory. For purposes of this clause (i), "Total Qualified Inventory" means all Raw Materials Inventory, Finished Goods Inventory and Semi-Finished Goods Inventory; or
- (j) Qualified Inventory that is not located in the United States other than Qualified Inventory in an aggregate amount not to exceed \$25,000,000 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 Qualified Inventory; or
- (k) Qualified Inventory that is not owned solely by a Credit Party, or as to which a Credit Party does not have good, valid and marketable title thereto; or
- (l) intercompany profit included in the value of Qualified Inventory; or

(m) Qualified Inventory that consists of scale, slag and other by-products; or

(n) Qualified Inventory that consists of raw materials other than iron ore, coke, coal, scrap, limestone, other alloys and fluxes; or

(o) Qualified Inventory that does not otherwise conform to the representations and warranties contained in this Agreement or the other Loan Documents; or

(p) depreciation included in the value of Qualified Inventory; or

(q) non-production costs included in the value of Qualified Inventory; or

(r) (i) Semi-Finished Goods Inventory and Finished Goods Inventory that are less than 12 months old and are reserved under the Borrower's inventory policy as in effect at the time of determination and (ii) Semi-Finished Goods Inventory and Finished Goods Inventory that are more than twelve months old; *provided* that, in each case, the scrap value of such inventory shall be included in the calculation of Eligible Inventory;

(s) Qualified Inventory which was acquired or originated by a Person acquired in a Permitted Acquisition, including, for the avoidance of doubt, the Specified Acquisition, to the extent the Qualified Inventory of such Person is in excess of the lesser of (x) 10% of the aggregate amount of the Lenders' Commitments at such time and (y) 10% of the Aggregate Borrowing Base (as reported in the most recent Borrowing Base Certificate delivered to the Administrative Agent in accordance herewith) then in effect (until such time as the Administrative Agent has received the results of a field examination and appraisal as to such Qualified Inventory and such Person, which field examination and appraisal is reasonably satisfactory to the Administrative Agent); it being understood that only the excess of the Qualified Inventory of such Person over the lesser of the foregoing clauses (x) or (y) shall constitute "Ineligible Inventory"; or

(t) such other Qualified Inventory as may be deemed ineligible by the Collateral Agent from time to time in its Permitted Discretion.

"Ineligible Receivables" means all Qualified Receivables described in at least one of the following clauses:

(a) Qualified Receivables that are not subject to a perfected first priority Lien in favor of the Collateral Agent or that are subject to any Lien other than the Liens permitted pursuant to Section 6.01;

(b) Qualified Receivables that (i) 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 or (ii) payment of which are directed to an account other than a Blocked Account (it being understood that, following the addition of any Subsidiary as a Subsidiary Guarantor hereunder, this clause (ii) shall not apply with respect to Qualified Receivables of such Subsidiary Guarantor prior to the date that is 60 days after the date such Subsidiary is added as a Subsidiary Guarantor (or such longer period as the Collateral Agent may agree));

(c) Unless constituting Qualified Long Dated Receivables, Qualified Receivables (i) with respect to which the scheduled due date is more than 65 days (or, if the Account Debtor with respect thereto has an Investment Grade Rating, 90 days) after the date of the original invoice therefor, (ii) which are unpaid for more than 60 days after the original date payment is due (in determining the aggregate amount from the same Account Debtor that is unpaid hereunder, such amount shall be the gross amount due in respect of the applicable Receivables without giving effect to any net credit balances) or (iii) which have been written off the books of the applicable Credit Party or otherwise designated as uncollectible;

(d) Qualified Receivables which are owing by an Account Debtor for which more than 50% of the Receivables owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c)(ii);

(e) Qualified Receivables which are owing by an Account Debtor to the extent the aggregate amount of Receivables (excluding Receivables ineligible under the provisions of this definition other than this clause (e)) owing from such Account Debtor and its Affiliates to all Credit Parties exceed 20% of the aggregate amount of Eligible Receivables of all Credit Parties;

(f) Qualified Receivables that do not otherwise conform to the representations and warranties contained in this Agreement or the other Loan Documents;

(g) Qualified Receivables which (i) do not arise from the sale of goods in the ordinary course of business, (ii) are not evidenced by an invoice or other documentation satisfactory to the Collateral Agent, in its Permitted Discretion, which has been sent to the Account Debtor, (iii)

represent a progress billing, (iv) are contingent upon the applicable Credit Party's completion of any further performance, (v) represent a sale on a bill-and-hold, guaranteed sale, sale and return, sale on approval, cash-on-delivery or any other repurchase or return basis or (vi) relate to payments of interest;

(h) Qualified Receivables for which the goods giving rise thereto have not been shipped to the Account Debtor or goods giving rise thereto which have been shipped, but title has not passed or if such Qualified Receivable was invoiced more than once;

(i) Qualified Receivables which are owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws (other than post-petition accounts payable of an Account Debtor that is a debtor in possession and acceptable to the Collateral Agent in its Permitted Discretion), (iv) admitted in writing its inability, or is generally unable, to pay its debts as they become due, (v) become insolvent, (vi) ceased operation of its business or (vii) sold all or substantially all of its assets;

(j) Qualified Receivables which are owed (i) in a currency other than Dollars or (ii) by an Account Debtor which (A) is not invoiced at an address in the United States or Canada or (B) is not organized under applicable law of the United States, any state thereof or the District of Columbia or Canada or any province in Canada other than, in the case of clause (ii), (x) Qualified Receivables backed by a letter of credit or other credit insurance acceptable to the Collateral Agent, in its Permitted Discretion, which, in the case of a letter of credit, (i) such letter of credit is in the possession of, and directly drawable by, the Collateral Agent or (ii) such letter of credit (or the proceeds thereof) is assigned to the Collateral Agent (via an assignment substantially in the form of Exhibit A-2, or any other form approved by the Administrative Agent in its sole discretion) and (y) Qualified Receivables as to which the Account Debtor is a Qualified Foreign Account Debtor in an aggregate amount for all such Qualified Receivables not to exceed \$50,000,000;

(k) Qualified Receivables which are owed by (i) a Governmental Authority of any country other than the United States,

unless such Qualified Receivables are backed by a letter of credit acceptable to the Collateral Agent, in its Permitted Discretion, which is in the possession of, and is directly drawable by, the Collateral Agent or (ii) any Governmental Authority of the United States, or any department, agency, public corporation or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Collateral Agent in such Qualified Receivables, have been complied with to the Collateral Agent's satisfaction in its Permitted Discretion;

(l) Qualified Receivables which are owed by (i) any Affiliate of a Credit Party, (ii) a Borrower Joint Venture (other than Qualified Receivables in an aggregate amount not to exceed \$25,000,000 at any time; *provided* that (1) the underlying sales agreement in respect of such Qualified Receivables requires that payment be made to the applicable Credit Party in cash in accordance with the Borrower's standard policies and (2) sales to such Borrower Joint Venture are conducted on arm's length terms) or (iii) any employee, officer, director, agent or stockholder of any Credit Party or Affiliate of any Credit Party or of any Borrower Joint Venture;

(m) Qualified Receivables with respect to which the Account Debtor on such Receivables or any of its Affiliates is also a supplier to or creditor of a Credit Party, to the extent of the applicable offset (it being understood that ineligibility under this clause (m) shall be calculated as set forth in Exhibit D);

(n) Qualified Receivables which are subject to any deduction, reduction, partial payment, debit memos, chargebacks, counterclaim, discount, allowance, rebate, credit, return privilege, exchange rate adjustment, other adjustments or other conditions other than volume sales discounts given in the ordinary course of business of the applicable Credit Party; *provided*, however, that such Receivables shall be ineligible pursuant to this clause (n) only to the extent of such deduction, reduction, partial payment, debit memo, chargeback, counterclaim, discount, allowance, rebate, credit, return privilege, exchange rate adjustment, other adjustment or other condition;

(o) Qualified Receivables which do not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including the Federal Consumer Credit

Protection Act, the Federal Truth in Lending Act and Regulation Z of the Federal Reserve Board;

(p) Qualified Receivables which are for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (whether written or oral) that indicates or purports that any Person other than a Credit Party has an ownership interest in such goods, or which indicates that any Person other than a Credit Party as payee or remittance party;

(q) Qualified Receivables (i) with respect to which any check or other instrument or payment has been returned uncollected for any reason or (ii) which are evidenced by any promissory note, chattel paper or instrument;

(r) Qualified Receivables as to which the underlying contract or agreement is governed by (or, if no governing law is expressed therein, is deemed to be governed by) the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia or Canada or any province thereof;

(s) Qualified Receivables which were acquired or originated by a Person acquired in a Permitted Acquisition, including, for the avoidance of doubt, the Specified Acquisition, to the extent the Qualified Receivables of such Person is in excess of the lesser of (x) 10% of the aggregate amount of the Lenders' Commitments at such time and (y) 10% of the Aggregate Borrowing Base (as reported in the most recent Borrowing Base Certificate delivered to the Administrative Agent in accordance herewith) then in effect (until such time as the Administrative Agent has received the results of a field examination and appraisal as to such Qualified Receivables and such Person, which field examination and appraisal is reasonably satisfactory to the Administrative Agent); it being understood that only the excess of the Qualified Receivables of such Person over the lesser of the foregoing clauses (x) or (y) shall constitute "Ineligible Receivables"; or

(t) such other Qualified Receivables as may be deemed ineligible by the Collateral Agent from time to time in its Permitted Discretion.

"Interest Period" means, with respect to each EurodollarTerm Benchmark Loan, the period commencing on the date of borrowing specified in the applicable Notice of Borrowing or on the date specified in the applicable Notice of Interest Rate Election and ending one, ~~two~~, three or six months

thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower may elect in such notice; *provided* that:

(a) any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; ~~and~~

(c) no tenor that has been removed from this definition pursuant to Section 2.19(f) shall be available for specification in such Notice of Borrowing or Interest Election Request; and

(~~ed~~) no Interest Period may end after the Stated Termination Date.

“**Internal Revenue Code**” or “**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Interpolated Rate**” means, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

“**Inventory**” has the meaning set forth in Article 9 of the UCC.

“**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.

“**IRS**” means the United States Internal Revenue Service.

“**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.](#)

“**LC Commitment Amount**” means (a) as to each LC Issuing Bank party hereto as of the Effective Date, the commitment amount set forth opposite its name in the LC Commitment Schedule and (b) as to each LC Issuing Bank that becomes an LC Issuing Bank hereunder after the date hereof, the commitment amount of such LC Issuing Bank set forth in the instrument under which such LC Issuing Bank becomes an LC Issuing Bank. The LC Commitment Amount of any LC Issuing Bank may be changed by written agreement between the Borrower and such LC Issuing Bank, with notice to the Administrative Agent, without the consent of any other party hereto.

“**LC Commitment Schedule**” means the LC Commitment Schedule attached hereto.

“**LC Disbursement**” means a payment made by an LC Issuing Bank in respect of a drawing under a Letter of Credit.

“**LC Exposure**” means, at any time, the sum of (a) the aggregate undrawn amount of all Letters of Credit outstanding at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Tranche A Lender at any time will be its Percentage of the total LC Exposure at such time.

“**LC Issuing Bank**” means JPMorgan Chase Bank, N.A., Bank of America, N.A., Wells Fargo Bank, National Association, Barclays Bank PLC, BMO Harris Bank N.A., PNC Bank, National Association, SunTrust Bank, Credit Suisse AG, Cayman Islands Branch, Citibank, N.A., Morgan Stanley Bank, N.A., Citizens Bank, N.A., ING Capital LLC and any other Lender acceptable to the Administrative Agent and the Borrower that may agree in its sole discretion to issue Letters of Credit hereunder, in each case in its capacity as an issuer of a Letter of Credit, and their respective successors in such capacity as provided in Section 2.16(i). Any LC Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term “LC Issuing Bank” shall include each such Affiliate with respect to Letters of Credit issued by it.

“LC Reimbursement Obligations” means, at any time, all obligations of the Borrower to reimburse any LC Issuing Bank for amounts paid by it in respect of drawings under Letters of Credit, including any portion of such obligations to which Lenders have become subrogated by making payments to any LC Issuing Bank pursuant to Section 2.16(e).

“LC Sublimit” means \$429,000,000.

“Lender Affiliate” means, with respect to any Lender, (i) an Affiliate of such Lender or (ii) any entity (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers or manages such Lender.

“Lender Parties” means the Lenders, the LC Issuing Banks, and the Agents.

“Lenders” means the Tranche A Lenders and the Tranche B Lenders. Unless the context requires otherwise, the term “Lenders” includes the LC Issuing Banks.

“Letter of Credit” means each Existing Letter of Credit and any letter of credit issued pursuant to this Agreement. For the avoidance of doubt, a Bi-Lateral Letter of Credit (as defined in the Borrower Security Agreement) shall not be a Letter of Credit.

“LIBO Screen Rate” has the meaning set forth in the definition of “London Interbank Offered Rate” in Section 2.06.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“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 Credit Parties and (ii) Aggregate Facility Availability.

“Liquidity Condition” means that, on any date of determination, the Borrower has Liquidity of not less than the sum of (x) \$250,000,000 and (y) the aggregate outstanding principal amount of all Maturing Senior Notes on such date of determination, at least \$150,000,000 of which Liquidity is comprised of Aggregate Facility Availability.

“Loan” means a Tranche A Loan or a Tranche B Loan.

“Loan Documents” means this Agreement, any promissory note issued by the Borrower pursuant to Section 2.17(d), the Security Documents and each Subsidiary Guarantee Agreement.

“London Interbank Offered Rate” ~~has the meaning set forth in Section 2.06(b)~~ applicable to any Interest Period means the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, if such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the “LIBO Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided further, that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) then the London Interbank Offered Rate shall be the Interpolated Rate; provided that if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Long-Term Debt” means any Debt that, in accordance with GAAP, constitutes (or, when incurred, constituted) a long-term liability (other than operating leases characterized as such in accordance with GAAP as in effect immediately prior to the Effective Date).

“Mark-to-Market Value” has the meaning specified in the Borrower Security Agreement.

“Material Adverse Change” means any event, development or circumstance that has had or would reasonably be expected to have a material adverse effect on (a) the business, operations or financial condition of the Borrower and its Subsidiaries taken as a whole or (b) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Administrative Agent and the Lenders thereunder.

“Material Debt” means Debt (other than (i) obligations in respect of the Loans and Letters of Credit and (ii) Debt owed by the Borrower or one of its Subsidiaries solely to the Borrower or another Subsidiary of the Borrower), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$100,000,000. For purposes of determining Material Debt, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time will be the maximum aggregate amount (after giving effect to any enforceable netting agreements) that the Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time in circumstances in which the Borrower or such Subsidiary was the defaulting party.

“Maturing Senior Notes” has the meaning set forth in the definition of “Termination Date”.

“Maximum Facility Availability” means an amount equal to the lesser of (x) the aggregate amount of the Lenders’ Commitments on such date and (y) the Aggregate Borrowing Base on such date.

“Maximum Tranche A Availability” means an amount equal to the lesser of (x) the aggregate amount of the Tranche A Lenders’ Tranche A Commitments on such date and (y) the Tranche A Borrowing Base on such date.

“Maximum Tranche B Availability” means an amount equal to the lesser of (x) the aggregate amount of the Tranche B Lenders’ Tranche B Commitments on such date and (y) the Tranche B Borrowing Base on such date.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Notice of Borrowing” has the meaning set forth in Section 2.02.

“Notice of Interest Rate Election” has the meaning set forth in Section 2.07.

“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.

“Other Benchmark Rate Election” means, if the then-current Benchmark is the London Interbank Offered 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 London Interbank Offered 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 London Interbank Offered Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.24).

“Outside Processor” means any Person that provides processing services with respect to Qualified Inventory owned by a Credit Party and on whose premises Qualified Inventory is located, which premises are neither owned nor leased by such Credit Party.

“Participants” has the meaning specified in Section 9.04(e).

“Participant Register” has the meaning assigned to such term in Section 9.04(e).

“Payment” has the meaning assigned to it in Section 8.14(a).

“Payment Notice” has the meaning assigned to it in Section 8.14(b).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Percentage” means, with respect to any Lender, (a) with respect to the Tranche A Loans, the percentage of the total Tranche A Commitments represented by such Lender’s Tranche A Commitment, (b) with respect to the Tranche B Loans, the percentage of the total Tranche B Commitments represented by such Lender’s Tranche B Commitment and (c) with respect to all Loans, the percentage of the total Commitments represented by such Lender’s Commitment; *provided* that in the case of Section 2.25 when a Defaulting Lender shall exist, “Percentage” shall mean the percentage of the applicable Commitments (disregarding any Defaulting Lender’s applicable Commitment) represented by such Lender’s applicable Commitment. If the Tranche A Commitments and/or the Tranche B Commitments have terminated or expired, the Percentages will be determined based on the Tranche A Commitments and/or the Tranche B Commitments (as applicable) most recently in effect, adjusted to give effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Perfection Certificate” means a certificate in the form of Exhibit A to the applicable Security Agreement or any other form approved by the Administrative Agent.

“Permanently Idled Operations Capital Expenditures” means Capital Expenditures in connection with existing capital assets that are identified in writing to the Administrative Agent as permanently idled or sold to a third party and as not requiring any further Capital Expenditures or investments.

“Permitted Acquisition” means an acquisition permitted hereunder, by merger, consolidation, amalgamation or otherwise, by the Borrower or any Subsidiary of assets (including assets constituting a business unit, line of business or division) or Equity Interests.

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Liens” means:

- (a) Liens imposed by law or regulation for taxes that are not yet due or are being contested in good faith by appropriate proceedings;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, vendors’ and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in good faith by appropriate proceedings;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations (including deposits made in the ordinary course of business to cash collateralize letters of credit described in the parenthetical in clause (i) of the definition of "Debt");

(d) Liens or deposits to secure the performance of bids, trade contracts, leases, Hedging Agreements, statutory or regulatory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, and Liens imposed by statutory or common law relating to banker's liens or rights of set-off or similar rights relating to deposit accounts, in each case in the ordinary course of business;

(e) Liens arising in the ordinary course of business in favor of issuers of documentary letters of credit;

(f) judgment liens in respect of judgments that do not constitute an Event of Default under clause (l) of Article 7; and

(g) easements, zoning restrictions, rights-of-way, licenses, reservations, minor irregularities of title and similar encumbrances on real property imposed by law or regulation or arising in the ordinary course of business that do not secure any monetary obligation and do not materially detract from the value of the affected property for its current use or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

provided that the term "Permitted Liens" shall not include any Lien that secures Debt.

"Permitted Supply Chain Financing" means (i) any supply chain financing or other factoring transaction whereby the Receivables payable by a particular customer of a Credit Party are sold or pledged as collateral by a Credit Party to a third-party financing source on a basis that is non-recourse to the applicable Credit Party and (ii) the Specified Financing. Unless otherwise agreed by the Collateral 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).

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

“Plan” means any employee pension benefit plan (except a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Internal Revenue Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA.

“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.

“Prevailing Eastern Time” means “eastern standard time” as defined in 15 USC §263 as modified by 15 USC §260a.

“Pricing Schedule” means the Pricing Schedule attached hereto.

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

“PTE” means a prohibited transaction class exemption issued by the United States Department of Labor, as any such exemption may be amended from time to time.

“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 it in Section 9.17.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified Foreign Account Debtor” means an Account Debtor that is a Subsidiary of a Qualified Parent.

“Qualified Inventory” means all Raw Materials Inventory, Semi-Finished Goods Inventory and Finished Goods Inventory held by a Credit Party in the normal course of business and owned solely by such Credit Party (per plant level records whereby manufactured items are valued at pre-determined costs and purchased items are valued at rolling average actual cost).

“Qualified Long Dated Receivables” means Qualified Receivables (i) with respect to which the scheduled due date is (A) more than 65 days (or, if the Account Debtor with respect thereto has an Investment Grade Rating, 90 days) after the date of the original invoice therefor and (B) not more than 120 days after the date of the original invoice therefor, (ii) which are not unpaid after the original date payment is due (in determining the aggregate amount from the same Account Debtor that is unpaid hereunder, such amount shall be the gross amount due in respect of the applicable Receivables without giving effect to any net credit balances), (iii) which have not been written off the books of the applicable Credit Party or otherwise designated as uncollectible and (iv) which are not owing by an Account Debtor for which more than 50% of the Receivables owing from such Account Debtor and its Affiliates are unpaid after the original date payment is due; provided, that the aggregate amount of Qualified Receivables that shall constitute Qualified Long Dated Receivables shall not exceed \$125,000,000 at any time (it being agreed that, in determining the aggregate amount of Qualified Receivables that shall constitute Qualified Long Dated Receivables hereunder, such amount shall be the gross amount due in respect of the applicable Receivables without giving effect to any net credit balances).

“Qualified Parent” means any Person that (a) as of the Effective Date, is set forth on Schedule 1.01(b) hereto, as such schedule may be amended by the Collateral Agent in its Permitted Discretion following the completion of customary field exam diligence or (b) after the Effective Date, is identified by the Borrower and acceptable to the Collateral Agent in its Permitted Discretion following the completion of customary field exam diligence.

“Qualified Receivables” means all Receivables that are directly created by a Credit Party in the ordinary course of business arising out of the sale of Inventory by such Credit Party, which are at all times acceptable to the Collateral Agent in all respects in the exercise of its reasonable judgment and the customary credit policies of the Collateral Agent.

“Quarterly Payment Dates” means each March 31, June 30, September 30, and December 31.

“Rating Agency” means each of S&P, Fitch and Moody’s.

“Raw Materials Inventory” means any raw materials used or consumed in the manufacture or production of other inventory including, iron ore and sinter, coke, coal, limestone and other alloys and fluxes, steel scrap and iron scrap .

“Receivables” means any account or payment intangible (each as defined in the UCC) and any other right, title or interest which, in accordance with GAAP, would be included in receivables on a consolidated balance sheet of the Borrower.

“Recipient” means the Administrative Agent, any LC Issuing Bank or any Lender, as applicable.

“Reference Time” with respect to any setting of the then-current Benchmark means (a) if such Benchmark is London Interbank Offered Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting or (b) if such Benchmark is not the London Interbank Offered Rate, the time determined by the Administrative Agent in its reasonable discretion.

“Register” has the meaning specified in Section 9.04(c).

“Regulation U” means Regulation U of the Federal Reserve Board, as in effect from time to time.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and its Affiliates.

“Release Conditions” has the meaning assigned to such term in each Security Agreement.

“Relevant Governmental Body” means the Federal Reserve Board and/ or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Repayment Date” means the date on which all Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or been cancelled and all LC Disbursements have been reimbursed.

“Required Lenders” means, at any time, Lenders having more than 50% of the aggregate Credit Exposures of all Lenders at such time, in each case exclusive of Defaulting Lenders.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest in the Borrower, or any payment (whether in cash, securities or other property) or incurrence of an obligation by the Borrower or any of its Subsidiaries, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interest in the Borrower (including, for this purpose, any payment in respect of any Equity Interest under a Synthetic Purchase Agreement).

“Revitalization Program” means the multi-year, comprehensive asset revitalization program announced by the Borrower on January 31, 2017 pursuant to which up to \$2,000,000,000 shall be invested by the Borrower in the improvement of safety, quality, delivery and cost and delivery performance of the Borrower’s capital and other assets.

“Revolving Credit Period” means the period from and including the Effective Date to, but excluding, the Termination Date.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“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 United States Securities and Exchange Commission.

“Secured Derivative Obligations” has the meaning specified in Section 1 of the Borrower Security Agreement.

“Secured Obligations” means any and all “Secured Obligations”, as defined in any Security Agreement.

“Secured Parties” means any and all “Secured Parties”, as defined in any Security Agreement.

“Security Agreement” means each of the Borrower Security Agreement and the Subsidiary Security Agreement.

“Security Documents” means each Security Agreement and each other security agreement, instrument or document executed and delivered pursuant to Section 5.10 to secure any of the Secured Obligations.

“Semi-Finished Goods Inventory” means semi-finished goods produced or used by a Credit Party in the ordinary course of business, including slabs, blooms, rounds, coiled strip, black plate, sheets hot rolled and cold rolled, unfinished tubes and pig iron.

“Senior Debt Rating” means a rating of the Borrower’s senior long-term debt that is not secured or supported by a guarantee, letter of credit or other form of credit enhancement; *provided* that if a Senior Debt Rating by a Rating Agency is required to be at or above a specified level and such Rating Agency shall have changed its system of classifications after the date hereof, the requirement will be met if the Senior Debt Rating by such Rating Agency is at or above the new rating which most closely corresponds to the specified level under the old rating system; and *provided further* that the Senior Debt Rating in effect on any date is that in effect at the close of business on such date.

“Senior Notes” means any of the 2020 Notes, the 2021 Notes and any Additional Senior Secured Debt.

“Senior Notes Documents” means (a)(i) the Indenture, dated as of May 21, 2007, between the Borrower and the Senior Notes Trustee and (ii) the Fourth Supplemental Indenture, dated as of March 19, 2010, between the Borrower and the Senior Notes Trustee, (b) the Indenture dated as of May 10, 2016, between the Borrower and U.S. Bank National Association (and its successors in such capacity) and (c) with respect to any Additional Senior Secured Debt, the indenture, supplemental indenture, credit agreement or similar instrument governing or otherwise establishing such Additional Senior Secured Debt.

“Senior Notes Event” means, with respect to any series of Senior Notes, any of the following: (a) the redemption, repayment, defeasance or other discharge, in full, of such series of Senior Notes (including, in each case, all accrued but unpaid interest, fees and other amounts in respect thereof) in accordance with the terms of the applicable Senior Notes Documents (other than with the proceeds of Debt); (b) the amendment to or other modification of such series of Senior Notes and the applicable Senior Notes Documents causing the stated maturity date of such series of Senior Notes to be extended to a date that is at least 91 days after the Stated Termination Date; and/or (c) the refinancing of such series of Senior Notes with Debt having a maturity date that is at least 91 days after the Stated Termination Date; provided that, in the case of clauses (b) and (c) of this definition, such series of Senior Notes 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 Stated Termination Date 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 Stated Termination Date.

“Senior Notes Trustee” means The Bank of New York Mellon and its successors in such capacity.

“Share Repurchase Program” means any agreement, combination of agreements or policy of the Borrower (which policy has been approved by a majority of the board of directors of the Borrower) that is in effect on the Effective Date, pursuant to which the Borrower is or may become obligated to repurchase Equity Interests issued by it that are held by third parties in an amount determined by reference to the price or value of the Borrower’s Equity Interests so repurchased at the time of such repurchase.

“Significant Subsidiary” means any Subsidiary Guarantor and any subsidiary of the Borrower, whether now or hereafter owned, formed or acquired that, at the time of determination is a “significant subsidiary” of the Borrower, as such term is defined on the date of this Agreement in Regulation S-X of the SEC (a copy of which is attached as Exhibit G).

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published 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.

“**Specified Acquisition**” means the acquisition by U.S. Steel Holdco LLC, directly or indirectly, of 49.9% of the equity interests in Big River Steel Holdings LLC pursuant to the Big River Acquisition Agreement.

“**Specified Financing**” means a financing evidenced by Specified Financing Documents.

“**Specified Financing Documents**” means (i)(x) that certain Export-Import Transaction Specific Loan and Security Agreement, dated as of September 30, 2020 by and among the Borrower, USSI, the lenders from time to time parties thereto and PNC Bank, National Association, as Agent (the “**ExIm Loan Agreement**” and (y) the “Other Documents” as defined in the ExIm Loan Agreement and (ii) the documentation for any financing transaction that amends, amends and restates, supplements, modifies, extends, replaces, renews, restates or refinances the financing provided for under the Specified Financing Documents described in clause (i) (such financing described in clause (i), the “**Initial Specified Financing**”), so long as (x) the Receivables securing such Specified Financings are attributable solely to Specified Financing Eligible Account Debtors and (y) the material terms of such financing transaction (other than amounts, yield, fees or other compensatory economics, maturity, advance rates and other economic terms) are substantially consistent with the material terms of the Initial Specified Financing; provided that a certificate of the Borrower certifying in good faith that the material terms of such financing transaction are substantially consistent with the material terms of the Initial Specified Financing shall satisfy the requirements of this clause (y).

“**Specified Financing Eligible Account Debtor**” means (i) Algoma Steel Inc. and any of its subsidiaries, (ii) Stelco Holdings Inc. and any of its subsidiaries or (iii) the Account Debtor identified to the Administrative Agent by the Borrower on the Amendment No. 1 Effective Date and any of its subsidiaries; provided, the Borrower may make a one-time election to replace such Account Debtor set forth in this clause (iii) upon at least three Business Days’ prior written notice to the Administrative Agent with another Account Debtor identified in such notice (the “**Specified Financing Replacement Account Debtor**”) and subject to the requirements set forth in Section 6.05(b).

“**Specified Financing Replacement Account Debtor**” has the meaning set forth in the definition of Specified Financing Eligible Account Debtor.

“Specified Lender” means a Defaulting Lender or a Downgraded Lender.

“Stated Termination Date” means the fifth anniversary of the Effective Date.

“Statutory Reserve Adjustment” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to Eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Federal Reserve Board). Such reserve percentages will include those imposed pursuant to such Regulation D. Eurodollar Term Benchmark Loans will be deemed to constitute Eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions, or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Adjustment will be adjusted automatically on and as of the effective date of any change in any applicable reserve percentage.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned directly, or indirectly through one or more intermediaries, or both, by such Person; *provided* that the Excluded Subsidiary shall not be considered a Subsidiary of the Borrower. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower. By way of clarification and not limitation, consolidated Subsidiaries do not include variable interest entities—i.e., entities subject to consolidation according to the provisions of the Financial Accounting Standards Board Interpretation No. 46 “Consolidation of Variable Interest Entities” as revised.

“Subsidiary Guarantee Agreement” means each of (a) the Guarantee Agreement, dated as of March 1, 2016, by U.S. Steel Seamless Tubular Operations, LLC, for the benefit of JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, (b) the Subsidiary Guarantee Agreement, dated as of November 13, 2018, by United States Steel International, Inc. for the benefit of JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, (c) the Subsidiary Guarantee Agreement, dated as of May 21, 2019, by U. S. Steel Oilwell Services, LLC and U. S. Steel Tubular Products, Inc.

and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent and (d) each other guarantee agreement entered into after the Effective Date by any Subsidiary Guarantor for the benefit of the Administrative Agent and Collateral Agent substantially in the form of Exhibit E hereto.

“Subsidiary Guarantor” means any Domestic Subsidiary that (a) as of the Effective Date, is set forth on Schedule 1.01(a) hereto and (b) after the Effective Date, the Borrower elects to cause to become a Subsidiary Guarantor by fulfilling the Collateral and Guarantee Requirement, in each case, until such time as such Subsidiary Guarantor ceases to be a Subsidiary Guarantor pursuant to the terms of its Subsidiary Guarantee Agreement and the other Loan Documents.

“Subsidiary Security Agreement” means the Second Amended and Restated Subsidiary Security Agreement dated as of the Effective Date, between U.S. Steel Seamless Tubular Operations, LLC, United States Steel International, Inc., U.S. Steel Oilwell Services, LLC and U.S. Steel Tubular Products, Inc., the other Subsidiary Guarantors from time to time party thereto and JPMorgan Chase Bank, N.A., as the Collateral Agent, substantially in the form of Exhibit C-2 hereto.

“Supported QFC” has the meaning assigned to it in Section 9.17.

“Sustainability Structuring Agents” means each of J.P. Morgan Securities LLC and ING Capital LLC, in its capacity as a sustainability structuring agent with respect to the credit facility provided under this Agreement.

“Synthetic Purchase Agreement” means any swap, derivative or other agreement or combination of agreements pursuant to which the Borrower or a Subsidiary is or may become obligated to make (i) any payment in connection with the purchase by any third party, from a Person other than the Borrower or a Subsidiary, of any Equity Interest or (ii) any payment (other than on account of a permitted purchase by it of any Equity Interest) the amount of which is determined by reference to the price or value at any time of any Equity Interest; *provided* that no phantom stock or similar plan providing for payments only to current or former directors, officers or employees of the Borrower or its Subsidiaries (or their heirs or estates) will be deemed to be a Synthetic Purchase Agreement.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**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 LIBO Rate.

“**Term Benchmark Lending Office**” means, as to each Lender, its office, branch or affiliate located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its **Term Benchmark Lending Office**) or such other office, branch or affiliate of such Lender as it may hereafter designate as its **Term Benchmark Lending Office** by notice to the Borrower and the Administrative Agent.

“**Term Benchmark Loan**” means a Term Benchmark Tranche A Loan or a Term Benchmark Tranche B Loan.

“**Term Benchmark Tranche A Loan**” means a Tranche A Loan that bears interest at a **Term Benchmark Rate** pursuant to the applicable Notice of Borrowing or Notice of Interest Rate Election.

“**Term Benchmark Tranche B Loan**” means a Tranche B Loan that bears interest at a **Term Benchmark Rate** pursuant to the applicable Notice of Borrowing or Notice of Interest Rate Election.

“**Term Benchmark Rate**” means a rate of interest determined pursuant to Section 2.06(b) on the basis of an Adjusted LIBO Rate.

“**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.

“**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 2.14 that is not Term SOFR.

“**Termination Date**” means the Stated Termination Date; *provided, however*, that if, as of the Early Maturity Date with respect to any series of Senior

Notes, a Senior Notes Event with respect to such series of Senior Notes has not occurred (such series, “**Maturing Senior Notes**”), then the Termination Date shall be the Early Maturity Date with respect to such Maturing Senior Notes (the occurrence of the event described in this proviso, an “**Early Maturity Event**”); *provided further, however*, that if a Senior Notes Event with respect to such Maturing Senior Notes has not occurred prior to the Early Maturity Date with respect to such Maturing Senior Notes, but as of the Early Maturity Date with respect to such Maturing Senior Notes (I) the Liquidity Condition is satisfied or (II) the aggregate outstanding principal amount of all Maturing Senior Notes (including any Maturing Senior Notes with respect to any other series of Senior Notes) as of such Early Maturity Date does not exceed \$65,000,000, then (a) an Early Maturity Event shall not occur and (b) the Termination Date shall continue to be the Stated Termination Date unless, as of any time (the date on which such time occurs, the “**Accelerated Termination Date**”) on or after the Early Maturity Date with respect to such Maturing Senior Notes when a Senior Notes Event with respect to such Maturing Senior Notes has not occurred, (x) the Liquidity Condition is not satisfied and (y) the condition specified in clause (II) above is not satisfied, in which event the Termination Date shall be the Accelerated Termination Date. In addition, with respect to any series of Senior Notes, if (A) the Senior Notes Documents have been amended in order to cause a Senior Notes Event set forth in clause (b) of the definition thereof to occur, or if any of the Senior Notes have been refinanced with Debt in order to cause a Senior Notes Event set forth in clause (c) of the definition thereof to occur and (B) the Senior Notes Documents (or the operative documents in respect of any such refinancing Debt) 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 “Senior Notes Event” are no longer satisfied, then, unless at the applicable time (x) the Liquidity Condition is satisfied or (y) the condition specified in clause (II) above is satisfied, the Termination 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 Senior Notes, shall be the Early Maturity Date with respect to such series of Senior Notes).

“**Third-Party Location**” means any property that is either owned or leased by (a) a Third-Party Warehouseman, (b) an Outside Processor, or (c) a Borrower Joint Venture.

“**Third-Party Warehouseman**” means any Person on whose premises Qualified Inventory is located, which premises are neither owned nor leased by a Credit Party, any customer of or vendor to a Credit Party, or an Outside Processor.

“Total Outstanding Amount” means, at any date, the sum of the aggregate outstanding principal amount of all Loans plus the aggregate LC Exposures of all Lenders at such date.

“Total Tranche A Outstanding Amount” means, at any date, the sum of the aggregate outstanding principal amount of all Tranche A Loans plus the aggregate LC Exposures of all Tranche A Lenders at such date.

“Total Tranche B Outstanding Amount” means, at any date, the aggregate outstanding principal amount of all Tranche B Loans at such date.

“Tranche A Available Inventory” means, at any time, the sum of:

(a) the lesser of (i) 80% of Eligible Finished Goods Inventory and (ii) the product of (x) 85% of the net recovery rates as determined by an independent appraisal multiplied by (y) Eligible Finished Goods Inventory; *plus*

(b) the lesser of (i) 75% of Eligible Semi-Finished Goods Inventory and (ii) the product of (x) 85% of the net recovery rates as determined by an independent appraisal multiplied by (y) Eligible Semi-Finished Goods Inventory; *plus*

(c) the lesser of (i) 75% of Eligible Raw Materials Inventory and (ii) the product of (x) 85% of the net recovery rates as determined by an independent appraisal multiplied by (y) Eligible Raw Materials Inventory.

“Tranche A Available Receivables” means, at any time, the sum of (a) 85% of Eligible Receivables (other than Eligible Investment Grade Receivables) plus (b) 90% of Eligible Investment Grade Receivables (in each case, it being understood that Eligible Receivables shall not include any Receivables that have been transferred pursuant to, or that secure, a Permitted Supply Chain Financing).

“Tranche A Borrowing Base” means, at any time, subject to adjustment as provided in Section 5.07(c), an amount equal to the sum of (i) Tranche A Available Receivables *plus* (ii) Tranche A Available Inventory. Standards of eligibility and reserves and advance rates of the Tranche A Borrowing Base may be revised and adjusted from time to time by the Collateral Agent in its Permitted Discretion; *provided* that any such changes in such standards shall be effective five Business Days after delivery of notice thereof to the Borrower; and *provided, further* that the Collateral Agent shall not increase advance rates above the percentages specified in the definitions of **“Tranche A Available Inventory”** and **“Tranche A Available Receivables”**, or standards of eligibility from those

specified herein in a manner that causes the Tranche A Borrowing Base to be increased, except pursuant to an amendment effected in accordance with Section 9.02.

“**Tranche A Commitment**” means (i) with respect to each Lender listed on the Commitment Schedule, the amount set forth opposite such Lender’s name under the heading “Tranche A Commitment” on the Commitment Schedule, (ii) with respect to each Additional Lender, the amount of the Tranche A Commitment assumed by it pursuant to Section 2.15 and (iii) with respect to any substitute Lender or an assignee that becomes a Lender pursuant to Section 2.24 or 9.04, the amount of the transferor Lender’s Tranche A Commitment assigned to it pursuant to Section 9.04, in each case as such amount may be changed from time to time pursuant to Section 2.09 or 9.04; *provided* that, if the context so requires, the term “**Tranche A Commitment**” means the obligation of a Lender to extend credit up to such amount to the Borrower hereunder. As of the Effective Date, the Tranche A Commitments are \$1,850,000,000.

“**Tranche A Lenders**” means, as of any date, Persons having a Tranche A Commitment.

“**Tranche A Loans**” means a loan made pursuant to Section 2.01(a) by any Tranche A Lender; *provided* that, if any such loan or loans (or portions thereof) are combined or subdivided pursuant to a Notice of Interest Rate Election, the term “**Tranche A Loan**” shall refer to the combined principal amount resulting from such combination or to each of the separate principal amounts resulting from such subdivision, as the case may be.

“**Tranche B Available Inventory**” means, at any time, the sum of:

(a) the lesser of (i) 7.5% of Eligible Finished Goods Inventory and (ii) the product of (x) 7.5% of the net recovery rates as determined by an independent appraisal multiplied by (y) Eligible Finished Goods Inventory; *plus*

(b) the lesser of (i) 7.5% of Eligible Semi-Finished Goods Inventory and (ii) the product of (x) 7.5% of the net recovery rates as determined by an independent appraisal multiplied by (y) Eligible Semi-Finished Goods Inventory; *plus*

(c) the lesser of (i) 7.5% of Eligible Raw Materials Inventory and (ii) the product of (x) 7.5% of the net recovery rates as determined by an independent appraisal multiplied by (y) Eligible Raw Materials Inventory.

“Tranche B Available Receivables” means, at any time, the sum of (a) 7.5% of Eligible Receivables (other than Eligible Investment Grade Receivables) plus (b) 2.5% of Eligible Investment Grade Receivables (in each case, it being understood that Eligible Receivables shall not include any Receivables that have been transferred pursuant to, or that secure, a Permitted Supply Chain Financing).

“Tranche B Borrowing Base” means, at any time, subject to adjustment as provided in Section 5.07(c), an amount equal to the sum of (i) Tranche B Available Receivables *plus* (ii) Tranche B Available Inventory. Standards of eligibility and reserves and advance rates of the Tranche B Borrowing Base may be revised and adjusted from time to time by the Collateral Agent in its Permitted Discretion; *provided* that any such changes in such standards shall be effective five Business Days after delivery of notice thereof to the Borrower; and *provided, further* that the Collateral Agent shall not increase advance rates above the percentages specified in the definitions of **“Tranche B Available Inventory”** and **“Tranche B Available Receivables”**, or standards of eligibility from those specified herein in a manner that causes the Tranche B Borrowing Base to be increased, except pursuant to an amendment effected in accordance with Section 9.02.

“Tranche B Commitment” means (i) with respect to each Lender listed on the Commitment Schedule, the amount set forth opposite such Lender’s name under the heading “Tranche B Commitment” on the Commitment Schedule, (ii) with respect to each Additional Lender, the amount of the Tranche B Commitment assumed by it pursuant to Section 2.15 and (iii) with respect to any substitute Lender or an assignee that becomes a Lender pursuant to Section 2.24 or 9.04, the amount of the transferor Lender’s Tranche B Commitment assigned to it pursuant to Section 9.04, in each case as such amount may be changed from time to time pursuant to Section 2.09 or 9.04; *provided* that, if the context so requires, the term **“Tranche B Commitment”** means the obligation of a Lender to extend credit up to such amount to the Borrower hereunder. As of the Effective Date, the Tranche B Commitments are \$150,000,000.

“Tranche B Lenders” means, as of any date, Persons having a Tranche B Commitment.

“Tranche B Loans” means a loan made pursuant to Section 2.01(b) by any Tranche B Lender; *provided* that, if any such loan or loans (or portions thereof) are combined or subdivided pursuant to a Notice of Interest Rate Election, the term **“Tranche B Loan”** shall refer to the combined principal amount resulting from such combination or to each of the separate principal amounts resulting from such subdivision, as the case may be.

“Transaction Liens” means the Liens on Collateral granted by the Credit Parties under the Security Documents.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“UK Financial Institutions” 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.

“Undisclosed Administration” means in relation to a Lender, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed; *provided* that, for the avoidance of doubt, at any time that such appointment is publicly disclosed, such appointment shall no longer be considered an Undisclosed Administration.

“United States” or **“U.S.”** means the United States of America.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to it in Section 9.17.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.22(f)(ii)(B)(3).

“Valuation Reserves” means the sum of the following:

- (a) a favorable variance reserve for variances between pre-determined cost and actual costs;
- (b) a calculated revaluation reserve, as determined by the Collateral Agent in its Permitted Discretion;
- (c) a reserve for costs incurred at headquarters which are allocated to Inventory;
- (d) a lower of cost or market reserve which includes all Inventory sold for less than pre-determined cost as deemed appropriate by the Collateral Agent in its Permitted Discretion;
- (e) a reserve for iron ore transportation costs, as determined by the Collateral Agent in its Permitted Discretion; and
- (f) such other reserves as may be deemed appropriate by the Collateral Agent from time to time in its Permitted Discretion.

“**Vendor Financing Facility**” has the meaning specified in Section 1 of the Borrower Security Agreement.

“**Withdrawal Liability**” means 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.

Section 1.02. . *Types of Borrowing.* The term “Borrowing” denotes (i) the aggregation of Tranche A Loans or Tranche B Loans made or to be made to the Borrower pursuant to Article 2 on the same day, all of which Loans are of the same type and, except in the case of Base Rate Loans, have the same initial

Interest Period or (ii) if the context so requires, the borrowing of such Tranche A Loans or Tranche B Loans. Borrowings are classified for purposes of this Agreement by reference to the pricing of Loans comprising such Borrowing (e.g., a “~~Eurodollar~~Term Benchmark Borrowing” is a Borrowing comprised of ~~Eurodollar~~Term Benchmark Loans).

Section 1.03. . *Terms Generally.* The definitions of terms herein (including those incorporated by reference to another document) apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine, and neuter forms. The words “**include**”, “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation**”. The word “**will**” shall be construed to have the same meaning and effect as the word “**shall**”. Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), any reference herein to any Person shall be construed to include such Person’s successors and assigns, the words “**herein**”, “**hereof**” and “**hereunder**”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and the word “**property**” shall be construed to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.04. . *Accounting Terms; Changes in GAAP.* Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP as in effect from time to time; *provided* that, if the Borrower notifies the Administrative Agent in writing that the Borrower wishes to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof with respect to any provision hereof (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to make a similar request), regardless of whether such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be applied on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or the applicable provision of this Agreement is amended in accordance herewith.

Section 1.05. . *Interest Rates*.~~The~~; LIBOR Notification. The interest rate on a Loan may be derived from an interest rate benchmark that 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 London Interbank Offered 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 London Interbank Offered Rate settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar London Interbank Offered Rate settings will permanently cease; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar London Interbank Offered 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 London Interbank Offered Rate and/or regulators will not take further action that could impact the availability, composition, or characteristics of the London Interbank Offered Rate or the currencies and/or tenors for which the London Interbank Offered 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 London Interbank Offered 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 2.19(b) and (c) provide a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.19(e), 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 ~~(other than as expressly set forth in this Agreement)~~ related to the Daily Simple SOFR, the London Interbank Offered Rate or ~~other rates in the definition of “London Interbank Offered Rate” or~~ with respect to any alternative, ~~comparable~~ or successor rate thereto, or replacement rate ~~therefor~~ thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.19(b) and (c), 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 2.19(d)), including

without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, ~~as it may or may not be adjusted pursuant to Section 2.19~~, will be similar to, or produce the same value or economic equivalence of, the London Interbank Offered Rate or have the same volume or liquidity as did the London Interbank Offered Rate prior to its discontinuance or unavailability. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any Term Benchmark Rate, 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 1.06. . *Outstanding Obligations under Existing Credit Agreement; Reaffirmation; and Reallocation of Commitments.*

(a) The Borrower acknowledges and agrees that all “Secured Obligations” (as defined in the Existing Credit Agreement) outstanding immediately prior to the Effective Date (collectively, the “**Existing Obligations**”) constitute valid and binding obligations of Borrower and Guarantors without offset, counterclaim, defense or recoupment of any kind. Each party hereto acknowledges and agrees that, on the Effective Date, the following transactions shall be deemed to occur automatically, without further action by any party hereto: (a) the Existing Credit Agreement shall be amended and restated in its entirety in the form of this Agreement; *provided* that the rights and obligations of the parties hereto with respect to periods prior to the Effective Date shall be governed by the Existing Credit Agreement, (b) all Existing Obligations which remain unpaid and outstanding as of the Existing Date shall be in all respects continuing and remain outstanding and payable under this Agreement and the other Loan Documents, with only the terms being modified from and after the Effective Date as provided in this Agreement and the other Loan Documents, (c) the Loan Documents, including the Liens and security interests created thereunder in favor of the Collateral Agent, for the benefit of the Secured Parties, as security for the Existing Obligations, are reaffirmed, amended or amended and restated on the Effective Date, and the guarantees of the Existing Obligations, as reaffirmed, amended or amended and restated on the Effective Date, as the case may be, are in all respects continuing and shall remain in full force and effect with respect to all Secured Obligations hereunder and are hereby reaffirmed, (d) notwithstanding anything in Section 2.16 to the contrary, all Existing Letters of Credit will constitute Letters of Credit under this Agreement and (e) all references in the Loan Documents (other than this Agreement and any Loan Document amended

and restated on the Effective Date) to the Existing Credit Agreement shall be deemed to refer without further amendment to this Agreement

(b) Upon the Effective Date, the Administrative Agent shall make such reallocations, if any, of each Lender's Percentage of the total Credit Exposure of all Loans as are necessary in order that the Credit Exposure with respect to such Lender reflects such Lender's Percentage of the total Credit Exposure of all Loans under the Agreement. The Borrower hereby agrees to compensate each Lender for any and all losses, costs, and expenses incurred by such Lender in connection with any sale or assignment of ~~Eurodollar~~ Term Benchmark Loans necessary to effect the reallocation heretofore described on terms and in the manner set forth in Section 2.21 of the Existing Credit Agreement. Upon the Effective Date, automatically and without further action by any party hereto, (i) the Commitment of any Departing Lender shall be terminated, (ii) each Departing Lender will cease to be a Lender party to this Agreement and (iii) all outstanding Loans and accrued fees and other amounts payable under the Existing Credit Agreement for the account of any Departing Lender shall be due and payable on the Effective Date. Nothing contained in this Agreement or any other Loan Document shall constitute or be construed as a novation of any of the Obligations under the Existing Credit Agreement. The Lenders that are parties to the Existing Credit Agreement, comprising the "Required Lenders" as defined in the Existing Credit Agreement hereby waive any requirement of prior notice of termination of the Commitments (as defined in the Existing Credit Agreement) pursuant to Section 2.09 thereof and of prepayment of loans thereunder, to the extent necessary.

Section 1.07. *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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

Article 2.

The Credits

Section 2.01. . *Commitments to Lend.*

(a) Each Tranche A Lender severally agrees, on the terms and conditions set forth in this Agreement, to make loans to the Borrower pursuant to this Section from time to time during the Revolving Credit Period; *provided that* (A) no Tranche A Loan shall be made pursuant to this Section 2.01(a) (other than any Tranche A Loan made pursuant to Section 2.16(e)) at any time when the Total Tranche B Outstanding Amount is less than the Maximum Tranche B Availability and (B) immediately after each such loan is made: ~~(H)~~ (1) the sum of the aggregate outstanding principal amount of such Tranche A Lender's Tranche A Loans *plus* the aggregate amount of such Tranche A Lender's LC Exposure shall not exceed its Tranche A Commitment, ~~(2)~~ (2) the Total Tranche A Outstanding Amount shall not exceed the Maximum Tranche A Availability and ~~(iii)~~ (3) the Total Outstanding Amount shall not exceed the Maximum Facility Availability. Subject to Section 2.02(c), each Borrowing under this Section shall be in an aggregate principal amount of \$5,000,000 or any larger multiple of \$1,000,000 (except that (x) any such Borrowing may be in the aggregate amount available within the limitations in the foregoing proviso and (y) any Base Rate Borrowing pursuant to Section 2.16(e) may be in the amount specified therein) and shall be made from the several Tranche A Lenders ratably in proportion to their respective Tranche A Commitments. Within the foregoing limits, the Borrower may borrow under this Section, repay, or to the extent permitted by Section 2.11, prepay Tranche A Loans and re-borrow under this Section 2.01.

(b) Each Tranche B Lender severally agrees, on the terms and conditions set forth in this Agreement, to make loans to the Borrower pursuant to this Section from time to time during the Revolving Credit Period; *provided that*, immediately after each such loan is made: (i) the aggregate outstanding principal amount of such Tranche B Lender's Tranche B Loans shall not exceed its Tranche B Commitment, (ii) the Total Tranche B Outstanding Amount shall not exceed the Maximum Tranche B Availability and (iii) the Total Outstanding Amount shall not exceed the Maximum Facility Availability. Subject to Section 2.02, each Borrowing under this Section shall be in an aggregate principal amount of \$5,000,000 or any larger multiple of \$1,000,000 (except that any such Borrowing may be in the aggregate amount available within the limitations in the foregoing proviso) and shall be made from the several Tranche B Lenders ratably in proportion to their respective Tranche B Commitments. Within the foregoing limits, the Borrower may borrow under this Section, repay, or to the extent permitted by Section 2.11, prepay Tranche B Loans and re-borrow under this Section 2.01.

Section 2.02. . *Notice of Committed Borrowing.* The Borrower shall give the Administrative Agent notice (a "**Notice of Borrowing**") not later than (x) Noon (Prevailing Eastern Time) on the date of each Base Rate Borrowing and (y)

11:00 A.M. (Prevailing Eastern Time) on the third Business Day before each ~~Eurodollar~~Term Benchmark Borrowing, specifying:

- (a) the date of such Borrowing, which shall be a Business Day,
- (b) the aggregate amount of such Borrowing,
- (c) whether such Borrowing is of Tranche A Loans or Tranche B Loans; *provided* that, notwithstanding any minimum Dollar threshold set forth in Section 2.01, such Borrowing shall be Tranche A Loans unless the Total Tranche B Outstanding Amount is less than the Maximum Tranche B Availability, in which case up to an amount equal to the Maximum Tranche B Availability *minus* the Total Tranche B Outstanding Amount shall be Tranche B Loans, and the remaining amount of such Borrowing shall be Tranche A Loans;
- (d) whether the Loans comprising such Borrowing are to be Base Rate Loans or ~~Eurodollar~~Term Benchmark Loans, and
- (e) in the case of a ~~Eurodollar~~Term Benchmark Borrowing, the duration of the Interest Period applicable thereto, subject to the provisions of the definition of Interest Period.

Section 2.03. . *[Reserved]*.

Section 2.04. . *Notice to Lenders; Funding of Loans.*

- (a) Upon receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each applicable Lender of the contents thereof and of such Lender's share of such Borrowing and such Notice of Borrowing shall not thereafter be revocable by the Borrower.
- (b) Not later than 2:00 P.M. (Prevailing Eastern Time) on the date of each Borrowing, each applicable Lender shall (except as provided in subsection (c) of this Section) make available its share of such Borrowing, in Federal or other funds immediately available in New York City, to the Administrative Agent at its address referred to in Section 9.01. Unless the Administrative Agent determines that any applicable condition specified in Article 4 has not been satisfied, the Administrative Agent will make the funds so received from the applicable Lenders available to the Borrower at the Administrative Agent's aforesaid address.
- (c) If any Lender makes a new Loan hereunder on a day on which the Borrower is to repay all or any part of an outstanding Loan from such Lender, such Lender shall apply the proceeds of its new Loan to make such repayment and

only an amount equal to the difference (if any) between the amount being borrowed and the amount being repaid shall be made available by such Lender to the Administrative Agent as provided in subsection (b), or remitted by the Borrower to the Administrative Agent as provided in Section 2.11(a), as the case may be.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available to the Administrative Agent on the date of such Borrowing in accordance with subsections (b) and (c) of this Section 2.04 and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such share available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at (i) in the case of the Borrower, a rate per annum equal to the higher of the Federal Funds Rate and the interest rate applicable thereto pursuant to Section 2.07 or (ii) in the case of such Lender, the Federal Funds Rate. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount so repaid shall constitute such Lender's Loan included in such Borrowing for purposes of this Agreement.

Section 2.05. . *Maturity of Loans.* Each Loan shall mature, and the principal amount thereof shall be due and payable (together with accrued interest thereon), on the Termination Date.

Section 2.06. . *Interest Rates.*

(a) Each Base Rate Loan shall bear interest on the outstanding principal amount thereof, for each day from the date such Loan is made until it becomes due, at a rate per annum equal to the sum of the Applicable Rate for such day *plus* the Base Rate for such day. Such interest shall be payable quarterly in arrears on each Quarterly Payment Date. Any overdue principal of or interest on any Base Rate Loan shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the sum of 2% plus the Applicable Rate for such day *plus* the Base Rate for such day.

(b) Each ~~Eurodollar~~ Term Benchmark Loan shall bear interest on the outstanding principal amount thereof, for each day during each Interest Period applicable thereto, at a rate per annum equal to the sum of the Applicable Rate for

such day *plus* the Adjusted LIBO Rate applicable to such Interest Period. Such interest shall be payable for each Interest Period on the last day thereof and, if such Interest Period is longer than three months, at intervals of three months after the first day thereof.

~~“Adjusted LIBO Rate” means, with respect to any Group of Eurodollar Loans for any Interest Period, an interest rate per annum (rounded upward, if necessary, to the next 1/16 of 1%) equal to (a) the London Interbank Offered Rate for such Interest Period multiplied by (b) the Statutory Reserve Adjustment.~~

~~“London Interbank Offered Rate” applicable to any Interest Period means the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, if such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the “LIBO Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; *provided* that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; *provided further*, that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) then the London Interbank Offered Rate shall be the Interpolated Rate; *provided* that if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.~~

(c) Any overdue principal of or interest on any Eurodollar Term Benchmark Loan shall bear interest, payable on demand, for each day from and including the date payment thereof was due to but excluding the date of actual payment, at a rate per annum equal to the sum of 2% plus the higher of (i) the sum of the Applicable Rate for such day *plus* the Adjusted LIBO Rate applicable to such Loan on the day before such payment was due and (ii) the Applicable Rate for such day *plus* the result obtained (rounded upward, if necessary, to the next higher 1/100 of 1%) by multiplying (x) the rate per annum at which one day (or, if such amount due remains unpaid more than three Business Days, then for such other period of time not longer than six months as the Administrative Agent may select) deposits in dollars in an amount approximately equal to such overdue payment are offered by the principal London office of the Administrative Agent in the London interbank market for the applicable period determined as heretofore provided by (y) the Statutory Reserve Adjustment (or, if the circumstances

described in Section 2.19 shall exist, at a rate per annum equal to the sum of 2% plus the Base Rate for such day).

(d) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder. The Administrative Agent shall give prompt notice to the Borrower and the participating Lenders of each rate of interest so determined, and its determination thereof shall be conclusive in the absence of manifest error.

Section 2.07. . *Method of Electing Interest Rates.*

(a) The Loans included in each Borrowing shall bear interest initially at the type of rate specified by the Borrower in the applicable Notice of Borrowing. Thereafter, the Borrower may from time to time elect to change or continue the type of interest rate borne by each Group of Loans (subject to Section 2.07(d) and Section 2.19), as follows:

(i) if such Loans are Base Rate Tranche A Loans, the Borrower may elect to convert such Loans to ~~Eurodollar~~Term Benchmark Tranche A Loans as of any Business Day;

(ii) if such Loans are Base Rate Tranche B Loans, the Borrower may elect to convert such Loans to ~~Eurodollar~~Term Benchmark Tranche B Loans as of any Business Day;

(iii) if such Loans are ~~Eurodollar~~Term Benchmark Tranche A Loans, the Borrower may elect to convert such Loans to Base Rate Tranche A Loans as of any Business Day or to continue such Loans as ~~Eurodollar~~Term Benchmark Tranche A Loans for an additional Interest Period, subject to Section 2.21 if any such conversion is effective on any day other than the last day of an Interest Period applicable to such Loans; and

(iv) if such Loans are ~~Eurodollar~~Term Benchmark Tranche B Loans, the Borrower may elect to convert such Loans to Base Rate Tranche B Loans as of any Business Day or to continue such Loans as ~~Eurodollar~~Term Benchmark Tranche B Loans for an additional Interest Period, subject to Section 2.21 if any such conversion is effective on any day other than the last day of an Interest Period applicable to such Loans.

Each such election shall be made by delivering a notice (a “**Notice of Interest Rate Election**”) to the Administrative Agent not later than 11:00 A.M. (Prevailing Eastern Time) on the third Business Day before the conversion or continuation selected in such notice is to be effective. A Notice of Interest Rate

Election may, if it so specifies, apply to only a portion of the aggregate principal amount of the relevant Group of Loans; *provided* that (i) such portion is allocated ratably among the Loans comprising such Group and (ii) the portion to which such Notice applies, and the remaining portion to which it does not apply, are each at least \$5,000,000 (unless such portion is comprised of Base Rate Loans). If no such notice is timely received before the end of an Interest Period for any Group of ~~Eurodollar~~Term Benchmark Loans, the Borrower shall be deemed to have elected that such Group of Loans be converted to Base Rate Loans at the end of such Interest Period.

(b) Each Notice of Interest Rate Election shall specify:

(i) the Group of Loans (or portion thereof) to which such notice applies and whether such Group of Loans (or portion thereof) are Tranche A Loans or Tranche B Loans;

(ii) the date on which the conversion or continuation selected in such notice is to be effective, which shall comply with the applicable clause of Section 2.07(a);

(iii) if the Loans comprising such Group are to be converted, the new type of Loans and, if the Loans resulting from such conversion are to be ~~Eurodollar~~Term Benchmark Loans, the duration of the next succeeding Interest Period applicable thereto; and

(iv) if such Group of Loans are to be continued as ~~Eurodollar~~Term Benchmark Loans for an additional Interest Period, the duration of such additional Interest Period.

Each Interest Period specified in a Notice of Interest Rate Election shall comply with the provisions of the definition of Interest Period.

(c) Promptly after receiving a Notice of Interest Rate Election from the Borrower pursuant to Section 2.07(a), the Administrative Agent shall notify each applicable Lender of the contents thereof and such notice shall not thereafter be revocable by the Borrower.

(d) The Borrower shall not be entitled to elect to convert any Loans to, or continue any Loans for an additional Interest Period as, ~~Eurodollar~~Term Benchmark Loans if (i) the aggregate principal amount of any Group of ~~Eurodollar~~Term Benchmark Loans created or continued as a result of such election would be less than \$5,000,000 or (i) a Default shall have occurred and be continuing when the Borrower delivers notice of such election to the Administrative Agent.

(e) If any Loan is converted to a different type of Loan, the Borrower shall pay, on the date of such conversion, the interest accrued to such date on the principal amount being converted.

(f) A conversion or continuation pursuant to this Section 2.07 is not a Borrowing.

Section 2.08. . *Fees.*

(a) *Commitment Fees.* (i) The Borrower shall pay to the Administrative Agent for the account of each Tranche A Lender a commitment fee, which shall accrue at (x) 0.25% per annum on the average daily unused amount of the Tranche A Commitment of such Tranche A Lender if the average daily usage exceeds 331/3% of the aggregate Tranche A Commitments and (y) otherwise, 0.30% per annum on the average daily unused amount of the Tranche A Commitment of such Tranche A Lender, during the period from and including the Effective Date to the date on which such Tranche A Commitment terminates and (ii) the Borrower shall pay to the Administrative Agent for the account of each Tranche B Lender a commitment fee, which shall accrue at (x) 0.25% per annum on the average daily unused amount of the Tranche B Commitment of such Tranche B Lender if the average daily usage exceeds 331/3% of the aggregate Tranche B Commitments and (y) otherwise, 0.30% per annum on the average daily unused amount of the Tranche B Commitment of such Tranche B Lender, during the period from and including the Effective Date to the date on which such Tranche B Commitment terminates; provided that, notwithstanding the foregoing, effective as of August 1 of each fiscal year (commencing August 1, 2022), the commitment fee 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 5.01(d) for such fiscal year (provided, for the avoidance of doubt, that any adjustment to the commitment fee 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). All commitment fees will be computed on the basis of a year of 360 days and will be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, a Lender’s Commitment will be deemed to be used to the extent of its outstanding Loans and LC Exposure.

(b) *Letter of Credit Fees.* The Borrower shall pay (i) to the Administrative Agent for the account of the Tranche A Lenders ratably a letter of credit fee accruing daily on the aggregate undrawn amount of all outstanding Letters of Credit at a rate per annum equal to the Applicable Rate on ~~Eurodollar~~ Term Benchmark Tranche A Loans for such day and (ii) to each LC Issuing Bank for its own account, a letter of credit fronting fee in an amount equal to 0.125% per annum accruing daily on the aggregate amount then available for drawing under all Letters of Credit issued by such LC Issuing Bank.

(c) *Payments.* Accrued fees under this Section shall be payable quarterly in arrears on each Quarterly Payment Date, commencing on the first such date to occur after the date hereof, and upon the date of termination of the Commitments in their entirety (or, if later, the date on which the aggregate amount of the Credit Exposures is reduced to zero).

Section 2.09. . *Optional Termination or Reduction of Commitments.*

(a) The Borrower may, upon at least three Business Days' notice to the Administrative Agent, terminate the Tranche A Commitments at any time, if no Tranche A Loans or Letters of Credit or LC Reimbursement Obligations are outstanding at such time, (ii) terminate the Tranche B Commitments at any time, if no Tranche B Loans are outstanding at such time, (iii) ratably reduce from time to time by an aggregate amount of \$5,000,000 or any larger multiple of \$1,000,000, the aggregate amount of the Tranche A Commitments in excess of the Total Tranche A Outstanding Amount or (iv) ratably reduce from time to time by an aggregate amount of \$5,000,000 or any larger multiple of \$1,000,000, the aggregate amount of the Tranche B Commitments in excess of the Total Tranche B Outstanding Amount, respectively; *provided* that no Tranche B Commitment may be terminated or reduced unless, prior to or simultaneously with such termination or reduction, all Tranche A Loans are repaid in full. If the LC Sublimit exceeds the aggregate amount of the Tranche A Commitments, the LC Sublimit shall automatically be reduced by the amount of such excess.

(b) Promptly after receiving a notice of termination or reduction pursuant to this Section, the Administrative Agent shall notify each Lender of the contents thereof and of such Lender's ratable share of any such reduction, and such notice shall not thereafter be revocable by the Borrower.

Section 2.10. . *Scheduled Termination of Commitments.* Unless previously terminated, the Commitments shall terminate on the Termination Date.

Section 2.11. . *Optional and Mandatory Prepayments.*

(a) Subject in the case of any Group of Loans that are EurodollarTerm Benchmark Loans to Section 2.21, the Borrower may, upon at least one Business Days' notice to the Administrative Agent, prepay any Group of Loans that are Base Rate Loans or upon at least three Business Days' notice to the Administrative Agent, prepay any Group of Loans that are EurodollarTerm Benchmark Loans, in each case in whole at any time, or from time to time in part, in amounts aggregating \$5,000,000 or any larger multiple of \$1,000,000 (or in either case, if less, the aggregate outstanding amount of the applicable Group of Loans), by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment; *provided* that no Tranche B Loan may be prepaid unless, prior to or simultaneously with such prepayment, all Tranche A Loans and unreimbursed LC Disbursements are repaid or reimbursed, as applicable, in full. Each such optional prepayment shall be applied to prepay ratably the Loans of the several Lenders included in such Group.

(b) If at any date the Total Outstanding Amount exceeds the Maximum Facility Availability calculated as of such date, then not later than the next succeeding Business Day, the Borrower shall be required to prepay the Tranche A Loans (or, if no Tranche A Loans are outstanding, deposit cash in a Cash Collateral Account to cash collateralize LC Exposures) in an amount equal to such excess until the Total Outstanding Amount, net of the amount of cash collateral deposited in the Cash Collateral Account, does not exceed the Maximum Facility Availability (or, if there are no Total Tranche A Outstanding Amounts at such time, prepay the Tranche B Loans in an amount equal to such excess until the Total Outstanding Amount does not exceed the Maximum Facility Availability).

(c) Upon receipt of a notice of prepayment pursuant to this Section, the Administrative Agent shall promptly notify each applicable Lender of the contents thereof and of such Lender's ratable share (if any) of such prepayment and such notice shall not thereafter be revocable by the Borrower.

Section 2.12. . *[Reserved]*.

Section 2.13. . *Computation of Interest and Fees.* Interest based on the Prime Rate hereunder shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and paid for the actual number of days elapsed (including the first day but excluding the last day). All other interest and fees shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.14. . *[Reserved]*.

Section 2.15. . *Increased Commitments; Additional Lenders.*

(a) From time to time subsequent to the Effective Date, the Borrower may, upon at least 30 days' notice to the Administrative Agent (which shall promptly provide a copy of such notice to the Tranche A Lenders or the Tranche B Lenders, as appropriate), propose to increase the aggregate amount of the Commitments by an amount not to exceed \$500,000,000; *provided* that the aggregate amount of the Tranche B Commitments shall not be increased by greater than \$37,500,000 (the amount of any such increase, the “**Increased Commitments**”). Each Tranche A Lender (or, solely in the case of an Increased Commitment in respect of the Tranche B Commitments, each Tranche B Lender) party to this Agreement at such time shall have the right (but no obligation), for a period of 15 days following receipt of such notice, to elect by notice to the Borrower and the Administrative Agent to increase its Tranche A Commitment or Tranche B Commitment, as applicable, by a principal amount which bears the same ratio to the Increased Commitments as its then-effective Commitment bears to the aggregate Commitments then existing. The failure of a Lender to respond to the Borrower's request for an increase shall be deemed a rejection of the Borrower's request by such Lender.

(b) If any Lender party to this Agreement shall not elect to increase its Commitment pursuant to subsection (a) of this Section, the Borrower may, within 10 days of the Lender's response (or deemed response), designate one or more of the applicable existing Lenders or other financial institutions acceptable to the Administrative Agent, the LC Issuing Banks and the Borrower (which consent of the Administrative Agent and the LC Issuing Banks shall not be unreasonably withheld or delayed) which at the time agree to in the case of any such Person that is an existing Lender, increase its Commitment and in the case of any other such Person (an “**Additional Lender**”), become a party to this Agreement. The sum of the increases in the Commitments of the existing Lenders pursuant to this subsection (b) plus the Commitments of the Additional Lenders shall not in the aggregate exceed the unsubscribed amount of the Increased Commitments, and the increases in the Commitments of the existing Lenders and the Commitments of the Additional Lenders made pursuant to this subsection (b) shall be on the same terms (including upfront fees) as were offered to the applicable Lenders pursuant to Section 2.15(a) or on terms more advantageous to the Borrower.

(c) [Reserved].

(d) Any increase in the Commitments pursuant to this Section 2.15 shall be subject to satisfaction of the following conditions:

(i) immediately before and after giving effect to such increase, all representations and warranties contained in Article 3 shall be true;

(ii) immediately before and after giving effect to such increase, no Default shall have occurred and be continuing; and

(iii) after giving effect to such increase, the aggregate amount of all increases in Commitments made pursuant to Section 2.15(a) shall not exceed \$500,000,000; *provided* that the aggregate amount of all increases in Tranche B Commitments made pursuant to Section 2.15(a) shall not exceed \$37,500,000.

(e) An increase in the aggregate amount of the Commitments pursuant to this Section 2.15 shall become effective upon the receipt by the Administrative Agent of an agreement in form and substance reasonably satisfactory to the Administrative Agent signed by the Borrower, by each Additional Lender and by each other Lender whose Commitment is to be increased, setting forth the new Commitments of such Lenders and setting forth the agreement of each Additional Lender to become a party to this Agreement and to be bound by all the terms and provisions hereof, together with such evidence of appropriate corporate or other organizational authorization on the part of the Borrower with respect to the Increased Commitments and such opinions of counsel for the Borrower with respect to the Increased Commitments as the Administrative Agent may reasonably request. This Section 2.15(e) shall supersede anything to the contrary in Section 9.02(b).

(f) Upon (i) any increase in the aggregate amount of the Tranche A Commitments pursuant to this Section 2.15 that is not pro rata among all Tranche A Lenders, (x) within five Business Days, in the case of any Group of Base Rate Loans then outstanding, and at the end of the then current Interest Period with respect thereto, in the case of any Group of ~~Eurodollar~~ Term Benchmark Loans then outstanding, the Borrower shall prepay such Group in its entirety and, to the extent the Borrower elects to do so and subject to the conditions specified in Article 4, the Borrower shall re-borrow Tranche A Loans from the Tranche A Lenders in proportion to their respective Tranche A Commitments after giving effect to such increase, until such time as all outstanding Tranche A Loans are held by the Tranche A Lenders in such proportion and (y) effective upon such increase, the amount of the participations held by each Lender in each Letter of Credit then outstanding shall be adjusted such that, after giving effect to such adjustments, the Lenders shall hold participations in each such Letter of Credit in the proportion its respective Tranche A Commitment bears to the aggregate Tranche A Commitments after giving effect to such increase and (ii) any increase in the aggregate amount of the Tranche B Commitments pursuant to this Section 2.15 that is not pro rata among all Tranche B Lenders, within five Business Days, in the case of any Group of Base Rate Loans then outstanding, and at the end of the then current Interest Period with respect thereto, in the case of any Group of

~~Eurodollar~~Term Benchmark Loans then outstanding, the Borrower shall prepay such Group in its entirety and, to the extent the Borrower elects to do so and subject to the conditions specified in Article 4, the Borrower shall re-borrow Tranche B Loans from the Tranche B Lenders in proportion to their respective Tranche B Commitments after giving effect to such increase, until such time as all outstanding Tranche B Loans are held by the Tranche B Lenders in such proportion.

Section 2.16. . *Letters of Credit.*

(a) *General.* On the Effective Date, each LC Issuing Bank shall be deemed, without further action by any party hereto, to have sold to each of the Tranche A Lenders, and each of the Tranche A Lenders shall be deemed, without further action by any party hereto, to have purchased from such LC Issuing Bank, a participation (on the terms specified in this Section) in each Existing Letter of Credit issued by such Issuing Bank equal to such Tranche A Lender's Percentage thereof. Concurrently with such sale, the participations sold to the Existing Lenders pursuant to the terms of the Existing Credit Agreement shall be automatically cancelled without further action by any of the parties hereto. Each Tranche A Lender acknowledges and agrees that its obligation to acquire participations in Existing Letters of Credit pursuant to this subsection is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Tranche A Commitments, and that each payment by a Tranche A Lender to acquire such participations shall be made without any offset, abatement, withholding or reduction whatsoever. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account or for the account of any other Credit Party, in a form reasonably acceptable to the Administrative Agent and the applicable LC Issuing Bank, from time to time during the Revolving Credit Period; *provided* that Credit Suisse AG, Cayman Islands Branch shall only be required to issue standby Letters of Credit. If the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, any LC Issuing Bank relating to any Letter of Credit are not consistent with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

(b) *Notice of Issuance, Amendment, Renewal, or Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable LC Issuing Bank) to the applicable LC Issuing Bank and the Administrative Agent (reasonably in advance of the

requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the requested date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with Section 2.16(c)), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable LC Issuing Bank, the Borrower also shall submit a letter of credit application on such LC Issuing Bank's standard form (with such changes as are agreed by such LC Issuing Bank and the Borrower) in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (i) the Administrative Agent shall have been given notice of such issuance, amendment, renewal or extension (other than in the case of an automatic extension) and (ii) after giving effect to such issuance, amendment, renewal or extension (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), (A) the aggregate LC Exposure will not exceed the LC Sublimit, (B) the Total Outstanding Amount will not exceed the Maximum Facility Availability on such date and (C) the Total Tranche A Outstanding Amount will not exceed the Maximum Tranche A Availability on such date. No LC Issuing Bank shall be required to issue Letters of Credit in an aggregate outstanding amount exceeding such LC Issuing Bank's LC Commitment Amount. No LC Issuing Bank shall issue a Letter of Credit if the Required Lenders have informed such LC Issuing Bank in writing that the conditions to funding in Section 4.02 have not been satisfied.

(c) *Expiration Date.* Each Letter of Credit shall expire at or before the close of business on the earlier of the date that is one year after such Letter of Credit is issued (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and the date that is five Business Days before the Stated Termination Date; *provided* that a Letter of Credit may have an expiry date later than that otherwise permitted by this clause (ii) so long as all LC Exposures with respect to such Letter of Credit are cash collateralized not later than the fifth Business Day prior to the Stated Termination Date in the manner specified in subsection (j).

(d) *Participations.* Effective upon the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable LC Issuing Bank or the Tranche A Lenders, such LC Issuing Bank grants to each Tranche A Lender, and each Tranche A Lender acquires from such LC Issuing Bank, a participation in such Letter of Credit equal to such Tranche A Lender's Percentage of the aggregate

amount available to be drawn thereunder. Pursuant to such participations, each Tranche A Lender agrees to pay to the Administrative Agent, for the account of the applicable LC Issuing Bank, such Tranche A Lender's Percentage of each LC Disbursement made by such LC Issuing Bank and not reimbursed by the Borrower on the date due as provided in Section 2.16(e) and any reimbursement payment required to be refunded to the Borrower for any reason. Each Tranche A Lender's obligation to acquire participations and make payments pursuant to this subsection is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or any reduction or termination of the Tranche A Commitments, and each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) *Reimbursement.* If the applicable LC Issuing Bank makes any LC Disbursement under a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying an amount equal to such LC Disbursement to the Administrative Agent not later than 2:00 P.M. (Prevailing Eastern Time) on the day that such LC Disbursement is made, if the Borrower receives notice of such LC Disbursement before 10:00 A.M., Prevailing Eastern Time, on such day, or, if such notice has not been received by the Borrower before such time on such day, then not later than Noon (Prevailing Eastern Time) on the Business Day that the Borrower receives such notice, if such notice is received before 10:00 A.M. (Prevailing Eastern Time) on the day of receipt, or the next Business Day, if such notice is not received before such time on the day of receipt; *provided* that, if such LC Disbursement is at least \$500,000, the Borrower may, subject to the conditions to borrowing set forth herein, request that such payment be made with the proceeds of a Borrowing of Base Rate Tranche A Loans in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Borrowing of Base Rate Tranche A Loans. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Tranche A Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Tranche A Lender's Percentage thereof. Promptly after it receives such notice, each Tranche A Lender shall pay to the Administrative Agent its Percentage of the payment then due from the Borrower, in the same manner as is provided in Section 2.04 with respect to Tranche A Loans made by such Tranche A Lender (and Section 2.04(d) shall apply, *mutatis mutandis*, to such payment obligations of the Tranche A Lenders), and the Administrative Agent shall promptly pay to the applicable LC Issuing Bank the amounts so received by it from the Tranche A Lenders. If a Tranche A Lender makes a payment pursuant to this subsection to reimburse the applicable LC Issuing Bank for any LC Disbursement (other than by funding Base Rate Tranche A Loans as heretofore contemplated), (i) such payment will not constitute a Tranche A Loan and will not

relieve the Borrower of its obligation to reimburse such LC Disbursement and (ii) such Tranche A Lender will be subrogated to its pro rata share of the applicable LC Issuing Bank's claim against the Borrower for such reimbursement. Promptly after the Administrative Agent receives any payment from the Borrower pursuant to this subsection, the Administrative Agent will distribute such payment to the applicable LC Issuing Bank or, if Tranche A Lenders have made payments pursuant to this subsection to reimburse such LC Issuing Bank, then to such Tranche A Lenders and such LC Issuing Bank as their interests may appear.

(f) *Obligations Absolute.* The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.16(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, payment by any LC Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of set-off against, the Borrower's obligations hereunder. None of the Administrative Agent, the Lenders, the LC Issuing Banks and their respective Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any LC Issuing Bank; *provided* that the foregoing shall not excuse any LC Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such LC Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. In the absence of gross negligence or willful misconduct on the part of any LC Issuing Bank (as finally determined by a court of competent jurisdiction), such LC Issuing Bank shall be deemed to have exercised care in each such determination. Without limiting the generality of the foregoing, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable

LC Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents do not strictly comply with the terms of such Letter of Credit.

(g) *Disbursement Procedures.* The applicable LC Issuing Bank shall, within the period stipulated by the terms and conditions of the applicable Letter of Credit, after its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. After such examination of documents, the applicable LC Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy or other electronic means, if arrangements for doing so have been approved by the applicable LC Issuing Bank) of such demand for payment and whether such LC Issuing Bank has made or will make an LC Disbursement pursuant thereto; *provided* that any failure to give or delay in giving such notice will not relieve the Borrower of its obligation to reimburse such LC Issuing Bank and the Tranche A Lenders with respect to any such LC Disbursement.

(h) *Interim Interest.* Unless the Borrower reimburses an LC Disbursement in full on the day it is made, the unpaid amount thereof shall bear interest, for each day from and including the day on which such LC Disbursement is made to but excluding the day on which the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to Base Rate Tranche A Loans; *provided* that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to Section 2.16(e), then such amount shall bear interest, payable on demand, for each day until paid at a rate per annum equal to the sum of 2% plus the applicable Base Rate for such day. Interest accrued pursuant to this subsection shall be for the account of the applicable LC Issuing Bank, except that a pro rata share of interest accrued on and after the day that any Tranche A Lender reimburses such LC Issuing Bank for a portion of such LC Disbursement pursuant to Section 2.16(e) shall be for the account of such Tranche A Lender.

(i) *Replacement of an LC Issuing Bank.* Any LC Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced LC Issuing Bank and the successor LC Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement. At the time any such replacement becomes effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced LC Issuing Bank pursuant to Section 2.08(b). On and after the effective date of any such replacement, (i) the successor LC Issuing Bank will have all the rights and obligations of the replaced LC Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “LC

Issuing Bank” will be deemed to refer to such successor or to any previous LC Issuing Bank, or to such successor and all previous LC Issuing Banks, as the context shall require. After an LC Issuing Bank is replaced, it will remain a party hereto and will continue to have all the rights and obligations of an LC Issuing Bank under this Agreement with respect to Letters of Credit issued by it before such replacement, but will not be required to issue additional Letters of Credit.

(j) *Cash Collateralization.* If an Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Tranche A Lenders with LC Exposures representing more than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this subsection, the Borrower shall deposit in a Cash Collateral Account an amount in cash equal to 102% of the total LC Exposure as of such date plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (i) or (j) of Article 7. Any amount so deposited (including any earnings thereon) will be withdrawn from the Borrower’s Cash Collateral Account by the Administrative Agent and applied to pay LC Reimbursement Obligations as they become due; *provided* that if at any time all Events of Default have been cured or waived, such amount, to the extent not theretofore so applied, will be returned to the Borrower upon its request.

Section 2.17. . *Evidence of Debt.*

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time.

(b) The Administrative Agent shall maintain accounts in which it shall record the amount of each Loan made hereunder, the type thereof and each Interest Period (if any) applicable thereto, the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(c) The entries made in the accounts maintained pursuant to subsections (a) and (b) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that any failure by any Lender or the Administrative Agent to maintain such accounts or any error therein shall not affect the Borrower’s obligation to repay the Loans in

accordance with the terms of this Agreement; *provided, further*, that if such accounts are inconsistent with the Register, the Register shall prevail (absent manifest error).

(d) Any Lender may request that Loans made by it be evidenced by one or more promissory notes. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note(s) payable to such Lender and its registered assigns and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note(s) and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to such payee and its registered assigns.

Section 2.18. . *Change in Control.*

(a) If a Change in Control of the Borrower 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 thereof. Such notice shall describe in reasonable detail the facts and circumstances giving rise thereto and the date of such Change in Control and each Lender may, by notice to the Borrower and the Administrative Agent (a “**Termination Notice**”) given not later than ten days after the date of such Change in Control, terminate its 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 amounts shall become, due and payable, in each case on the day following delivery of such Termination 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.

(b) If the Tranche A Commitment of any Tranche A Lender is terminated pursuant to this Section at a time when any Letter of Credit is outstanding, then such Tranche A Lender shall remain responsible to the applicable LC Issuing Bank with respect to such Letter of Credit to the same extent as if its Tranche A Commitment had not terminated and the Borrower shall pay to such Tranche A Lender an amount in immediately available funds (which funds shall be held as collateral pursuant to arrangements satisfactory to such Tranche A Lender) equal to such Tranche A Lender’s Percentage of the aggregate amount available for drawing under all Letters of Credit outstanding at such time.

Section 2.19. . *Alternate Rate of Interest*

~~(a) If before the beginning of any Interest Period for a Eurodollar Borrowing:~~

(a) Subject to clauses (b), (c), (d), (e), (f) and (g) of this Section 2.19:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the London Interbank Offered Rate (including, without limitation, because the LIBO Screen Rate is not available or published on a current basis), for such Interest Period; or

(ii) Lenders having 50% or more of the aggregate principal amount of the Loans to be included in such Borrowing advise the Administrative Agent that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans for such Interest Period;

then the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders by telephone or telecopy (or by other electronic means, if arrangements for doing so have been approved by the Borrower and the applicable Lender) as promptly as practicable thereafter, whereupon until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (w) the obligations of the Lenders to make ~~Eurodollar~~ Term Benchmark Loans, or to continue to convert outstanding Loans as or into ~~Eurodollar~~ Term Benchmark Loans shall be suspended, (x) any Notice of Interest Rate Election that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a ~~Eurodollar~~ Term Benchmark Borrowing shall be ineffective, (y) each outstanding ~~Eurodollar~~ Term Benchmark Loan shall be converted into a Base Rate Loan on the last day of the then current Interest Period applicable thereto and (z) if any Notice of Borrowing requests a ~~Eurodollar~~ Term Benchmark Borrowing and the Borrower does not notify the Administrative Agent at least two Business Days before the date of such Borrowing that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing.

~~(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the London Interbank Offered Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated~~

~~loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Rate); provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.02, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, written notice from the Required Lenders stating that the Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.19(b), only to the extent the LIBO Screen Rate for Dollars and such Interest Period is not available or published at such time on a current basis), (w) the obligations of the Lenders to make Eurodollar Loans, or to continue to convert outstanding Loans as or into Eurodollar Loans shall be suspended, (x) any Notice of Interest Rate Election that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, (y) each outstanding Eurodollar Loan shall be converted into a Base Rate Loan on the last day of the then-current Interest Period applicable thereto and (z) if any Notice of Borrowing requests a Eurodollar Borrowing and the Borrower does not notify the Administrative Agent at least two Business Days before the date of such Borrowing that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing.~~

(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.

(c) 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 (c) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, 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.

(d) In connection with the implementation of a Benchmark Replacement, 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.

(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 2.19, 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 2.19.

(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 Term SOFR or the London Interbank Offered 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) 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 Base Rate Loans. 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 Rate applicable to such Term Benchmark Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.19, then 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 2.20. . *Increased Costs.*

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or any LC Issuing Bank;

(ii) impose on any Lender or any LC Issuing Bank or the London interbank market any other condition (other than Taxes) affecting this Agreement or ~~Eurodollar~~Term Benchmark Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes (which are addressed in Section 2.22), (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, loan principal, Letters of Credit, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital or liquidity attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any ~~Eurodollar~~Term Benchmark Loan (or of maintaining its obligation to make ~~Eurodollar~~Term Benchmark Loans) or to increase the cost to such Lender or such LC Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce any amount received or receivable by such Lender or such LC Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower shall pay to such Lender or such LC Issuing Bank, as the case may be, such additional amount or amounts as will compensate it for such additional cost incurred or reduction suffered.

(b) If any Lender or any LC Issuing Bank determines that any Change in Law regarding capital requirements or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such LC Issuing Bank's capital or on the capital of such Lender's or such LC Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such LC Issuing Bank, to a level below that which such Lender or such LC Issuing Bank or such Lender's or such LC Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such LC Issuing Bank's policies and the policies of such Lender's or such LC Issuing Bank's holding company with respect to capital adequacy), then from time to time following receipt of the certificate referred to in subsection (c) of this Section, the Borrower shall pay to such Lender or such LC Issuing Bank, as the case may be, such additional amount or amounts as will compensate it or its holding company for any such reduction suffered.

(c) A certificate of a Lender or an LC Issuing Bank setting forth the amount or amounts necessary to compensate it or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. Each such certificate shall contain a representation and warranty on the part of the Lender to the effect that such Lender has complied with its obligations pursuant to Section 2.24 hereof in an effort to eliminate or reduce such amount. The Borrower shall pay such Lender or such LC Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay by any Lender or any LC Issuing Bank to demand compensation pursuant to this Section will not constitute a waiver of its right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender or an LC Issuing Bank pursuant to this Section for any increased cost or reduction incurred more than 180 days before it notifies the Borrower of the Change in Law giving rise to such increased cost or reduction and of its intention to claim compensation therefor. However, if the Change in Law giving rise to such increased cost or reduction is retroactive, then the 180 day period heretofore referred to will be extended to include the period of retroactive effect thereof.

Section 2.21. . *Break Funding Payments.* If (a) any principal of any EurodollarTerm Benchmark Loan is repaid on a day other than the last day of an Interest Period applicable thereto (including as a result of an Event of Default or a Change in Control), (b) any EurodollarTerm Benchmark Loan is converted on a day other than the last day of an Interest Period applicable thereto, (c) the Borrower fails to borrow, convert, continue or prepay any EurodollarTerm Benchmark Loan on the date specified in any notice delivered pursuant hereto, or (d) any EurodollarTerm Benchmark Loan is assigned on a day other than the last day of an Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.24, then the Borrower shall compensate each Lender for its loss, cost and expense attributable to such event. In the case of a EurodollarTerm Benchmark Loan, such loss, cost and expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the end of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have begun on the date of such failure), over the amount of interest that would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the beginning of such period, for dollar deposits of a comparable amount and period from other banks in the EurodollarLondon interbank market. A

certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 2.22. . *Taxes.* Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.22) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made. For purposes of this Section 2.22, the term “applicable law” shall include, without limitation, FATCA.

(b) The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, Other Taxes.

(c) As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 2.22, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority, if it exists, evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) The Credit Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to

the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) 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 Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(e) 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 (e).

(f) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by 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 Section 2.22(f)(ii)(A), (ii)(B) and (ii)(D)) 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.

(i) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E 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;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-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 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the

Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to 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 to deduct and withhold from such payment. Regardless of whether a Lender complied with Section 1471(b) or 1472(b) of the Code, if a Lender fails to submit the completed documentation identified in paragraphs B and C of this subsection (completion of which will be determined by the Borrower and the Administrative Agent) in a timely manner, 30% tax may be withheld from all payments due such Lender as required by Section 1471(a) of the Code. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of the Amendment, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loan as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.22 (including by the payment of additional amounts pursuant to this Section 2.22), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.22 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an

indemnifying party pursuant to this paragraph (g) 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 paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Each party's obligations under this Section 2.22 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 the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 2.23. . *Payments Generally; Pro Rata Treatment; Sharing of Set-Offs.*

(a) The Borrower shall make each payment required to be made by it under the Loan Documents (whether of principal, interest or fees, or reimbursement of LC Disbursements, or amounts payable under Section 2.20, 2.21 or 2.22(c) or otherwise) before the time expressly required under the relevant Loan Document for such payment (or, if no such time is expressly required, before 2:00 P.M. (Prevailing Eastern Time)), on the date when due, in immediately available funds, without set-off or counterclaim. Any amount received after such time on any day may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 500 Stanton Christiana Road, Ops 2 Floor 3, Newark, Delaware 19713-2107, except payments to be made directly to any LC Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.20, 2.21, 2.22 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payment received by it for the account of any other Person to the appropriate recipient promptly after receipt thereof. Whenever any payment of principal of, or interest on, Base Rate Loans or of fees shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. Whenever any payment of principal of, or interest on, EurodollarTerm Benchmark Loans shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which

case the date for payment thereof shall be the next preceding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time. All payments under each Loan Document shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and/or fees (as the case may be) then due hereunder, such funds shall be applied first, to pay interest and/or fees (as the case may be) then due hereunder to the Tranche A Lenders and LC Issuing Banks in accordance with the amounts of interest and fees then due to such Tranche A Lenders and LC Issuing Banks, (ii) second, to pay principal and/or unreimbursed LC Disbursements (as the case may be) then due hereunder to the Tranche A Lenders and LC Issuing Banks, ratably among the parties entitled thereto in accordance with the amounts of principal and/or unreimbursed LC Disbursements (as the case may be) then due to such parties, (iii) third, to pay interest and/or fees (as the case may be) then due hereunder to the Tranche B Lenders in accordance with the amounts of interest and fees then due to such Tranche B Lenders and (iv) fourth, to pay principal then due hereunder to the Tranche B Lenders, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or any of its participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other applicable Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Tranche A Loans, the Tranche B Loans and/or participations in LC Disbursements (as applicable) of other applicable Lenders to the extent necessary so that the benefit of all such payments shall be shared by the applicable Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Tranche A Loans, the Tranche B Loans and/or participations in LC Disbursements; *provided that* if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and the provisions of this subsection shall not apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the

provisions of this subsection shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless, before the date on which any payment is due to the Administrative Agent for the account of one or more Lender Parties hereunder, the Administrative Agent receives from the Borrower notice that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance on such assumption, distribute to each relevant Lender Party the amount due to it. In such event, if the Borrower has not in fact made such payment, each Lender Party severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender Party with interest thereon, for each day from and including the day such amount is distributed to it to but excluding the day it repays 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.

(e) If any Lender fails to make any payment required to be made by it to the Administrative Agent or any LC Issuing Bank pursuant to this Agreement, the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such obligations until all such unsatisfied obligations are fully paid.

Section 2.24. . *Lender's Obligation to Mitigate; Replacement of Lenders.*

(a) If any Lender requests compensation under Section 2.20, or if 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 2.22, then such Lender shall use all commercially reasonable efforts to mitigate or eliminate the amount of such compensation or additional amount, including by designating a different lending office for funding or booking its Loans hereunder or by assigning its rights and obligations hereunder to another of its offices, branches or affiliates; *provided* that no Lender shall be required to take any action pursuant to this Section 2.24(a) unless, in the judgment of such Lender, such designation or assignment or other action would eliminate or reduce amounts payable pursuant to Section 2.20 or 2.22, as the case may be, in the future, would not subject such Lender to any unreimbursed cost or expense and would not

otherwise be disadvantageous to such Lender. The Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.20, or if 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 2.22, or if any Lender is a Specified Lender, or if any Lender does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby and that has been approved by the Required Lenders, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Commitment is being assigned, the LC Issuing Banks), which consents shall not unreasonably be withheld or delayed, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, 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) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.20 or payments required to be made pursuant to Section 2.22, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; *provided* that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

Section 2.25. . *Defaulting Lenders*. If any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unused portion of the Tranche A Commitment and/or Tranche B Commitment of such Defaulting Lender pursuant to Section 2.08(a);

(b) any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 7 of any applicable Security Agreement or otherwise) shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the extent that such Defaulting Lender is a Tranche A Lender, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any LC Issuing Bank hereunder; *third*, to the extent that such Defaulting Lender is a Tranche A Lender, to cash collateralize the LC Issuing Banks' LC Exposure with respect to such Defaulting Lender in accordance with this Section; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), 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 the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the 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) to the extent that such Defaulting Lender is a Tranche A Lender, cash collateralize the LC Issuing Banks' future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; *sixth*, to the payment of any amounts owing to the Lenders or (to the extent that such Defaulting Lender is a Tranche A Lender) the LC Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any LC Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; 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 LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate 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, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) below. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) the Commitment and Credit Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification permitted to be effected by the Required Lenders pursuant to Section 9.02);

(d) to the extent that such Lender is a Tranche A Lender, if any LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) so long as no Default or Event of Default shall have occurred and be continuing, LC Exposure of such Defaulting Lender shall be automatically reallocated among the Tranche A Lenders that are non-Defaulting Lenders in accordance with their respective Percentages but only to the extent the sum of all such non-Defaulting Lenders' Credit Exposures plus such Defaulting Lender's LC Exposure does not exceed the total of all non-Defaulting Lenders' Tranche A Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within three Business Days following notice by the Administrative Agent either (x) procure the reduction or termination of the Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) or (y) cash collateralize for the ratable benefit of the LC Issuing Banks only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender

pursuant to Section 2.08(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) to the extent that the LC Exposure of the non-Defaulting Lenders are reallocated pursuant to clause (i) above, then the letter of credit fees payable to the Lenders pursuant to Section 2.08(b) shall to the same extent be adjusted in accordance with such non-Defaulting Lenders' Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is not reallocated, reduced, terminated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of any LC Issuing Bank or any other Tranche A Lender hereunder, all letter of credit fees payable under Section 2.08(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the applicable LC Issuing Bank until and to the extent that such LC Exposure is reallocated, reduced, terminated and/or cash collateralized; and

(e) so long as such Lender is Tranche A Lender and a Defaulting Lender, no LC Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit, unless the Defaulting Lender's then outstanding LC Exposure after giving effect thereto will be 100% covered by the Tranche A Commitments of the Tranche A Lenders that are non-Defaulting Lenders and/or prepaid, reduced, terminated and/or cash collateralized in accordance with Section 2.25(d), and participating interests in any newly issued or increased Letter of Credit shall be allocated among such non-Defaulting Lenders in a manner consistent with Section 2.25(d)(i) (and such Defaulting Lender shall not participate therein).

If any LC Issuing Bank has a good faith belief that any Tranche A Lender has defaulted in fulfilling its funding obligations under one or more other agreements in which such Tranche A Lender commits to extend credit, such LC Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit, unless such LC Issuing Bank shall have entered into arrangements with the Borrower or such Tranche A Lender, reasonably satisfactory to such LC Issuing Bank to defease any risk to such LC Issuing Bank in respect of such Lender hereunder relating to LC Exposure.

If the Administrative Agent, the Borrower and, in the case of a Defaulting Lender that is a Tranche A Lender, each LC Issuing Bank each agrees (such agreement not to be unreasonably withheld or delayed) that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then (i) in the case of a Defaulting Lender that is a Tranche A Lender, the

LC Exposure of the Tranche A Lenders shall be readjusted to reflect the inclusion of such Lender's Tranche A Commitment and (ii) on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine is necessary in order for such Lender to hold such Loans in accordance with its Percentage; *provided* that there shall be no retroactive effect on fees reallocated pursuant to Section 2.25(d)(iv) and (d)(v).

Article 3.
Representations and Warranties

The Borrower represents and warrants to the Lender Parties that:

Section 3.01. . *Organization; Powers.* The Borrower and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted, except in the case of Subsidiaries to an extent that, in the aggregate, would not reasonably be expected to result in a Material Adverse Change.

Section 3.02. . *Authorization; Enforceability.* The Financing Transactions to be entered into by the Borrower are within its corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which the Borrower is to be a party, when executed and delivered by the Borrower, will constitute, a legal, valid and binding obligation of the Borrower, in each case enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03. . *Governmental Approvals; No Conflicts.* The Financing Transactions (a) do not require any consent or approval of, registration or filing with, or other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its properties, or give rise to a right thereunder to require the Borrower to make any payment, and (d) will not result in the creation or imposition of any Lien on any property of the Borrower (other than Liens granted under the Loan Documents), except, in each case

described in clauses (c) and (d), which would not reasonably be expected to result in a Material Adverse Change.

Section 3.04. . *Financial Statements; No Material Adverse Change.*

(a) The Borrower has heretofore furnished to the Lenders the Borrower's Latest Form 10-K containing the audited consolidated balance sheet of the Borrower and its Subsidiaries as of December 31, 2018 and the related consolidated statements of income and cash flows for the Fiscal Year then ended, reported on by PricewaterhouseCoopers LLP, independent public accountants. Such financial statements present fairly, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as of such date and its consolidated results of operations and cash flows for such period in accordance with GAAP.

(b) Except as set forth in the Borrower's Latest Form 10-K or the Borrower's Latest Form 10-Q there has been no Material Adverse Change since December 31, 2018.

Section 3.05. . *Litigation and Environmental Matters.*

(a) Except as set forth in the Borrower's Latest Form 10-K or the Borrower's Latest Form 10-Q, as filed with the SEC pursuant to the Exchange Act, there is no action, suit, arbitration proceeding or other proceeding, inquiry or investigation, at law or in equity, before or by any arbitrator or Governmental Authority pending against the Borrower or any of its Subsidiaries or of which the Borrower has otherwise received official notice or which, to the knowledge of the Borrower, is threatened against the Borrower or any of its Subsidiaries as to which there is a reasonable possibility of an unfavorable decision, ruling or finding which would reasonably be expected to result in a Material Adverse Change or that involves any of the Loan Documents or the Financing Transactions.

(b) Except as set forth in the Borrower's Latest Form 10-K or the Borrower's Latest Form 10-Q, the Borrower does not presently anticipate that remediation costs and penalties associated with any Environmental Law, to the extent not previously provided for, will result in a Material Adverse Change.

Section 3.06. . *Taxes.* Each of the Borrower and its Subsidiaries has filed or caused to be filed all material tax returns that are required to be filed by it and has paid all taxes shown to be due and payable on said returns or on any material assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any Taxes (x) the amount or validity of

which are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower and its Subsidiaries or (y) the failure to pay which would not reasonably be expected to result in a Material Adverse Change).

Section 3.07. . *Investment Company Status; Margin Regulations.* The Borrower is not an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U) or extending credit for the purpose of purchasing or carrying margin stock.

Section 3.08. . *ERISA.* 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 to result in a Material Adverse Change.

Section 3.09. . *Disclosure.*

(a) ~~*Disclosure.*~~ The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Change. All of the reports, financial statements, certificates and other written information (other than projected financial information) that have been made available by or on behalf of the Borrower to the Arrangers, any Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder, 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.

(b) As of the Effective Date, to the best knowledge of the Borrower, the information included in any Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

Section 3.10. . *Security Documents; Subsidiary Guarantees.* The Security Documents create valid security interests in the Collateral purported to be covered thereby, which security interests are and will remain perfected security

interests, prior to all other Liens, other than Liens permitted under Section 6.01. Each of the representations and warranties made by the Borrower or any Subsidiary Guarantor in the Security Documents and Subsidiary Guarantees to which it is a party is true and correct in all material respects.

Section 3.11. . *Processing of Receivables*. In the ordinary course of its business, each Credit Party processes its accounts receivable in a manner such that (i) each payment received by such Credit 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 Credit Party and (ii) if, at any time any accounts receivable to such Credit 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 Financing.

Section 3.12. . *Solvency*. Immediately after the Financing Transactions to occur on the Effective Date are consummated and after giving effect to the application of the proceeds of each Loan made on the Effective Date and after giving effect to the application of the proceeds of each Loan made on any other date, (a) the fair value of the assets of the Borrower, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the Borrower will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (c) the Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and proposed to be conducted after the Effective Date.

Section 3.13. . *Collateral and Guarantee Requirement*. The Collateral and Guarantee Requirement shall have been satisfied as of the Effective Date.

Section 3.14. . *Anti-Corruption Laws and Sanctions*. The Borrower has implemented and maintains in effect 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. The Borrower, its 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) the Borrower, (b) any of its Subsidiaries or (c) 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 the Borrower and its Subsidiaries.

Section 3.15. . *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 Effective Date.

Section 3.16. . *[Reserved]*.

Section 3.17. . ~~EEA~~Affected *Financial Institutions*. No Credit Party is an ~~EEA~~Affected Financial Institution.

Article 4.

Conditions

Section 4.01. . *Effective Date*. This Agreement shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received counterparts hereof signed by the Borrower and each Lender (~~or, in the case of any party as to which an executed counterpart shall not have been received, receipt by the Administrative Agent in form satisfactory to it of confirmation from such party that it has executed a counterpart hereof~~). ~~Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic (e.g., a “pdf” or “tif” file) means will be effective as delivery of a manually executed counterpart of this Agreement.~~ which, subject to Section 9.07(b), may include any Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page).

(b) The Administrative Agent shall have received the favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Milbank LLP, counsel to the Credit Parties, which opinion is in form and substance reasonably satisfactory to the Administrative Agent. The Borrower requests such counsel to deliver such opinion.

(c) The Administrative Agent and the Collateral Agent shall have received such documents and certificates as the Agents or their counsel may reasonably request relating to the organization, existence and good standing of the Credit Parties, the authorization for and validity of the Financing Transactions and any other material legal matters relating to the Credit Parties, the Loan Documents

or the Financing Transactions, all in form and substance satisfactory to the Agents and their counsel.

(d) The Administrative Agent and the Collateral Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in clauses (b), (c) and (d) of Section 4.02.

(e) The Borrower shall have paid (i) all principal, interest, fees and other amounts due and payable to the Departing Lenders (if any) and (ii) all accrued interest and fees under the Existing Credit Agreement to any lender party to the Existing Credit Agreement that is not a Departing Lender.

(f) The Borrower shall have paid all fees and other amounts due and payable to the Lender Parties on or before the Effective Date for which invoices have been presented to the Borrower at least three Business Days prior to the Effective Date, including, to the extent invoiced, all out-of-pocket expenses (including fees, charges and disbursements of counsel) required to be reimbursed or paid by the Borrower under the Loan Documents.

(g) (i) The Administrative Agent (on behalf of the Lenders) shall have received not later than three Business Days prior to the Effective Date (or such later date as shall be acceptable to it), all documentation and other information about the Credit Parties as had been reasonably requested at least 10 Business Days prior to the Effective Date by the Administrative Agent (on behalf of the Lenders) that it reasonably determines is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act; and (ii) to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least five days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least 10 days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(h) The Administrative Agent shall have received the results of a search of the UCC (or equivalent) filings made with respect to the Credit Parties and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are permitted by Section 6.01 or have been released.

(i) The Administrative Agent and the Collateral Agent shall have received evidence reasonably satisfactory to them that all insurance required by Section 5.05 is in effect.

(j) The Borrower Security Agreement, each Subsidiary Guarantee Agreement and the Subsidiary Security Agreement shall have been executed and delivered by the parties thereto. The Lenders hereby instruct the Collateral Agent to execute the Borrower Security Agreement, each Subsidiary Guarantee Agreement and the Subsidiary Security Agreement on their behalf.

(k) The Administrative Agent and the Lenders shall have received at least three Business Days prior to the Effective Date a Borrowing Base Certificate that calculates the Aggregate Borrowing Base, the Tranche A Borrowing Base and the Tranche B Borrowing Base as of the last day of the month most recently ended prior to the date that is 30 days prior to the Effective Date.

(l) [Reserved].

(m) The Borrower shall have executed and delivered to the Collateral Agent a Perfection Certificate dated as of the Effective Date.

Promptly after the Effective Date occurs, the Administrative Agent shall notify the Borrower and the Lenders thereof, and such notice shall be conclusive and binding.

Section 4.02. . *Conditions to Initial Utilization and Each Subsequent Utilization.* The obligation of each Lender to make a Loan on the occasion of any Borrowing (including, subject to Section 4.03, the initial Borrowing) and the obligation of any LC Issuing Bank to issue, amend, renew or extend any Letter of Credit (including any initial Letter of Credit), are each subject to receipt of the Borrower's request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The Effective Date shall have occurred.

(b) Immediately before and after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(c) The representations and warranties of the Borrower set forth in the Loan Documents shall be true on and as of the date of such Borrowing or the date of issuance, amendment, renewal, or extension of such Letter of Credit, as applicable.

(d) Immediately after such Borrowing is made, or such Letter of Credit is issued, amended, renewed, or extended, as applicable, the Total Outstanding Amount will not exceed the Maximum Facility Availability.

(e) To the extent such Borrowing is a Tranche A Loan Borrowing (other than with respect to a Borrowing of Tranche A Loans pursuant to Section 2.16(e)), the Total Tranche B Outstanding Amount shall not be less than the Maximum Tranche B Availability immediately prior to such Borrowing.

Subject to Section 4.03, each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (b), (c), (d) and (e) of this Section.

Section 4.03. . . . *Conditions to Utilization for Specified Acquisition.*
The obligation of each Lender to make a Loan on the Closing Date (as defined in the Big River Acquisition Agreement), are subject to the receipt of the Borrower's request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The Effective Date shall have occurred.

(b) Immediately before and after giving effect to such Borrowing, no Default or Event of Default under clause (a), (b), (i), (j) or (k) of Article 7 hereof shall have occurred and be continuing.

(c) The representations and warranties of the Borrower set forth in Sections 3.01 (with respect to the Borrower only), 3.02, 3.03(b), 3.07, 3.10, 3.12 and 3.14 hereof be true on and as of the date of such Borrowing.

(d) Immediately after such Borrowing is made, the Total Outstanding Amount will not exceed the Maximum Facility Availability.

(e) To the extent such Borrowing is a Tranche A Loan Borrowing (other than with respect to a Borrowing of Tranche A Loans pursuant to Section 2.16(e)), the Total Tranche B Outstanding Amount shall not be less than the Maximum Tranche B Availability immediately prior to such Borrowing.

(f) Such Borrowing shall not exceed \$725,000,000.

(g) The Proceeds of such Borrowing shall be applied solely to fund all or a portion of the consideration for the Specified Acquisition and pay certain costs and expenses related thereto.

(h) The Closing Date (as defined in the Big River Acquisition Agreement) occurs on or before the date that is five (5) Business Days after the Outside Date (as defined in the Big River Acquisition Agreement (as in effect on the date hereof).

The Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (b), (c), (d), (e) and (g) of this Section.

Article 5.
Affirmative Covenants

Until all the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or been cancelled and all LC Disbursements have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 5.01. . *Financial Statements and Other Information.*

(a) The Borrower will furnish the following to the Administrative Agent (for delivery to each Lender):

(i) as soon as available and in any event within 90 days after the end of each Fiscal Year commencing with the Fiscal Year ending December 31, 2018, its audited consolidated balance sheet as of the end of such Fiscal Year and the related statements of income and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by PricewaterhouseCoopers LLC or another “registered public accounting firm” as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit except as permitted by the Exchange Act and the regulations promulgated thereunder) as presenting fairly in all material respects the financial position, results of operations and cash flows of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP;

(ii) as soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, its consolidated balance sheet as of the end of such Fiscal Quarter and the related statement of income for such Fiscal Quarter and statements of income and cash flows for the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as

of the end of) the previous Fiscal Year, all certified by a Financial Officer as (x) reflecting all adjustments (which adjustments are normal and recurring unless otherwise disclosed) necessary for a fair presentation of the results for the period covered and (y) having been prepared in accordance with the applicable rules of the SEC;

(iii) as soon as available and in any event within 30 days after the end of each fiscal month (x) its shipment and average selling price data for such month and for the then elapsed portion of the Fiscal Year and (y) the additional monthly financial information described in (and substantially in the form of) Schedule 5.01, certified as to accuracy by a Financial Officer;

(iv) concurrently with each delivery of financial statements under clause (i) or (ii), a certificate of a Financial Officer (x) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (y) setting forth reasonably detailed calculations demonstrating compliance with the applicable provisions of Section 6.03 and (z) identifying any change(s) in GAAP or in the application thereof that have become effective since the date of, and have had an effect on, the Borrower's most recent audited financial statements referred to in Section 3.04 or delivered pursuant to this Section (and, if any such change has become effective, specifying the effect of such change on the financial statements accompanying such certificate);

(v) no later than 60 days after the beginning of each Fiscal Year commencing with the Fiscal Year ending December 31, 2018, a forecast of the following for each Fiscal Quarter of such Fiscal Year: estimates of operating income, depreciation, Consolidated EBITDA, Consolidated Interest Expense, Consolidated Cash Interest Expense, operating cash flow, Capital Expenditures and cash balances, estimates of Eligible Receivables and estimates of Eligible Inventory;

(vi) promptly after the same become publicly available, copies of all periodic and other material reports and proxy statements filed by the Borrower or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC;

(vii) promptly upon the effectiveness of any material amendment or modification of, or any waiver of the rights of the Borrower or any of its Subsidiaries 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;

(viii) written notice of any change in the Borrower's Senior Debt Ratings by either Moody's, Fitch or S&P; and

(ix) promptly following any request therefor; such other information regarding the operations, business affairs and financial condition of the Borrower and its Subsidiaries, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request; 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.

Information required to be delivered pursuant to this Section 5.01(a) shall be deemed to have been delivered on the date on which the Borrower provides notice to the Administrative Agent that such information has been posted on the Borrower's website on the Internet at the website address listed on the signature pages hereof, at <https://www.sec.gov/cgi-bin/browse-edgar?CIK=x&owner=exclude&action=getcompany&Find=Search> or at another website identified in such notice and accessible by the Lenders without charge; *provided* that (i) such notice may be included in a certificate delivered pursuant to Section 5.01(a)(iv) and (ii) the Borrower shall deliver paper copies of the information referred to in Section 5.01(a)(i), Section 5.01(a)(ii) and Section 5.01(a)(vi) to the Administrative Agent for any Lender which requests such delivery.

(b) *Borrowing Base Reports.* The Borrower will furnish to the Administrative Agent and the Collateral Agent (and the Administrative Agent shall thereafter deliver to each Lender):

(i) as soon as available and in any event within 20 days (or if such 20th day is not a Business Day, the next succeeding Business Day) after the last day of each calendar month, a completed Borrowing Base Certificate (accompanied by supporting documentation and supplemental reporting) calculating and certifying the Aggregate Borrowing Base, the Tranche A Borrowing Base and the Tranche B Borrowing Base as of the end of such calendar month, signed on behalf of the Borrower by a Financial Officer and in form and substance satisfactory to the Collateral Agent; *provided* that such Borrowing Base Certificate (accompanied by supporting documentation and supplemental reporting) shall be furnished to the Administrative Agent and the Collateral Agent as soon as available and in any event within two Business Days after the end of each calendar

week (each such weekly period deemed, for purposes hereof, to end on a Friday) during any period beginning on the date on which Average Facility Availability has been less than the greater of (x) 12.5% of the total aggregate Commitments and (y) \$250,000,000 for the preceding five (5) consecutive days and ending on the date on which Average Facility Availability has been at least the greater of (x) 12.5% of the total aggregate Commitments and (y) \$250,000,000 for the preceding thirty (30) consecutive days; *provided* that if the Borrower is unable through commercially reasonable efforts to provide the reporting required by the foregoing proviso at the frequency specified, other information and reporting mutually acceptable to the Borrower, the Administrative Agent and the Collateral Agent shall be substituted; and

(ii) within two Business Days of any request therefor, such other information in such detail concerning the amount, composition, and manner of calculation of the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base as any Lender may reasonably request.

(c) The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(i) the occurrence of any Default;

(ii) 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 Change;

(iii) 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 Change; ~~and~~

(iv) any other development that results in, or would reasonably be expected to result in, a Material Adverse Change; ~~and~~ and

(v) 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 delivered under this subsection shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

(d) Within 10 business days after July 31 of each fiscal year (commencing with July 31, 2022), a Financial 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.

Section 5.02. . *Information Regarding Collateral.*

(a) The Borrower will furnish or cause to be furnished to the Administrative Agent and the Collateral Agent prompt written notice of any change in (i) any Credit Party's corporate name or any trade name used to identify such Credit Party in the conduct of its business or any Credit Party's jurisdiction of organization, chief executive office, its principal place of business, or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (ii) any Credit Party's identity or corporate or other organizational structure, (iii) any Credit Party's State Organizational Identification Number (or Charter Number) and (iv) any Credit Party's Federal Taxpayer Identification Number. The Borrower will not effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC and all other actions have been taken that are required so that such change will not at any time adversely affect the validity, perfection or priority of any Transaction Lien on any of the Collateral. The Borrower will also promptly notify the Administrative Agent and the Collateral Agent if any material portion of the Collateral is damaged or destroyed.

(b) Each year, at the time annual financial statements with respect to the preceding Fiscal Year are delivered pursuant to Section 5.01(a)(i), the Borrower will deliver to the Administrative Agent and the Collateral Agent a certificate of a Financial Officer and the chief legal officer (or other in-house counsel) of the Borrower (i) setting forth the information required pursuant to paragraphs 1 and 2 of the Perfection Certificate with respect to each Credit Party or confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Effective Date or the date of the most recent certificate delivered pursuant to this subsection and (ii) certifying that all UCC financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations, including all re-filings, re-recordings and re-registrations, containing a description of the Collateral have

been filed of record in each appropriate office in each jurisdiction identified pursuant to clause (i) to the extent necessary to protect and perfect the Transaction Liens for a period of at least 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

(c) If any Credit 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 Receivables of the Applicable Account Debtor as Ineligible Receivables hereunder, and, thereafter (until delivery of the next Borrowing Base Certificate pursuant to Section 5.01(b)), the Aggregate Borrowing Base, the Tranche A Borrowing Base and the Tranche B Borrowing Base shall each be determined based upon such updated Borrowing Base Certificate unless the Borrower notifies the Collateral Agent that the applicable Permitted Supply Chain Financing will not be consummated or that the applicable Permitted Supply Chain Financing has been terminated.

(d) If any Credit Party sells, transfers or otherwise disposes of any Collateral, (i) such Collateral shall thereafter be excluded from the Aggregate Borrowing Base, the Tranche A Borrowing Base and the Tranche B Borrowing Base and (ii) if the Collateral so sold, transferred or otherwise disposed of constitutes more than 10% of the Aggregate Borrowing Base at such time, the Borrower shall deliver to the Collateral Agent an updated Borrowing Base Certificate giving effect to such transaction.

(e) If any of the Senior Notes are outstanding after the date that is 45 days prior to the stated maturity date of such Senior Notes, the Borrower shall furnish to the Administrative Agent and the Collateral 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.

Section 5.03. . *Existence; Conduct of Business.* The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks

and trade names material to the conduct of its business; *provided* that the foregoing shall not prohibit (i) any merger, consolidation, liquidation or dissolution involving the Borrower which is expressly permitted under Section 6.02 or (ii) any other transaction which would not reasonably be expected to result in a Material Adverse Change.

Section 5.04. . *Maintenance of Properties.* The Borrower will, and will cause each of its Subsidiaries to, maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.05. . *Insurance.*

(a) The Borrower will maintain, and will cause each of the Subsidiary Guarantors to maintain, on its own or through the Borrower, at its (or their) sole cost and expense, insurance coverage reasonably acceptable to the Administrative Agent and Collateral Agent (i) with such policy limits (including deductibles) reasonable and customary for similarly situated Persons engaged in similar businesses and operating in the same or similar locations as the Borrower and the Subsidiary Guarantors and (ii) with financially sound and reputable insurers (either with (A) a minimum A. M. Best rating of A-VII, provided, however, that if the insurance is provided by Borrower's captive insurance company the minimum rating only applies to the reinsurers or (B) with such other insurers as shall be reasonably acceptable to the Administrative Agent and the Collateral Agent) with such policy limits (including deductibles) reasonable and customary for similarly situated Persons engaged in similar businesses and operating in the same or similar locations as the Borrower and the Subsidiary Guarantors. If at any time the Borrower becomes aware that conditions and circumstances may have a material adverse effect on its ability to maintain (or cause to be maintained) insurance coverage as described in the preceding sentence at favorable premiums, it shall immediately advise the Administrative Agent and the Collateral Agent in writing; *provided* that such notice must be given prior to the expiration of the relevant existing policy. Such notice shall include copies of any proposals from insurers regarding the insurance coverage in question as well as the Borrower's recommendations with respect thereto. The Administrative Agent shall promptly advise the Borrower of the requirements of the Administrative Agent (which requirements shall be determined in good faith by mutual agreement among the Administrative Agent and the Collateral Agent) regarding such insurance coverage, and the Borrower shall undertake all reasonable efforts to adhere to such requirements. If the Borrower fails to obtain or maintain the insurance coverage required pursuant to this Section 5.05 or to pay all premiums relating thereto, the Collateral Agent may at any time or times thereafter obtain and maintain such required insurance coverage and pay such premiums and take such

other actions with respect thereto that the Collateral Agent deem reasonably advisable. The Collateral Agent shall not have any obligation to obtain insurance for the Borrower or any of its Subsidiaries or to pay any premiums therefor. By doing so, the Collateral Agent shall not be deemed to have waived any Default arising from failure of the Borrower to maintain (or cause to be maintained) such insurance or to pay (or cause to be paid) any premiums therefor. All sums so disbursed, including reasonable attorneys' fees, court costs and other charges related thereto, shall be payable on demand by the Borrower to the Administrative Agent and shall be additional obligations hereunder secured by the Collateral. The Collateral Agent reserves the right at any time upon any change in the Borrower's risk profile to require additional insurance coverages and limits of insurance to, in such Agents' reasonable opinion, adequately protect the interests of the Lender Parties in all or any portion of the Collateral.

(b) Property damage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include (i) a lenders' loss payable clause, in each case in favor of the Collateral Agent and providing for losses thereunder to be payable to the Collateral Agent or its designee as loss payee and (ii) a provision to the effect that none of the Administrative Agent and the Collateral Agent nor any other Lender Party shall be a coinsurer. Commercial general liability policies shall be endorsed to name the Collateral Agent as an additional insured. Each such policy referred to in this subsection also shall provide that it shall not be canceled, modified or not renewed (x) by reason of nonpayment of premium except upon at least 10 days' prior written notice thereof by the insurer to the Collateral Agent (giving the Collateral Agent the right to cure defaults in the payment of premiums) or (y) for any other reason except upon at least 30 days' prior written notice thereof by the insurer to the Collateral Agent. The Borrower shall deliver to the Collateral Agent, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Collateral Agent) together with evidence reasonably satisfactory to the Collateral Agent of payment of the premium therefor.

Section 5.06. . *Casualty and Condemnation.* The Borrower will furnish to the Administrative Agent, the Collateral Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding.

Section 5.07. . *Proper Records; Rights to Inspect and Appraise.*

(a) The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which complete and correct entries are made of all transactions relating to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent, the Collateral Agent or any Lender, at reasonable times and upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested. Any representatives of the Administrative Agent or any Lender shall comply with the Borrower's rules regarding safety and security while visiting the Borrower's facilities.

(b) [Reserved].

(c) The Borrower will, and will cause each of its Subsidiaries to, permit the Collateral Agent and any representatives designated by it (including any consultants, accountants, lawyers and appraisers retained by the Collateral Agent) to conduct field exams and evaluations and appraisals of the assets included in the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base and the Borrower's computation of the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base, all at such reasonable times and as often as reasonably requested. The Borrower shall pay the reasonable and documented fees and expenses of employees of the Collateral Agent (including reasonable and customary internally allocated fees of such employees incurred in connection with periodic field exams, evaluations and internally allocated monitoring fees associated with the Collateral Agent's "collateral agent services group" or similar body), and the documented fees and expenses of any representatives (including any inventory appraisal firm) retained by the Collateral Agent to conduct any such inventory evaluation or appraisal, in respect of (i) up to one such field exam performed by the Collateral Agent in any calendar year and up to one such inventory appraisal in any calendar year at any time when the Average Facility Availability is greater than or equal to the greater of (x) 15% of the total aggregate Commitments and (y) \$300,000,000, *provided* that the Collateral Agent shall cause one inventory appraisal and field exam to be conducted every 12 months, except that so long as no Loans are outstanding and without limiting the following clauses (ii), (iii) and (iv), the Collateral Agent may in its Permitted Discretion elect to conduct less frequent inventory appraisals and/or field exams (but in no event less frequently than (A) once during the period commencing on the Effective Date and ending on December 31, 2020 and (B) once every 24 months thereafter) (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 Collateral 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), (ii) up to two such field exams performed by the Collateral Agent in any calendar year and up to two such inventory appraisals in any calendar year at any time beginning on the date on which Average Facility Availability has been less than the greater of (x) 15% of the total aggregate Commitments and (y) \$300,000,000 for the preceding five (5) consecutive days and ending on the date on which Average Facility Availability has been at least the greater of (x) 15% of the total aggregate Commitments and (y) \$300,000,000 for the preceding thirty (30) consecutive days, (iii) any number of such field exams performed by the Collateral Agent and any number of such inventory appraisals during the continuance of a Default or Event of Default, and (iv) any number of additional appraisals of the assets included in the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base, all at such times and as often as reasonably requested, if the Collateral Agent, in its good faith judgment, reasonably believes that any circumstance or event (including a decline in steel prices) has materially affected the value of the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base. The Collateral Agent and any representative designated by it to conduct such field exams, evaluations and appraisals shall, during any review, inspection or other activity performed at any of the Borrower's or any other Credit Party's plant sites, (I) be accompanied at all times by a plant safety representative (and the Borrower hereby agrees to cause such a plant safety representative to be available for such purpose at such reasonable hours as may be requested and upon reasonable prior notice) and (II) comply at all times with the Borrower's or such other Credit Party's rules regarding safety and security to the extent that the Collateral Agent or representative has been notified of such rules. In connection with any field exam or appraisal relating to the computation of the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base, the Borrower shall make adjustments to the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base (as applicable) (which may include maintaining additional reserves or modifying the eligibility criteria for components of the Tranche A Borrowing Base or the Tranche B Borrowing Base) to the extent required by the Collateral Agent or the Required Lenders as a result of any such field exam or appraisal. The Collateral Agent shall furnish to the Administrative Agent (for delivery to each Lender) a copy of the final written field exam or appraisal report prepared in connection with such field exam or appraisal.

Section 5.8. *Compliance with Laws.* The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws and ERISA and the respective rules and regulations thereunder) applicable to it or its property, other than such laws, rules or regulations the validity or applicability of

which the Borrower or any Subsidiary is contesting in good faith by appropriate proceedings or the failure to comply with which would not reasonably be expected to result in a Material Adverse Change. 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 5.9. . *Use of Proceeds and Letters of Credit.* The proceeds of the Loans will be used for the general corporate purposes (including working capital needs) of the Borrower. 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 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 5.10. . *Further Assurances.*

(a) The Borrower will and will cause each other Credit Party to execute and deliver any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable law, or that the Administrative Agent, the Collateral Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the Borrower's expense. The Borrower will provide to the Collateral Agent, from time to time upon request, evidence reasonably satisfactory to the Collateral Agent as to the perfection and priority of the Transaction Liens created or intended to be created by the Security Documents.

(b) If, on the date when all of the Tranche A Commitments are terminated (whether pursuant to Section 2.10 or otherwise), any Letter of Credit remains outstanding, the Borrower shall deposit in the Cash Collateral Account on such date an amount in cash equal to 102% of the total LC Exposure as of such

date plus any accrued and unpaid interest thereon. Any amount so deposited (including any earnings thereon) will be withdrawn from the Cash Collateral Account by the Administrative Agent and applied to pay LC Reimbursement Obligations as they become due; *provided* that at such time as all outstanding Letters of Credit have expired, and all LC Reimbursement Obligations (plus accrued and unpaid interest thereon) have been paid in full, such amount, to the extent not therefore applied, shall be returned to the Borrower.

Article 6.

Negative Covenants

Until all the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or been cancelled and all LC Disbursements have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 6.01. . *Liens*. The Borrower will not, and will not permit any of its Subsidiaries to, create or permit to exist any Lien on any property now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except the following:

(a) Permitted Liens;

(b) any Lien on any property of the Borrower or any Subsidiary existing on the date hereof and (in the case of any such Lien that (x) secures Debt or (y) arises outside the ordinary course of business) listed in Schedule 6.01; *provided* that such Lien shall not apply to any other property of the Borrower or any Subsidiary and such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) any Lien existing on any property or asset before the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that first becomes a Subsidiary after the date hereof before the time such Person becomes a Subsidiary; *provided* that such Lien is not initially created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, such Lien will not apply to any other property or asset of the Borrower or any Subsidiary and such Lien will secure only those obligations which it secures on the date of such acquisition or the date such Person first becomes a Subsidiary, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding (or committed) principal amount thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; *provided* that (i) such Liens and the Debt secured thereby are incurred before or within 180 days after such acquisition or the completion of such construction or improvement, (ii) the Debt 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 Subsidiary other than any additions and accessions thereto;

(e) Liens to secure a Debt owing to the Borrower or a Subsidiary;

(f) any Lien arising out of the refinancing, extension, renewal or refunding of any Debt secured by a Lien permitted by any of clause (c), (d) or (e) of this Section; *provided* that such Debt is not increased (except by the amount of fees, expenses and premiums required to be paid in connection with such refinancing, extension, renewal or refunding) and is not secured by any additional assets;

(g) Liens securing Debt arising out of, and sales of accounts receivable as part of, a Permitted Supply Chain Financing;

(h) Liens securing Industrial Revenue Bond Obligations issued for the benefit of the Borrower;

(i) Liens on assets of Foreign Subsidiaries securing obligations of Foreign Subsidiaries;

(j) Liens not otherwise permitted by the foregoing clauses of this Section 6.01 on assets (other than assets that either (i) constitute Collateral or (ii) are of the type that would constitute Collateral if the owner of such assets were a Subsidiary Guarantor and had satisfied the Collateral and Guarantee Requirement); *provided* that (x) the aggregate principal amount of Debt and other obligations secured thereby shall not exceed 17.5% of Consolidated Net Tangible Assets (determined at the time of incurrence) and (y) the holders of any Debt secured thereby (or the representative thereof) shall have entered into 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

(k) Liens granted by the Borrower or any Subsidiary Guarantor pursuant to the Loan Documents.

Section 6.02. . *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 Subsidiaries, taken as a whole, to any other Person; *provided* that the Borrower may permit any corporation 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 corporation 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 of the principal of and interest on the Loans and the due and punctual performance of the obligations of the Borrower hereunder and under any promissory note delivered pursuant to Section 2.17(d) hereunder, 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 corporation that originally executed this Agreement as the borrower from its liability as obligor hereunder or under any promissory note delivered pursuant to Section 2.17(d) hereunder.

Section 6.03. . *Financial Covenant*. The Borrower will not permit the Fixed Charge Coverage Ratio to be less than 1.00:1.00; *provided* that compliance with this Section 6.03 shall be required only at such times as Aggregate Facility Availability is less than the greater of (x) 10% of the total aggregate Commitments and (y) \$~~200,000,000~~175,000,000.

Section 6.04. . *Sale of Receivables*. The Borrower will not, and will not permit any Credit Party to, sell, transfer, or otherwise dispose of any Receivables owned by the Borrower or any Credit 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 Ineligible Receivables in the ordinary course of business in connection with the collection thereof.

Section 6.05. . *Specified Financings*. The Borrower will not, and will not permit any Credit Party to, (a) permit any amount constituting proceeds of a collection on a Transferred Receivable (as defined in the Security Agreement) in respect of any Specified Financing to be deposited in any deposit account that constitutes a Collection Account (as defined in the Security Agreement), and allow such deposited amount to remain in such Collection Account for longer than ten (10) business days (or such greater period acceptable to the Collateral Agent in its reasonable discretion) from the date such amount was deposited in such Collection Account and (b) permit the aggregate amount of Receivables attributable to the Specified Replacement Account Debtor securing any Specified Financings that would otherwise constitute Tranche A Available Receivables or Tranche B Available Receivables to materially exceed, in the aggregate, the sum of the Tranche A Receivables and Tranche B Receivables of the Specified Financing Eligible Account Debtor set forth in clause (iii) of the definition thereof

at the time such Specified Financing Eligible Account Debtor's Receivables first secure any Specified Financing.

Article 7.

Events of Default

If any of the following events ("**Events of Default**") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any LC Reimbursement Obligation when the same shall become due, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay when due any interest on any Loan or any fee or other amount (except an amount referred to in clause (a)) payable under any Loan Document, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation, warranty or certification made or deemed made by or on behalf of the Borrower in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect when made or deemed made and, if the circumstances giving rise to such false or misleading representation or warranty are susceptible to being cured in all material respects, such false or misleading representation or warranty shall not be cured in all material respects for five days after the earlier to occur of the date on which an officer of the Borrower shall obtain knowledge thereof or the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent;

(d) the Borrower shall fail to observe or perform any covenant or agreement contained in Section 5.01(a)(i) or (ii), Section 5.01(c), Section 5.02(c), Sections 5.04 through 5.06, Section 5.09, Section 5.10 or in Article 6 (other than Section 6.05(a));

(e) the Borrower shall fail to observe or perform (i) any covenant or agreement contained in Section 5.01(b) or Section 5.02(d) and such failure shall continue for three days after the earlier of notice of such failure to the Borrower from the Administrative Agent or knowledge of such failure by an officer of the Borrower, (ii) any covenant or agreement contained in Section 5.01(a)(iii), Sections 5.01(a)(v) through 5.01(a)(viii), Section 5.02(a) or Section 5.02(b) and such failure shall continue for 10 days after the earlier of notice of such failure to

the Borrower from the Administrative Agent or knowledge of such failure by an officer of the Borrower or (iii) any covenant or agreement contained in Section 6.05(a) and such failure shall continue for 5 business days;

(f) the Borrower shall fail to observe or perform any provision of any Loan Document (other than (i) those failures covered by clauses (a), (b), (d) and (e) of this Article 7 and (ii) any failure to observe or perform any provision of Section 5.01(d)) and such failure shall continue for 30 days after the earlier of notice of such failure to the Borrower from the Administrative Agent or knowledge of such failure by an officer of the Borrower;

(g) the Borrower or any of its Subsidiaries shall fail to make a payment or payments (whether of principal or interest and regardless of amount) in respect of any Material Debt when the same shall become due or within any applicable grace period;

(h) any event or condition occurs that results in acceleration of the maturity of any Material Debt or enables or permits the holder or holders of Material Debt or any trustee or agent on its or their behalf to cause any Material Debt to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, before its scheduled maturity but in the case of any event described in this 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 Material Debt;

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking liquidation, reorganization or other relief in respect of the Borrower or any of its Significant Subsidiaries or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any of its Significant Subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(j) the Borrower or any of its Significant Subsidiaries shall voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i), apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any the Borrower or any of its Significant Subsidiaries or for a

substantial part of its assets, file an answer admitting the material allegations of a petition filed against it in any such proceeding, make a general assignment for the benefit of creditors or take any action for the purpose of effecting any of the foregoing;

(k) the Borrower or any of its Significant Subsidiaries shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(l) one or more judgments for the payment of money in an aggregate amount exceeding \$100,000,000 shall be rendered against the Borrower or any of its Significant Subsidiaries and shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any asset of the Borrower or any of its Significant Subsidiaries to enforce any such judgment;

(m) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Change;

(n) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Credit Party not to be, a valid and perfected Lien on all or a substantial part of the Collateral, with the priority required by the applicable Security 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; or

(o) any Subsidiary Guarantee of a Subsidiary Guarantor shall cease for any reason to be in full force and effect, unless such Subsidiary Guarantee is released pursuant to the release provisions contained therein;

then, and (I) in every such event (except an event with respect to the Borrower described in clause (i) or (j) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii)(A) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and

payable immediately, without presentment, demand, protest or other notice of any kind, all of which are waived by the Borrower and (B) apply all payments received on account of the Obligations, subject to Section 2.25, (x) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts payable to the Administrative Agent (including fees and disbursements and other charges of counsel to the Administrative Agent payable under Section 9.03) and (y) second, in accordance with Section 7 of each applicable Security Agreement; and (II) in the case of any event with respect to the Borrower described in clause (i) or (j) above, (i) the Commitments shall automatically terminate and (ii)(A) the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are waived by the Borrower and (B) all payments received on account of the Obligations shall, subject to Section 2.25, be applied by the Administrative Agent (x) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts payable to the Administrative Agent (including fees and disbursements and other charges of counsel to the Administrative Agent payable under Section 9.03) and (y) second, in accordance with Section 7 of each applicable Security Agreement. Additionally, and without limiting the generality of the foregoing, on each Business Day during a Sweep Period (as defined in the applicable Security Agreement), the Collateral Agent shall apply funds on deposit in the Cash Collateral Account in accordance with Section 5(d) of the applicable Security Agreement.

Notwithstanding anything to the contrary herein, it is understood and agreed that any failure to observe or perform any provision of Section 5.01(d) 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.

Article 8.

The Agents

Section 8.01. . *Appointment and Authorization.* Each Lender and LC Issuing Bank irrevocably appoints and authorizes each Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to such Agent by the terms hereof or thereof, together with all such powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Collateral Agent shall have the sole and exclusive authority to (a) act as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein, (b) manage, supervise or otherwise deal with Collateral and (c) take any

enforcement action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, applicable law or otherwise. The Collateral Agent alone shall be authorized to determine whether any Receivables or Inventory constitute Eligible Receivables or Eligible Inventory, or whether to impose or release any Availability Reserve, which determinations and judgments, if exercised in good faith, shall exonerate the Collateral Agent from liability to any Lender, any LC Issuing Bank or other Person for any error in judgment.

Section 8.02. . *Administrative Agent and Affiliates.* JPMorgan Chase Bank, N.A. shall have the same rights and powers under this Agreement as any other Lender or LC Issuing Bank and may exercise or refrain from exercising the same as though it were not the Administrative Agent or the Collateral Agent, and JPMorgan Chase Bank, N.A. and its affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or affiliate of the Borrower as if it were not the Administrative Agent or the Collateral Agent hereunder.

Section 8.03. . *Action by Administrative Agent.*

(a) The obligations of each Agent hereunder are only those expressly set forth herein. Without limiting the generality of the foregoing, none of the Agents shall be required to take any action with respect to any Default, except as expressly provided in Article 7.

(b) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the LC Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic platform chosen by the Administrative Agent to be its electronic transmission system (any such chosen electronic transmission system, the “**Approved Electronic Platform**”).

(c) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the LC Issuing Banks and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. Each of the Lenders, each of the LC Issuing Banks and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(d) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. 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 THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY CO-DOCUMENTATION AGENT, ANY CO-SYNDICATION AGENT, ANY SUSTAINABILITY STRUCTURING AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “**APPLICABLE PARTIES**”) HAVE ANY LIABILITY TO ANY CREDIT PARTY, ANY LENDER, ANY LC ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY CREDIT PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM, EXCEPT FOR SUCH DAMAGES RESULTING FROM SUCH APPLICABLE PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED IN A FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. IN NO EVENT SHALL THE APPLICABLE PARTIES HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE).

(e) Each of the Lenders, each of the LC Issuing Banks and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent’s generally applicable document retention procedures and policies.

(f) Each of the Lenders and each of the LC Issuing Banks agrees that notice to it specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communication to such Lender or LC Issuing Bank, as applicable, for purposes of the Loan Documents. Each Lender and each LC Issuing Bank agrees (i) to notify the

Administrative Agent in writing (including by electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(g) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any LC Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 8.4. . *Consultation with Experts.* The Agents may consult with legal counsel (who may be counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 8.5. . *Liability of Agents.* None of the Agents nor any of their respective affiliates nor any of their respective directors, officers, agents, or employees shall be liable for any action taken or not taken by it in connection herewith (i) with the consent or at the request of the Required Lenders or such other number of Lenders as may be expressly required hereunder or (ii) in the absence of its own gross negligence or willful misconduct. None of the Agents nor any of their respective affiliates nor any of their respective directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement, warranty or representation made in connection with this Agreement or any borrowing or issuance of a Letter of Credit hereunder; (ii) the performance or observance of any of the covenants or agreements of the Borrower; (iii) the satisfaction of any condition specified in Article 4, except receipt of items required to be delivered to an Agent; or (iv) the validity, effectiveness or genuineness of this Agreement, any promissory note issued pursuant to Section 2.17(d) or any other instrument or writing furnished in connection herewith (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page). No Agent shall incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a Lender wire, telex, facsimile, electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties.

Section 8.6. . *Credit Decision.* Each Lender and each LC Issuing Bank acknowledges that it has, independently and without reliance upon any Agent or any other Lender or LC Issuing Bank, and based on such documents and information as it has deemed appropriate, made its own credit analysis and

decision to enter into this Agreement. Each Lender and LC Issuing Bank also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or LC Issuing Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under this Agreement.

Section 8.7. . *Successor Administrative Agent.* Any Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Agent gives notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be a commercial Lender organized or licensed under the laws of the United States, any state thereof or the District of Columbia and having a combined capital and surplus of at least \$50,000,000. Upon the acceptance of its appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

Section 8.8. . *Agents' Fees.* The Borrower shall pay to each Agent for its own account fees in the amounts and at the times previously agreed upon between the Borrower and such Agent.

Section 8.9. . *Sub-Agents and Related Parties.* Each Agent may perform any and all its duties and exercise its rights and powers by or through one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding Sections of this Article shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent hereunder.

Section 8.10. . *Other Agents.* Nothing in this Agreement shall impose any duty or liability whatsoever on any Agent (other than the Administrative Agent or the Collateral Agent) in its capacity as an Agent.

Section 8.11. . *Collateral and Guarantee Matters.* Each Secured Party irrevocably authorizes and instructs the Collateral Agent to do the following:

(a) release any Lien on any property granted to or held by Collateral Agent under any Loan Document (i) upon the satisfaction of the Release Conditions, (ii) that is sold or transferred or to be sold or transferred as part of or in connection with any sale, transfer or other disposition not prohibited by the Loan Documents to a Person that is not a Credit Party (including release of any Collateral subject to a Permitted Supply Chain Financing), (iii) that does not constitute (or ceases to constitute) Collateral, (iv) if the property subject to such Lien is owned by a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its guarantee otherwise in accordance with the Loan Documents, (v) otherwise in accordance with Section 12 of the Borrower Security Agreement (or the corresponding provision of any other Security Agreement) or (vi) if approved, authorized or ratified in writing by the percentage of Lenders required by Section 9.02; and

(b) release any Subsidiary Guarantor from its guarantee of the Secured Obligations (i) upon the consummation of any permitted transaction or series of related transactions if as a result thereof such Subsidiary Guarantor ceases to be a Subsidiary of the Borrower and/or (ii) upon the satisfaction of the Release Conditions.

Section 8.12. . *Secured Parties.* By accepting the benefits of the Security Document, each Secured Party, regardless of whether a signatory to this Agreement, shall be deemed to have agreed to the terms contained in this Article 8 and in Section 11 of the Borrower Security Agreement (and any corresponding provision in any other Security Agreement).

Section 8.13. . *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, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any Subsidiary, 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 Benefit Plans in connection with the Loans, the Letters of Credit 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 with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, and the conditions for exemptive relief thereunder are and will continue to be satisfied in connection therewith,

(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 Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, 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 Letters of Credit, 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 not 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, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any Subsidiary, that:

(i) none of the Administrative Agent, or any Arranger or any of their respective 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 Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21, as amended from time to time) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Internal Revenue Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent, any Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial 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 Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit 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, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

Section 1.14. . Acknowledgements of Lenders and LC 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 8.14 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 Credit 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 Credit Party.

(d) Each party's obligations under this Section 8.14 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 Secured Obligations under any Loan Document.

Section 8.15. *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 5.01(d) (and the Administrative Agent and each Sustainability Structuring Agent may rely conclusively on any such certificate, without further inquiry).

Article 9.

Miscellaneous

Section 9.01. . *Notices.*

(a) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing (it being understood that any notices or communication required to be delivered by the Borrower "in writing" may be delivered by the succeeding means, including via electronic mail) and shall be

delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy or other electronic means, as follows:

(i) if to the Borrower, to it at 600 Grant Street, 61st Floor, Pittsburgh, Pennsylvania 15219, Attention of Treasurer and Chief Risk Officer (Facsimile No. (412) 433-1167), with a copy to the Borrower, to it at 600 Grant Street, Room 1874, Pittsburgh, Pennsylvania 15219, Attention of the Manager – Corporate Finance (Facsimile No.(412) 433-2222);

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, N.A., 500 Stanton Christiana Road, Ops 2 Floor 3, Newark, Delaware 19713-2107, attention of Mary Crews (Tel: (302) 634-5758; Email: mary.crews@jpmorgan.com); with a copy to (i) James Shender, 383 Madison Avenue, FL 24, New York, New York 10179 (Facsimile: (212) 270-5100; Email: james.m.shender@jpmorgan.com) and (ii) Justin Aramalla, 383 Madison Avenue, FL 24, New York, New York 10179 (Email: justin.aramalla@jpmorgan.com);

(iii) if to the Collateral Agent, to JPMorgan Chase & Co., CIB DMO WLO, Mail code NY1-C413, 4 CMC, Brooklyn, NY, 11245-0001, United States (Email: ib.collateral.services@jpmchase.com); with a copy to (i) James Shender, 383 Madison Avenue, FL 24, New York, New York 10179 (Facsimile: (212) 270-5100; Email: james.m.shender@jpmorgan.com) and (ii) Justin Aramalla, 383 Madison Avenue, FL 24, New York, New York 10179 (Email: justin.aramalla@jpmorgan.com); Borrowing Base Certificates shall also be sent, to (i) ib.cbc@jpmchase.com and (ii) brittany.s.stark@jpmorgan.com;

(iv) if to JPMorgan Chase Bank, N.A. as LC Issuing Bank, to it at JPMorgan Chase Bank, N.A., 10420 Highland Manor Dr. 4th Floor, Tampa, FL 33610, Attention: Standby LC Unit, (Facsimile: 856-294-5267; Email: gts.ib.standby@jpmchase.com); with a copy to JPMorgan Chase Bank, N.A., 500 Stanton Christiana Rd., NCC5 / 1st Floor, Newark, DE 19713, Attention: Loan & Agency Services Group;

(v) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

(b) The Administrative Agent, the Collateral 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.

(c) Any party hereto may change its address, telecopy number or email address for notices and other communications hereunder by notice to the Administrative Agent and the Borrower. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement will be deemed to have been given on the date of receipt.

Section 9.02. . *Waivers; Amendments.*

(a) No failure or delay by any Lender Party in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender Parties under the Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by subsection (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, neither the making of a Loan nor the issuance, amendment, renewal or extension of a Letter of Credit shall be construed as a waiver of any Default, regardless of whether any Lender Party had notice or knowledge of such Default at the time.

(b) Except as otherwise provided in Section 2.15(e) or Section 2.19(b), no Loan Document or provision thereof may be waived, amended or modified except, in the case of this Agreement, by an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, by an agreement or agreements in writing entered into by the parties thereto with the consent of the Required Lenders; *provided* that no such agreement shall:

(i) increase the Commitment of any Lender without its written consent;

(ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fee payable hereunder, without the written consent of each Lender Party affected thereby;

(iii) postpone the maturity of any Loan, or the required date of any mandatory payment of principal (including pursuant to Section 2.11(b)), or the required date of reimbursement of any LC Disbursement, or any date for the payment of any interest or fee payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender Party affected thereby;

(iv) change (x) the definition of “Percentage” or Section 2.23 hereof or (y) with respect to any Security Agreement, the definition of “Additional Secured Obligations”, “Secured Bi-Lateral Letter of Credit Obligations”, “Secured Cash Management Obligations”, “Secured Derivative Obligations” or “Secured Vendor Financing Obligations” (or any component definitions used in the foregoing) or Section 7(a) or 7(b) of such Security Agreement, in each case, without the written consent of each Lender adversely affected thereby;

(v) change any provision of this Section or the percentage set forth in the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to take any action thereunder, without the written consent of each Lender;

(vi) except as otherwise expressly permitted pursuant to the applicable Security Agreement, release all or substantially all of the Collateral from the Transaction Liens, without the written consent of each Lender;

(vii) (A) increase the advance rate percentages used in the definitions of “**Tranche A Available Inventory**”, “**Tranche A Available Receivables**”, “**Tranche B Available Inventory**” or “**Tranche A Available Receivables**” without the written consent of each Lender, or (B) change standards of eligibility from those specified herein in a manner that causes the Aggregate Borrowing Base, the Tranche A Borrowing Base or the Tranche B Borrowing Base to be increased without the written consent of Lenders having aggregate Credit Exposures representing at least 75% of the sum of all Credit Exposures of all Lenders at such time;

(viii) unless signed by a Designated Lender or its Designating Lender, subject such Designated Lender to any additional obligation or affect its rights hereunder (unless the rights of all the Lenders are similarly affected); or

(ix) except as otherwise expressly permitted pursuant to the terms of the Loan Documents, release any Subsidiary Guarantor, without the written consent of the Collateral Agent and the Required Lenders; and

provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent or any LC Issuing Bank without its prior written consent; and *provided further* that neither (x) a reduction or termination of Commitments pursuant to Section 2.09 or 2.18, nor (y) an increase in Commitments pursuant to Section 2.15, constitutes an amendment, waiver or modification for purposes of this Section 9.02.

(c) Notwithstanding the foregoing, if the Required Lenders enter into or consent to any waiver, amendment or modification pursuant to subsection (b) of this Section, no consent of any other Lender will be required if, when such waiver, amendment or modification becomes effective, the Commitment of each Lender not consenting thereto terminates and all amounts owing to it or accrued for its account hereunder are paid in full.

(d) Notwithstanding the foregoing, Subsidiary Guarantee Agreements shall be terminated and Collateral shall be released from the Transaction Liens from time to time as necessary to effect any sale of assets (including the sale of a Subsidiary Guarantor) permitted by the Loan Documents, and the Administrative Agent shall (at the Borrower's expense) execute and deliver all release documents reasonably requested to evidence such release.

Section 9.03. . *Expenses; Indemnity; Damage Waiver.*

(a) The Borrower shall pay all reasonable and documented out-of-pocket expenses incurred by the Arrangers, the Administrative Agent and their respective Affiliates, including the reasonable fees, charges and disbursements of Davis Polk & Wardwell LLP, special counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), all reasonable and documented out-of-pocket expenses incurred by any LC Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and all out-of-pocket expenses incurred by any Lender Party, including the fees, charges and disbursements of any counsel for any Lender Party, in connection with the enforcement or protection of its rights in connection with the Loan Documents (including its rights under this Section), the Letters of Credit or the Loans, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Letters of Credit or the Loans.

(b) The Borrower shall indemnify each of the Lender Parties and their respective Related Parties (each such Person being called an “**Indemnatee**”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Financing Transactions or any other transactions contemplated hereby, any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an LC Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not comply with the terms of such Letter of Credit, as determined in accordance with Section 2.16(g)), any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or any Subsidiary or any actual or prospective claim, litigation, investigation, arbitration or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless whether any Indemnatee is a party thereto; *provided* that (i) such indemnity shall not be available to any Indemnatee to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee (or of any of such Indemnatee’s Related Parties acting at the direction of such Indemnatee); (ii) such indemnity shall not be available to any Indemnatee for losses, claims, damages, liabilities or related expenses arising out of a proceeding in which such Indemnatee and the Borrower are adverse parties involving a material breach by an Indemnatee to the extent that the Borrower prevails on the merits, as determined by a court of competent jurisdiction in a final and non-appealable judgment (it being understood that nothing in this Agreement shall preclude a claim or suit by the Borrower against any Indemnatee for such Indemnatee’s failure to perform any of its obligations to the Borrower under the Loan Documents); (iii) the Borrower shall not, in connection with any such proceeding or related proceedings in the same jurisdiction and in the absence of conflicts of interest, be liable for the fees and expenses of more than one law firm at any one time for the Indemnitees (which law firm shall be selected (x) by mutual agreement of the Administrative Agent and the Borrower or (y) 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); (iv) each Indemnatee shall give the Borrower (x) prompt notice of any such action brought against such Indemnatee in connection with a claim for which it is entitled to indemnity under this Section and (y) an opportunity to consult from time to time with such Indemnatee regarding

defensive measures and potential settlement; and (v) 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). In the case of an investigation, litigation or proceeding to which the indemnity in this Section applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its equity holders or creditors or an Indemnitee, whether or not an Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereby are consummated. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to any Agent or any LC Issuing Bank under subsection (a) or (b) of this Section, each Lender severally agrees to pay to such Agent or such LC Issuing Bank, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent or such LC Issuing Bank in its capacity as such. For purposes hereof, a Lender's "**pro rata share**" shall be determined based on its share of the sum of the total Credit Exposures.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), except for such damages resulting from such Indemnitee's gross negligence or willful misconduct as determined in a final judgment of a court of competent jurisdiction and (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Financing Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable within five Business Days after written demand therefor.

Section 9.04. . *Successors and Assigns.*

(a) The provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any LC Issuing Bank that issues any Letter of Credit), except that the Borrower may not assign or otherwise transfer

any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (except the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any LC Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly provided herein, the Related Parties of the Lender Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more assignees (other than (x) a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (y) a Defaulting Lender, or (z) the Borrower or any of the Borrower's Affiliates or Subsidiaries) all or a portion of its rights and obligations under this Agreement (including all or a portion of any Commitment it has at the time and any Loans at the time owing to it); *provided* that:

(i) except in the case of an assignment to a Lender or a Lender Affiliate, the Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed); *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof;

(ii) the Administrative Agent must give its prior written consent (which consent shall not be unreasonably withheld or delayed);

(iii) with respect to Tranche A Commitments only, each LC Issuing Bank must give its prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed);

(iv) each partial assignment of a Tranche A Commitment or Tranche B Commitment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations with respect to such Tranche A Commitment or Tranche B Commitment (as applicable) under this Agreement;

(v) unless each of the Borrower and the Administrative Agent otherwise consent, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the

date on which the relevant Assignment is delivered to the Administrative Agent) shall not be less than \$2,500,000; *provided* that this clause (v) shall not apply to an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans;

(vi) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment or (y) to the extent applicable, an agreement incorporating as Assignment by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment are participants, in each case together with a processing and recordation fee of \$3,500; *provided* that no such recordation fee shall be payable upon an assignment pursuant to Section 2.24; and

(vii) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent a completed Administrative Questionnaire; and

provided further that any consent of the Borrower otherwise required under this subsection shall not be required if an Event of Default has occurred and is continuing. Subject to acceptance and recording thereof pursuant to subsection (d) of this Section, from and after the effective date specified in each Assignment, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment, be released from its obligations under this Agreement (and, in the case of an Assignment covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.20, 2.21, 2.22 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (e) of this Section.

(c) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in New York City a copy of each Assignment delivered to it and a register for the recordation of the names and addresses of the Lenders, their respective Commitments and the principal amounts of the Loans and LC Disbursements owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive (absent manifest error), and the parties hereto shall treat each Person

whose name is recorded in the Register pursuant to the terms hereof as a Lender for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any party hereto at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of (x) a duly completed Assignment executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating as Assignment by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), any processing and recordation fee referred to in, and payable pursuant to, subsection (b) of this Section and any written consent to such assignment required by subsection (b) of this Section, the Administrative Agent shall accept such Assignment and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this subsection.

(e) Any Lender may, without the consent of the Borrower or any other Lender Party, sell participations to one or more banks or other entities (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) ("**Participants**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided* that such Lender's obligations under this Agreement shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower and the other Lender Parties shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (i), (ii) or (iii) of the first proviso to Section 9.02(b) that affects such Participant. Subject to subsection (f) of this Section, each Participant shall be entitled to the benefits of Sections 2.20, 2.21 and 2.22 (subject to the requirements and limitations therein, including the requirements under Section 2.22(f) (it being understood that the documentation required under Section 2.22(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; *provided* that such

Participant agrees to be subject to Section 2.23(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b)(1) of the proposed United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.20 or 2.22 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.22 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.22(f) as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or a central bank, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.05. . *Designated Lenders.*

(a) Subject to the provisions of this Section 9.05(a), any Lender may from time to time elect to designate an Eligible Designee to provide all or a

portion of the Loans to be made by such Lender pursuant to this Agreement; *provided* that such designation shall not be effective unless the Borrower and the Administrative Agent consent thereto. When a Lender and its Eligible Designee shall have signed an agreement substantially in the form of Exhibit H hereto and the Borrower and the Administrative Agent shall have signed their respective consents thereto, such Eligible Designee shall become a Designated Lender for purposes of this Agreement. The Designating Lender shall thereafter have the right to permit such Designated Lender to provide all or a portion of the loans to be made by such Designating Lender pursuant to Section 2.01 and the making of such Loans or portions thereof shall satisfy the obligation of the Designating Lender to the same extent, and as if, such Loans or portion thereof were made by the Designating Lender. As to any Loans or portion thereof made by it, each Designated Lender shall have all the rights that a Lender making such Loans or portion thereof would have had under this Agreement and otherwise; *provided* that (x) its voting rights under this Agreement shall be exercised solely by its Designating Lender and (y) its Designating Lender shall remain solely responsible to the other parties hereto for the performance of its obligations under this Agreement, including its obligations in respect of the Loans or portion thereof made by it. No additional promissory note shall be required to evidence Loans or portions thereof made by a Designated Lender; and the Designating Lender shall be deemed to hold any promissory note issued pursuant to Section 2.17(d) as agent for its Designated Lender to the extent of the Loans or portion thereof funded by such Designated Lender. Each Designating Lender shall act as administrative agent for its Designated Lender and give and receive notices and other communications on its behalf. Any payments for the account of any Designated Lender shall be paid to its Designating Lender as administrative agent for such Designated Lender and neither the Borrower nor the Administrative Agent shall be responsible for any Designating Lender's application of such payments. In addition, any Designated Lender may (i) with notice to, but without the prior written consent of, the Borrower or the Administrative Agent, assign all or portions of its interest in any Loans to its Designating Lender or to any financial institutions consented to by the Borrower and the Administrative Agent providing liquidity and/or credit facilities to or for the account of such Designated Lender to support the funding of Loans or portions thereof made by such Designated Lender and (ii) disclose on a confidential basis any non-public information relating to its Loans or portions thereof to any rating agency, commercial paper dealer or provider of any guarantee, surety, credit or liquidity enhancement to such Designated Lender.

(b) Each party to this Agreement agrees that it will not institute against, or join any other Person in instituting against, any Designated Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding or other proceeding under any federal or state bankruptcy or similar law, for one

year and a day after all outstanding senior indebtedness of such Designated Lender is paid in full. The Designating Lender for each Designated Lender agrees to indemnify, save, and hold harmless each other party hereto for any loss, cost, damage, and expense arising out of its inability to institute any such proceeding against such Designated Lender. This Section 9.05(b) shall survive the termination of this Agreement.

Section 9.06. . *Survival.* All covenants, agreements, representations and warranties made by the Borrower in the Loan Documents and in certificates or other instruments delivered in connection with or pursuant to the Loan Documents shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Lender Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as any principal of or accrued interest on any Loan or any fee or other amount payable hereunder is outstanding and unpaid or any Letter of Credit is outstanding or any Commitment has not expired or terminated. The provisions of Sections 2.20, 2.21, 2.22 and 9.03 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the Financing Transactions, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 9.07. . *Counterparts; Integration; Electronic Execution.*

(a) ~~*Counterparts; Integration.*~~ This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to any Agent 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.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an “Ancillary Document”) that is an Electronic Signature transmitted by telecopy, emailed pdf.

or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Credit Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Credit Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Credit Parties, Electronic Signatures transmitted by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Related Parties of the Administrative Agent or any Lender for any Liabilities

arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Credit Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.8. . *Severability.* If any provision of any Loan Document is invalid, illegal or unenforceable in any jurisdiction then, to the fullest extent permitted by law, (i) such provision shall, as to such jurisdiction, be ineffective to the extent (but only to the extent) of such invalidity, illegality or unenforceability, (ii) the other provisions of the Loan Documents shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Lender Parties in order to carry out the intentions of the parties thereto as nearly as may be possible and (iii) the invalidity, illegality or unenforceability of any such provision in any jurisdiction shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

Section 9.9. . *Right of Set-off.* If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any obligations of the Borrower now or hereafter existing hereunder and held by such Lender, irrespective of whether or not such Lender shall have made any demand hereunder and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

Section 9.10. . *Governing Law; Jurisdiction; Consent to Service of Process.*

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each party to this Agreement irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any relevant appellate court, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each party 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 extent permitted by law, in such Federal court. Each party 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. Nothing in any Loan Document shall affect any right that any party may otherwise have to bring any action or proceeding relating to any Loan Document against another party or its properties in the courts of any jurisdiction with respect to enforcement of judgments or actions taken in respect of the Collateral.

(c) Each party irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in subsection (b) of this Section. Each party hereto irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such suit, action, or proceeding in any such court.

(d) Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in any Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 9.11. . *WAIVER OF JURY TRIAL.* EACH PARTY HERETO 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 ANY LOAN DOCUMENT OR ANY TRANSACTION CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE CASE 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 BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.12. . *Headings.* Article and Section headings and the Table of Contents herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.13. . *Confidentiality.* Each Lender Party agrees to maintain the confidentiality of the Information (hereinafter defined), except that Information

may be disclosed ~~(a)~~ (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), ~~(b)~~ (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), ~~(c)~~ (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (after, to the extent feasible, giving the Borrower an opportunity to lawfully object to such production), ~~(d)~~ (d) to any other party to this Agreement, ~~(e)~~ (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to any Loan Document or the enforcement of any right thereunder, ~~(f)~~ (f) subject to an agreement containing provisions substantially the same as those of this Section, to ~~(i)~~ (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, ~~(ii)~~ (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (iii) any rating agency when required by it or (iv) the CUSIP Bureau or any similar organization, ~~(g)~~ (g) with the consent of the Borrower or ~~(h)~~ (h) to the extent such Information either ~~(i)~~ (i) becomes publicly available other than as a result of a breach of this Section or ~~(ii)~~ (ii) becomes available to any Lender Party on a non-confidential basis from a source other than the Borrower. For the purposes of this Section, "**Information**" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to any Lender Party on a non-confidential basis prior to disclosure by the Borrower (it being understood, for the avoidance of doubt, that "Information" shall exclude any information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry); *provided* that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential.

Section 9.14. . *USA PATRIOT Act Notice.* Each Lender (whether a party hereto on the date hereof or hereafter) 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 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the USA PATRIOT Act and to provide notice of these requirements, and this notice shall satisfy such notice requirements of the USA PATRIOT Act.

Section 9.15. . *No Fiduciary Duty*. The Borrower agrees that in connection with all aspects of the Loans and Letters of Credit contemplated by this Agreement and any communications in connection therewith, the Borrower and its Subsidiaries, on the one hand, and the Agents, the Lenders, the LC Issuing Banks and their Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Agents, the Lenders, the LC Issuing Banks or their Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications. The Borrower acknowledges that the Agents, the Lenders, the LC Issuing Banks and their Affiliates may have economic interests that conflict with those of the Borrower and its Subsidiaries and Affiliates.

Section 9.16. . *Acknowledgement and Consent to Bail-In of ~~EEA~~Affected Financial Institutions*. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any ~~EEA~~Affected Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of ~~an EEA~~the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an ~~EEA~~Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such ~~EEA~~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 EEA~~the applicable Resolution Authority.

Section 9.17. . *Acknowledgement Regarding Any Supported QFCs*. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging 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 the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

~~{Signature pages follow}~~

Exhibit B

Schedule 1.01(c)

ESG KPI Requirements

[Omitted.]

SECOND AMENDMENT TO ABL CREDIT AGREEMENT

This SECOND AMENDMENT TO ABL CREDIT AGREEMENT, dated as of July 23, 2021 (this “Amendment”), is by and among BIG RIVER STEEL LLC, a Delaware limited liability company (the “Borrower”), BRS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), 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.

WHEREAS, reference is hereby made to the 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, the “Existing Credit Agreement” and, as amended by this Amendment, the “Credit Agreement”; capitalized terms used and not defined herein shall have the meaning ascribed to such terms in the Existing Credit Agreement or the Credit Agreement, as the context may require), among the Borrower, Holdings, the Administrative Agent, the Collateral Agent and the Lenders party thereto;

WHEREAS, pursuant to Section 10.01 of the Existing Credit Agreement, Holdings, the Borrower and the Lenders party hereto desire to amend the Existing Credit Agreement for certain purposes;

WHEREAS, subject to the terms and conditions set forth herein, all of the Lenders on the signature pages hereto, by executing and delivering a counterpart to this Amendment in accordance with Section 3 hereto, shall be deemed to have consented to the amendments set forth in Section 1 hereof;

NOW, THEREFORE, in consideration of the premises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. Amendments.

(a) On the Amendment Effective Date (defined below), the Existing 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 the Credit Agreement attached to this Amendment as Annex A.

(b) On the Amendment Effective Date, (i) Schedule 2.01 (Commitments) to the Existing Credit Agreement is hereby amended and restated in its entirety and replaced with Schedule 2.01 to the Credit Agreement in the form attached hereto as Annex B and (ii) a new Schedule 1.01(3) (ESG KPI Requirements) is hereby added to the Credit Agreement in the form attached hereto as Annex C.

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 Credit Agreement) and immediately after (in the case of the 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 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 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 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”):

(a) 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) the Lenders;

(b) Each Loan Party shall have provided the Administrative Agent with customary opinions, officer’s certificates and resolutions pertaining to this Amendment, each in form and substance reasonably satisfactory to Administrative Agent;

(c) If requested by any Lender, Borrower shall have executed a Revolving Loan Note evidencing such Lender’s Revolving Commitment;

(d) The Borrower shall have paid to the Administrative Agent, for the ratable benefit of the Lenders, 0.15% on the Revolving Loan Commitments of such Lender as such Revolving Loan Commitment are set forth on Annex B hereto;

(e) The Borrowers shall have paid or reimbursed Administrative Agent for all fees and expenses required to be paid on the Amendment Effective Date including the reasonable out-of-pocket expenses incurred by Administrative Agent in connection with this Amendment pursuant to Section 10.04 of the Credit Agreement; and

(f) If requested by Administrative Agent or any Lender, a Beneficial Ownership Certification and customary “Know Your Customer” information shall have been provided by Loan Parties.

Section 4. New Revolving Lenders. In consideration of the terms and conditions set forth in this Amendment and the Credit Agreement, each of ING Capital LLC and First National Bank of Pennsylvania, each as a new Revolving Lender (each herein, a “New Revolving Lender”), agrees as follows: (a) such New Revolving Lender acknowledges and agrees that upon its execution of this Amendment that such New Revolving Lender shall become a “Lender” under, and for all purposes of, the Credit Agreement and the other Loan Documents, and shall be subject to and bound by the terms thereof, and shall perform all the obligations of and shall have all rights of a Lender thereunder; (b) such New Revolving Lender hereby agrees to commit to provide its Revolving Commitment as set forth on Annex B hereto; and (c) such New Revolving Lender: (i) confirms that it has received a copy of the Credit Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment and the Credit Agreement, that it is sophisticated with respect to decisions to make loans similar to those contemplated to be made under the Credit Agreement, and it is experienced in making loans of such type; (ii) agrees that it will, independently and without reliance upon Administrative Agent or any other Lender or Agent and based on such documents

and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iii) appoints and authorizes Administrative Agent and Collateral Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are respectively delegated to Administrative Agent and Collateral Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender. Upon the Amendment Effective Date, the Administrative Agent shall make such reallocations, if any, of each Lender's Pro Rata Share of all Loans as are necessary in order that the Total Utilization of Revolving Commitments with respect to such Lender reflects such Lender's Pro Rata Share of the Total Utilization of Revolving Commitments. Nothing contained in this Agreement or any other Loan Document shall constitute or be construed as a novation of any of the Obligations under the Existing 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 Credit Agreement or any other provision of the Existing 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 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 Credit Agreement, and this Amendment and the Existing 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.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to ABL Credit Agreement to be duly executed as of the date first above written.

BIG RIVER STEEL LLC, as the Borrower

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

BRS INTERMEDIATE HOLDINGS LLC, as
Holdings

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

BRS FINANCE CORP.

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

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

By: /s/ Jacob Elder_____

Name: Jacob Elder

Title: Authorized Signatory

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

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

ING CAPITAL LLC,
as a Lender

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

By: /s/ Michael Chen
Name: Michael Chen
Title: Director

Truist Bank,
as a Lender

By: /s/ Carla LeMoine

Name: Carla LeMoine

Title: Vice President

Wells Fargo Bank, National Association,
as a Lender

By: /s/ Roberto M. Ruiz

Name: Roberto M. Ruiz

Title: Authorized Signatory

BMO Harris Bank N.A.,
as a Lender

By: /s/ Si Qin

Name: Si Qin

Title: Authorized Signatory

First Security Bank,
as a Lender

By: /s/ Brad Edwards

Name: Brad Edwards

Title: President

FIRST NATIONAL BANK OF PENNSYLVANIA,
as a Lender

By: /s/ Anthony J. Leone
Name: Anthony J. Leone
Title: Senior Vice President

ANNEX A

Second Amendment Conformed Credit Agreement

[See attached.]

\$350,000,000
ABL CREDIT AGREEMENT

Dated as of August 23, 2017, [as amended by Amendment No. 1 dated September 10, 2020 and Amendment No. 2 dated July 23, 2021](#)

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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A-2	Conversion/Continuation Notice
A-3	Issuance Notice
B-1	Revolving Loan Note
B-2	Swing Line Note
C	Compliance Certificate
D-1	Assignment and Assumption
E	Guaranty
F	Security Agreement
G-1	ABL Intercreditor Agreement
G-2	Collateral Trust Agreement
H	United States Tax Compliance Certificates
I	Solvency Certificate
J	Joinder Agreement
K	Intercompany Note

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 I.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 ~~or~~, 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.

~~“**Acquired Indebtedness**” means, with respect to any specified Person,~~

~~(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and~~

~~(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.~~

“**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).

“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.

1. **“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.

~~**“Affiliate Transaction”** has the meaning specified in Section 7.07.~~

“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.

~~“**AHYDO Payment**” means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is intended or designed to cause such Indebtedness not to be treated as an “applicable high yield discount obligation” within the meaning of Section 163(i) of the Code.~~

“**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	$\geq 50.33 \frac{1}{3}\%$	0.25%
Category 2	$< 50.33 \frac{1}{3}\%$	0.375 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 Rate Loan, the Applicable Margin per annum set forth below under the caption “Applicable Margin for Base Rate Loans” or “Applicable Margin for Eurodollar Rate 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 Eurodollar Rate Loans
Category 1	$\geq 66\%$	0.75%	1.75%
Category 2	$\geq 33\%$ but $< 66\%$	1.00%	2.00%
Category 3	$< 33\%$	1.25%	2.25%

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 3 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 Restricted Subsidiaries issued in compliance with Section 7.02~~) 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(4);
- (c) any disposition in connection with the making of ~~any Restricted Payment that is permitted to be made, and is made, under Section 7.05, any Permitted~~ (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 ~~otherwise permitted under this Agreement;~~
- (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 ~~to the extent required by, or made pursuant to, customary buy/sell arrangements between the~~

~~joint venture parties set forth in joint venture arrangements and similar binding arrangements;~~

(q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, ~~which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;~~

(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 in effect for such day as announced from time to time by the Administrative Agent as its “prime rate” and (c) the Eurodollar Rate on such day for an Interest Period of one (1) month *plus* 1.00% (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.

“**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, ~~Indebtedness, Asset Sale, Investment, Restricted Payment,~~ 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 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 related **Benchmark Replacement Date** have occurred with respect to the Eurodollar 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 (c) 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 SOFR and (b) the related Benchmark Replacement Adjustment;

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

~~“**Benchmark Replacement**” means~~(3) the sum of: (a) the alternate benchmark rate (which may include Term SOFR) 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 ~~of interest~~ as a replacement ~~to the Eurodollar Rate for U.S. dollar-denominated~~for the then-current Benchmark for syndicated credit facilities denominated at such time in the United States and (b) the related Benchmark Replacement Adjustment; ~~provided that, if the Benchmark Replacement as so~~

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), (2) or (3) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the ~~Eurodollar Rate~~then-current Benchmark with an Unadjusted Benchmark Replacement for ~~each~~any applicable Interest Period, ~~the spread adjustment, or method for calculating or determining such spread adjustment~~ and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(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 ~~the Eurodollar Rate~~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 ~~the Eurodollar Rate~~such Benchmark with the applicable Unadjusted Benchmark Replacement for ~~U.S. 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, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day”, the definition of

“Interest Period,” timing and frequency of determining rates and making payments of interest ~~and other~~, 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, ~~in consultation with the Borrower,~~ 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 ~~the~~such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent, ~~in consultation with the Borrower,~~ 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 ~~earlier~~earliest to occur of the following events with respect to ~~the Eurodollar Rate~~such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” 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 ~~the Eurodollar Rate~~such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide ~~the Eurodollar Rate;~~or all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date of the public 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 of information referenced therein in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

(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 ~~the Eurodollar Rate~~ such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of ~~the Eurodollar Rate~~ such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide ~~the Eurodollar Rate~~ 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 ~~the Eurodollar Rate~~ 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 ~~the Eurodollar Rate, the U.S.~~ such Benchmark (or the published component used in the calculation thereof), ~~the~~ Federal Reserve ~~System Board~~, ~~the~~ NYFRB, an insolvency official with jurisdiction over the administrator for ~~the Eurodollar Rate~~ such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for ~~the Eurodollar Rate~~ such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for ~~the Eurodollar Rate~~ such Benchmark (or such component), ~~in each case~~, which states that the administrator of ~~the Eurodollar Rate~~ such Benchmark (or such component) has ceased or will cease to provide ~~the Eurodollar Rate~~ 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 ~~the Eurodollar Rate~~ 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 ~~the Eurodollar Rate~~ such Benchmark (or the published component used in the calculation thereof) announcing that ~~the Eurodollar Rate is~~ 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.

~~**“Benchmark Transition Start Date”** means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90-~~

~~days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.~~

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, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Eurodollar Rate and solely to the extent that the Eurodollar Rate has not been replaced with any Benchmark Replacement, the period (if any) (x) beginning at the time that such a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the Eurodollar Ratesuch then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with SectionsSection 3.03(b) through 3.03(e) and (y) ending at the time that a Benchmark Replacement has replaced the Eurodollar Ratesuch then-current Benchmark for all purposes hereunder pursuant to Sectionsand under any Loan Document in accordance with Section 3.03(b) through 3.03(e).~~

“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(4), “Borrower” shall mean ~~the Successor Borrower~~ 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 Loans, having the same Interest Period.

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

(i) ~~85% of Eligible Accounts of the Borrower Parties; plus~~

(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) ~~75~~80% multiplied by (B) the Inventory Value of the Eligible Inventory of the Borrower consisting of finished goods at such time; minus

(v) ~~an amount equal to 5% (such percentage the “Availability Block Percentage”) of the Borrowing Base in effect at such time (the amount that the Borrowing Base is reduced by this clause (v) shall be excluded in such calculation of the Borrowing Base in effect at such time)~~the face amount of all Bi-Lateral Letters of Credit; minus;

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

~~provided that the Availability Block Percentage shall decrease to 0% on the date on which (which shall be no earlier than the first anniversary of the Closing Date) the following conditions are satisfied: (x) no Default or Event of Default shall have occurred and be continuing and (y) the Administrative Agent shall have received and be satisfied with (in addition to the Closing A/R Field Examination and Closing Inventory Appraisal, which shall have been delivered prior to the Closing Date) a field examination report, an Inventory appraisal and an updated Borrowing Base Certificate reflecting the results of such field examination and Inventory appraisal and any Reserves the Administrative Agent may wish to establish in its Permitted Discretion.~~

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.

“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 -

~~(other than any Excluded~~that the Borrower elects to cause to become a Subsidiary);
Guarantor (which ~~as of the Closing Date~~ shall include ~~those that are listed on Schedule~~
~~1.01(2) hereto and (c) any~~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 ~~of the Borrower~~
~~that Guarantees (or is the borrower or issuer of) any Pari Passu Lien Obligations or any~~
~~Subordinated Indebtedness~~ceases to be a Subsidiary Guarantor pursuant to the terms of
the Loan Documents (the Persons in the preceding clauses (a) ~~through~~and (eb)
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 ~~Notes~~-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 - ~~4.24.02~~(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 ~~or otherwise to the extent permitted under Section 7.07~~ 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 ~~cash~~ interest income, ~~with respect to Indebtedness~~ 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, ~~solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a)~~, 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) solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Restricted Subsidiary (other than any Subsidiary Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Borrower reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); provided that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;~~

(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.

~~Notwithstanding the foregoing, for the purpose of Section 7.05(a) (other than clause (3)(d) of Section 7.05(a)), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (3)(d) of Section 7.05(a).~~

“Consolidated Secured Debt Net Tangible Assets” means, as of ~~any date~~ the time of determination, ~~subject to the definition of “Designated Revolving Commitments,”~~ the aggregate ~~principal~~ amount of ~~Indebtedness~~ assets of the Borrower and ~~the~~ its consolidated 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, 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 TotalSecured 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 ~~its~~^{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 **TotalSecured 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, 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.

“**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 ~~that is so designated as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration.~~

“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 Preferred Stock”** means Preferred Stock of any Restricted Subsidiary of the Borrower or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of Section 7.05(a).~~

“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.

~~**"Discharge"** means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, in any such case in whole or in part.~~

"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 ~~the Consolidated Total Debt or Consolidated Secured Debt, as applicable, will~~ 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) ~~(i) a determination a notification~~ by the Administrative Agent ~~or (ii) a notification to (or the request~~ by the ~~Required Lenders~~ Borrower to the Administrative Agent ~~(with a copy to the Borrower)~~ that the Required Lenders have determined that U.S. dollar-denominated to notify) each of the other parties hereto that at least five currently outstanding Dollar denominated syndicated credit facilities ~~being executed~~ at such time, ~~or that include language similar to that contained in Sections 3.03(b) through 3.03(e), are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Eurodollar Rate, and 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) ~~(i) the joint~~ election by the Administrative Agent ~~or (ii) the election by the Required Lenders, in each case in consultation with~~ and the Borrower, to ~~declare that an Early Opt-in Election has occurred~~ 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 ~~or by the Required Lenders of written notice of such election to the Administrative Agent.~~

“**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) ~~[reserved]~~ 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, ~~or~~ (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 ~~(with the extent of such coverage being determined giving effect to any foreign country limits, insured percentage amounts and credit limits under such credit insurance, it being also understood and agreed that any deductible thereunder shall reduce the, or (C) such Account Debtor is a Qualified Foreign Account Debtor in an aggregate amount off for all such Accounts that are otherwise eligible under this clause)~~ 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 ~~or any Affiliate thereof~~ is liable for goods sold or services rendered by the Account Debtor or ~~any Affiliate thereof~~ to such Borrower Party ~~or any Affiliate thereof~~ 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 ~~90~~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 ~~at one of the locations~~ in the ~~continental~~ United States of America ~~set forth on Schedule 6.19; provided that Inventory that is in transit from one location set forth on Schedule 6.19 to another location set forth on Schedule 6.19, in each case, for a~~

~~period of not more than 10 days, shall not be excluded as Eligible Inventory under this clause; (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) is in transit to or from a location of such Borrower Party (other than Inventory that is in transit from one location set forth on Schedule 6.19 to another location set forth on Schedule 6.19, in each case, for a period of not more than 10 days);[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 ~~\$2,000,000~~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 ~~an Excluded Contribution~~ ~~or~~ 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 Contribution”** means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:~~

- ~~(1) contributions to its common equity capital;~~
- ~~(2) dividends, distributions, fees and other payments from any joint ventures that are not Restricted Subsidiaries; and~~
- ~~(3) the sale (other than to a Restricted Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower;~~

~~in each case, designated as Excluded Contributions pursuant to an Officer’s Certificate and that are excluded from the calculation set forth in clause (3) of Section 7.05(a); provided that Excluded Contributions shall not include Cure Amounts.~~

“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 ~~made pursuant to clause (26) of the definition of “Permitted Investments”~~; 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).

~~“FCPA” has the meaning specified in Section 5.01.~~

“Federal Funds Rate” means, for any day, the rate ~~per annum equal to the weighted average of the rates on overnight~~ calculated by the NYFRB based on such day’s federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so by depositary 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 ~~and (b) if no such rate is so published on such next succeeding Business Day, by the NYFRB as the effective federal funds rate; provided, that if the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three depository institutions of recognized standing selected by it; provided, further, that in no event shall the Federal Funds Rate be less than 0.0%.~~ shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

~~“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.~~

“**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.

“~~First Amendment Effective Date~~**Fitch**” means ~~August []~~**Fitch, 2020**~~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 to (b) Fixed Charges 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.~~

~~Notwithstanding the foregoing, for purposes of calculating the Fixed Charge Coverage Ratio under Section 7.12 and the definitions of “Specified Investment Payment Conditions” and “Specified Restricted Payment Conditions”, the “Fixed Charge Coverage Ratio” shall be defined as follows:~~

“**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 ~~and (iv) all cash dividends and other cash distributions (including repurchases) paid or to be paid to the extent utilizing the Specified Restricted Payment Conditions~~, 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.

“**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 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 Loan, an interest period of one, ~~two~~, three or six months or, subject to the consent of all applicable Lenders, such other period that is 12 months ~~or less~~ (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; ~~and~~ (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 ~~or~~, 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 ~~definitions of “Permitted Investments” and “definition of “Unrestricted Subsidiary”~~ and Section 7.05,

(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**” ~~has the meaning specified in Section 5.15.~~ 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.

~~“**Market Capitalization**” means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Borrower or the applicable Parent Company, as applicable, on the date of the declaration of a Restricted Payment permitted pursuant to Section 7.05(b)(8) multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.~~

“Material Adverse Effect” means any event, development or circumstance ~~or condition~~ that has had a ~~materially~~material adverse effect on (a) the business, operations, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole; or (b) ~~the ability of the Loan Parties (taken as a whole) to perform their payment obligations under~~validity or enforceability of any of the Loan Documents or ~~(e) the rights and~~or remedies of ~~the Lenders, the Collateral Agent or the Administrative Agent under the Loan Documents, 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” ~~means the fifth anniversary of the Closing 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 ~~First~~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 ~~105~~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 ~~an~~ 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**” ~~has the meaning specified in Section 5.17~~ 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 Acquisition”** has the meaning specified in clause (3) of the definition of “Permitted Investments.”~~

~~“Permitted Asset Swap” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets (in each case excluding assets included in the Borrowing Base) and cash or Cash Equivalents between the Borrower or any Restricted Subsidiary and another Person; provided that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with the Term Credit Agreement or ABL Intercreditor Agreement, as applicable.~~

“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 Indebtedness” means Indebtedness permitted to be incurred in accordance with Section 7.02.~~

~~“Permitted Investments” means:~~

~~(1) any Investment in any Loan Party (including guarantees of obligations of the Guarantors);~~

~~(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;~~

~~(3) (a) 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 (and in the event such Investment was made by a Loan Party, becomes a Loan Party) 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 (and in the event such Investment was made by a Loan Party, such amalgamation, merger, consolidation, transfer or conveyance is made to a Guarantor) (a “Permitted Acquisition”); provided that immediately after giving *pro forma* effect to any such Investment, (x) no Event of Default will have occurred and be continuing and (y) the Specified Investment Payment Conditions shall be satisfied with respect thereto; and~~

~~(b) any Investment held by such Person described in the preceding clause (a); provided that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;~~

~~(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;~~

~~(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each of the foregoing cases with respect to any such Investment or binding commitment in effect on the Closing Date in excess of \$5.0 million, as set forth on Schedule 7.05, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date; provided that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted hereunder;~~

~~(6) any Investment by the Borrower or any Restricted Subsidiary:~~

~~(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);~~

- (b) in satisfaction of judgments against other Persons;
- (c) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or
- (d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;
- (7) Hedging Obligations permitted under Section 7.02(b)(11);
- (8) any Investment in a Similar Business ~~taken together with all other~~ Investments made pursuant to this clause (8) that are at that time outstanding not to exceed (as of the date such Investment is made) the greater of (a) \$40.0 million and (b) 25% of Consolidated EBITDA of the Borrower determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis) so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;
- (9) Investments the payment for which consists of, or are funded by the sale of, Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company or are funded from cash equity contributions to the capital of the Borrower; *provided* that such Equity Interests, the proceeds from the sale of any such Equity Interests and such contributions to the capital of the Borrower will not increase the amount available for Restricted Payments under clause (3) of Section 7.05(a);
- (10) (a) guarantees of Indebtedness permitted under Section 7.02, performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;
- (11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.07(b) (except transactions described in clauses (2), (6), (10), (16) or (23) of such Section);
- (12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services, equipment or similar assets or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;
- (13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (i) \$40.0 million and (ii) 25.0% of Consolidated

EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis) so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;

(14) [reserved];

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, independent contractors and members of management not in excess of \$2.0 million outstanding at any one time, in the aggregate, so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, including pursuant to Management Services Agreements, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Borrower or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Restricted Subsidiary;

(18) any Investment in any Subsidiary Guarantor in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;

~~(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (i) \$20.0 million and (ii) 15.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis) so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;~~

~~(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;~~

~~(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable Law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;~~

~~(26) any Investment, constituting Indebtedness, by the Borrower or a Subsidiary Guarantor in a 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 (i) such Investment 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 Term 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 Restricted Subsidiary Liens;~~

~~(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;~~

~~(28) [reserved];~~

~~(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually~~

~~advanced by the Borrower or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;~~

~~(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;~~

~~(31) Investments resulting from pledges and deposits permitted pursuant to the definition of “Permitted Liens”;~~

~~(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;~~

~~(33) any other Investments if on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto; and~~

~~(34) Permitted Bond Hedge Transactions.~~

“**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 - ~~actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP~~ 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 ~~impair their use in the operation~~ interfere with the ordinary conduct of the business of such Person;

~~(7) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to clause (5), (7), (14), (15) or (16) of Section 7.02(b); provided that:~~

~~(a) Liens—securing—obligations—relating—to—any—Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such~~

~~clause (14) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), *plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness, Disqualified Stock or Preferred Stock incurred under clause (5) or (14) of Section 7.02(b);~~

~~(b) [reserved];~~

~~(c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (5) extend only to the assets so purchased, constructed, replaced, leased or improved and proceeds and products thereof; *provided further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty;~~

~~(d) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (15) are solely on acquired property or the assets of the acquired entity and 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; and~~

~~(e7) Liens securing (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 ~~permitted to be incurred pursuant to such clause (15)~~ 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 (a*i*) be no ~~less~~ greater than the Senior Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Indebtedness secured by such Lien or (b*ii*) not exceed ~~2.50~~ 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, ~~other than Liens securing obligations under the Loan Documents, the Term Facility, the Senior Secured Notes and the related guarantees issued 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 ~~or incurred~~ in connection with, or in contemplation of, such other Person becoming such a Subsidiary) 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;

(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 ~~or incurred~~ in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) 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;

(11) Liens securing obligations in respect of Indebtedness or other obligations ~~of a Restricted Subsidiary~~ owing to the Borrower or another Restricted Subsidiary ~~permitted to be incurred in accordance with Section 7.02~~;

(12) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services which Liens shall be on ~~non-ABL~~ 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 ~~either (a)~~ materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, ~~or (b) secure any Indebtedness~~;

(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) ~~reserved~~; 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 ~~securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) \$50.0 million and (ii) 35.0; provided that~~ (x) the aggregate principal amount of Indebtedness and other obligations secured thereby shall not exceed 17.5% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries Net Tangible Assets (determined at the time of incurrence ~~of such Lien for the most recently ended Test Period (calculated on a pro-forma basis), which shall be subject to~~), (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 ~~for the payment of money~~ 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 ~~permitted under this Agreement~~; *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 acquired in an Investment permitted under this Agreement~~ 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 ~~permitted under Section 7.04~~[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; ~~provided that such satisfaction or discharge is permitted under this Agreement;~~

(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 ~~and provided that such Indebtedness is permitted to be incurred under Section 7.02(b)(2)(ii) and 7.02(b)(3);~~

(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 ~~(but excluding any “Additional Notes” under the Senior Secured Notes Indenture and related guarantees)~~, 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 ~~is permitted by Section 7.02 or otherwise~~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 contemplated by clause (26) of the definition of “Permitted Investments”.~~

(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 EBITDA Net Tangible Assets, and such refinancing would cause the percentage of Consolidated EBITDA Net Tangible Assets to be exceeded if calculated based on the Consolidated EBITDA Net Tangible Assets on the date of such refinancing, such percentage of Consolidated EBITDA 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 Ratio Debt” has the meaning specified in Section 7.02(a).~~

~~“Permitted Restricted Subsidiary Liens” means clauses (2) through (6), (7) (with respect to clauses (5), (7) (14), (15) or (16) of Section 7.02(b); provided that, with respect to such clause (14), only with respect to such clause (5)), (9) through (18), (19) (with respect to clauses (7), (8), (9) and (10)), (20) through (32), (34) through (38), (40), (42) through (47), (51) and (52) of the definition of “Permitted Liens”.~~

“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.

“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).

5. **“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.

6. **“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).

7. **“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 ~~both~~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 ~~both~~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 Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting or (b) if such Benchmark is not the Eurodollar 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, ~~including any Refinancing Indebtedness, so long as:~~

~~(1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the **“Refinanced Debt”**), plus (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, plus (c) 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 Debt 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 to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the **“Incremental Amounts”**);~~

(2) such Refinancing Indebtedness has a:

(a) ~~Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and~~

(b) ~~final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the Maturity Date);~~

(3) ~~to the extent such Refinancing Indebtedness Refinances (a) Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 7.05, such Refinancing Indebtedness is subordinated to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt or (b) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;~~

(4) ~~such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and~~

(5) ~~such Refinancing Indebtedness shall not be secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not secure the Refinanced Debt being Refinanced (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property);~~

provided that Refinancing Indebtedness will not include:—

(a) ~~Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Borrower;~~

(b) ~~Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or~~

(c) ~~Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;~~

provided further that (x) clause (2) of this definition ~~will not apply to any~~ Refinancing of any Indebtedness other than Indebtedness incurred under clauses (2), (3) and (32) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof), Disqualified Stock and

~~Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (2) of this definition).~~

“Refunded Swing Line Loans” has the meaning specified in Section 2.02(2)(iv).

~~**“Refunding Capital Stock”** has the meaning specified in Section 7.05(b)(2).~~

“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 Indemnatee means (1) any controlling Person or controlled Affiliate of such Indemnatee, (2) the respective directors, officers, partners, employees, advisors or successors of such Indemnatee or any of its controlling Persons or controlled Affiliates and (3) the respective agents, trustees and other representatives of such Indemnatee or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnatee, 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 ~~Federal Reserve Bank of New York~~[NYFRB](#), or a committee officially endorsed or convened by the Federal Reserve Board and/or the ~~Federal Reserve Bank of New York or~~[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.

~~**“Reporting Trigger Date”** means the last day of the fiscal quarter ending on or after June 30, 2018 on which Borrower has cumulative Consolidated EBITDA for the period commencing on the Closing Date and ending on the last day of such fiscal quarter that is no less than 90% of the Consolidated EBITDA projected by Borrower for such period as set forth in the projections delivered to the Administrative Agent prior to the Closing Date.~~

“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 Investment” means any Investment other than any Permitted Investment(s).**~~

~~**“Restricted Payment” has the meaning specified in Section 7.05.**~~

“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 ~~First~~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 ~~or of the United States~~ U.S. Department of the Treasury, the U.S. Department of State ~~or by~~, the United Nations Security Council, Her Majesty’s Treasury of the United Kingdom, the European Union or any EU European Union member state, (b) any Person operating, organized or resident in ~~any jurisdictions subject to Sanctions or~~ 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” ~~has the meaning specified in Section 5.17.~~ 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 ~~day means~~ Business Day, a rate per annum equal to the secured overnight financing rate ~~published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website~~ for such Business Day published 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.

“**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 Investment Payment Conditions” means, at any time of determination with respect to any Investment, the requirement that (a) no Event of Default shall have occurred and be continuing or would arise as a result of such Investment, (b) after giving *pro forma* effect to such Investment, (i) Excess Availability shall have been greater than the greater of 15% of the Line Cap and \$20,000,000 at all times during the period of 30 consecutive days ended on the date of such Investment and (ii) the Fixed Charge Coverage Ratio as of the last day of the most recently ended Test Period (regardless whether a Covenant Period has occurred and is continuing) shall be not less than 1.00 to 1.00; provided, that the provisions of this clause (b)(ii) shall not be applicable if Excess Availability, calculated in accordance with clause (b)(i) hereof, immediately after giving *pro forma* effect to such Investment, is greater than the greater of 20% of the Line Cap and \$25,000,000 and (c) the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower certifying that all the requirements of the Specified Investment Payment Conditions have been satisfied with respect to such Investment and including reasonably detailed calculations demonstrating satisfaction of such requirements.~~

“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 Restricted Payment Conditions” means, at any time of determination with respect to any Restricted Payment, the requirement that (a) no Event of Default shall have occurred and be continuing or would arise as a result of such Restricted Payment, (b) after giving *pro forma* effect to such Restricted Payment, (i) Excess Availability shall have been greater than the greater of 20% of the Line Cap and \$20,000,000 at all times during the period of 30 consecutive days ended on the date of such Restricted Payment, and (ii) the Fixed Charge Coverage Ratio as of the last day of the most recently ended Test Period~~

~~(regardless whether a Covenant Period has occurred and is continuing) shall be not less than 1.00 to 1.00; provided, that the provisions of this clause (b)(ii) shall not be applicable if Excess Availability, calculated in accordance with clause (b)(i) hereof, immediately after giving *pro forma* effect to such Restricted Payment, is greater than the greater of 25% of the Line Cap and \$25,000,000 and (c) the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower certifying that all the requirements of the Specified Restricted Payment Conditions have been satisfied with respect to such Restricted Payment and including reasonably detailed calculations demonstrating satisfaction of such requirements.~~

“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 ~~Restricted Payment or~~ 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).

8. “**Supported QFC**” has the meaning assigned to such term in Section 10.27.

9. “**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 Distributions**” has the meaning specified in Section 7.05(b)(14)(b).~~

~~“**Tax Group**” has the meaning specified in Section 7.05(b)(14)(b).~~

“**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 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 ~~to the extent permitted under Section 7.02(b)(2)~~, 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.

“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.

“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 ~~\$25.0~~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.

“**Treasury Capital Stock Trustee**” has the meaning assigned to such term in [Section 7.05\(b\)\(2\)\(a\) 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 Loan.

10. “**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) such designation shall be deemed an Investment and such Investment complies with Section 7.05;~~

~~(ii)~~ 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

~~(iii)~~ 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:

~~(i)~~ immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; ~~and,~~

~~(ii) the Borrower could incur at least \$1.00 of additional Permitted Ratio Debt.~~

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 ~~Indebtedness and~~ Liens of such Subsidiary existing at such time.

"U.S. Lender" means any Lender that is not a Foreign Lender.

11. **"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 ~~15.0~~ 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 ~~15.0~~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 ~~15.0~~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.

~~“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:~~

~~(1) the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, multiplied by the amount of such payment, by~~

~~(2) the sum of all such payments;~~

~~provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the “**Applicable Indebtedness**”), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.~~

“**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 I.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (i) (ii) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (iii) (iv) 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.
- (v) (vi) 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.
- (vii) (viii) The term “including” is by way of example and not limitation.
- (ix) (x) 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.
- (xi) (xii) 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.”
- (xiii) (xiv) 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.
- (xv) (xvi) The word “or” is not intended to be exclusive unless expressly indicated otherwise.
- (xvii) (xviii) 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.

(xix) (xx) 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.

(xxi) (xxii) 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 I.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 I.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 I.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 I.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 I.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; ~~provided, however, that at the election of the Borrower, the *pro forma* calculation will not give effect to any Indebtedness incurred or Disqualified Stock or Preferred Stock issued on such determination date pursuant to the provisions described in Section 7.02(b) (other than Section 7.02(b)(15) or Indebtedness secured pursuant to clause (39) of the definition of Permitted Liens).~~

(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, ~~the making of any Asset Sale, the making of an Investment, the making of a Restricted Payment, or~~ the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary ~~or the repayment of Indebtedness, Disqualified Stock or Preferred Stock~~, (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, ~~the making of any Asset Sale, the making of an Investment, the making of a Restricted Payment, or~~ the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary ~~or the repayment of Indebtedness, Disqualified Stock or Preferred Stock~~, 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. ~~Notwithstanding anything in this Agreement or any Loan Document to the contrary, if the Borrower or its Restricted Subsidiaries (x) incurs Indebtedness, issues Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, makes Investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with any Limited Condition Transaction under a ratio-based Basket and (y) incurs Indebtedness, issues~~

~~Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, Investments or Restricted Payments, designates any as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with such Limited Condition Transaction under a non-ratio-based Basket (which shall occur within five Business Days of the events in clause (x) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based Basket without regard to any such action under such non-ratio-based Basket made in connection with such Limited Condition Transaction.~~

~~SECTION 1.08 [Reserved].—~~

SECTION 1.08. Interest Rates; LIBOR Notification. The interest rate on a Loan may be derived from an interest rate benchmark that 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 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 or have the same volume or liquidity as did the Eurodollar Rate prior to its discontinuance or unavailability. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any Term Benchmark Rate, 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 I.9. 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 I.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 I.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 II.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 Rate 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 ~~10:00~~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 Rate Loan, and ~~at 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 Rate Loans. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that

is a Eurodollar Rate 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 ~~10:00~~11:00 a.m. (New York City time) in the case of a Eurodollar 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 II.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) ~~the stated amount of each Letter of Credit shall not be less than \$250,000 or such lesser amount as is acceptable to Issuing Bank~~[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) ~~105~~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; ~~(xix)~~ 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 ~~10:00 a~~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 ~~105~~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 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 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) ~~(d)~~ 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 Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Rate Loan pursuant to Section ~~3.04~~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 Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate 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 Rate 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 Rate 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 ~~10:00~~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 Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate 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 Loan, at the Eurodollar 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 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 Loans there shall be no more than five Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate 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 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 ~~10:00~~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 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 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 Loan, the date of conversion of such Eurodollar Rate 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 Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate 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; ~~and (iv.iii)~~ in the case of any Protective Advance or any interest accrued in accordance with Section 2.10, on demand; and (iii.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 Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate 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 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 ~~12:00~~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 ~~12:00~~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 ~~11:00~~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 ~~\$125,000,000- during the term of this Agreement~~ 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 ~~pre-scribed~~prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any ~~entitle-ment~~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 under 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 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, 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 Loans or to convert Base Rate Loans to Eurodollar Rate 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 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 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 Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar 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 Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar 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 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 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. (a) ~~Subject to clauses (b), (c), (d), (e) (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,

(2) 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

(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) ~~(b) Benchmark Replacement.~~ Notwithstanding anything to the contrary herein or in any other Loan Document, ~~upon the occurrence of~~ a Benchmark Transition Event ~~or~~, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, ~~the Administrative Agent and the Borrower may amend this Agreement to replace the Eurodollar Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. 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 ~~Administrative Agent has posted such proposed amendment to all Lenders and the Borrower~~ 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 ~~amendment from Lenders~~

~~comprising Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that~~Benchmark Replacement from Lenders comprising the Required Lenders ~~have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the Eurodollar Rate with a Benchmark Replacement pursuant to Sections 3.03(b) through 3.03(e) will occur prior to the applicable Benchmark Transition Start Date.~~

(c) 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 (c) 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.

~~(d) (e) Benchmark Replacement Conforming Changes.~~ In connection with the implementation of a Benchmark Replacement, the Administrative Agent, ~~in consultation with the Borrower,~~ 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.

~~(e) (d) Notices; Standards for Decisions and Determinations.~~ The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event ~~or,~~ an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, ~~and its related Benchmark Replacement Date and Benchmark Transition Start Date,~~ (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes ~~and,~~ (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 ~~Sections this Section 3.03(b) through 3.03(e),~~ 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 ~~hereto to this Agreement or any other Loan Document,~~ except, in each case, as expressly required pursuant to ~~Sections this Section 3.03(b) through 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 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) (e) ~~Benchmark Unavailability Period~~—Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a ~~Eurodollar Rate Loan~~Term Benchmark Borrowing of, conversion to or continuation of ~~Eurodollar Rate~~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 such request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to Base Rate Loans. 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 ~~Eurodollar Rate~~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 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 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.

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SECTION 3.04 Increased Cost and Reduced Return; 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 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 interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender that is not otherwise accounted for in the definition of “Eurodollar 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 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 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 Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a Eurodollar Rate 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 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 Loans from one Interest

Period to another Interest Period, or to convert Base Rate Loans into Eurodollar Rate 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 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 Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Rate 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 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 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).

Circumstances.

SECTION 3.07 Mitigation Obligations; Replacement of Lenders under Certain

(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 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 laundering 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.

(xxiii) 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) ~~is in compliance with all applicable Laws orders, writs, injunctions and orders (including the United States Foreign Corrupt Practices Act of 1977 (the "FCPA"))~~[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), ~~(4)~~ 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 ~~such Person or any of the Restricted Subsidiaries~~ 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, ~~injunction, writ or decree~~ of any Governmental Authority ~~or any arbitral award~~ 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 ~~(but not~~ 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 ~~the Closing Date~~ 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.

~~(3) The forecasts of consolidated balance sheets and statements of income of the Borrower and its Subsidiaries for each fiscal year ending after the Closing Date until no earlier than the fifth anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that:~~

~~(a) no forecasts are to be viewed as facts;~~

~~(b) all forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or the Investors;~~

~~(c) no assurance can be given that any particular forecasts will be realized and~~

~~(d) actual results may differ and such differences may be material.~~

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 ~~Property; Liens~~ Properties. ~~Each Loan Party~~ The Borrower and ~~each of its respective~~ Restricted Subsidiaries has good and ~~valid record title in fee simple to, or good and valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business~~ marketable title to all its Collateral (subject to exceptions that are, in the aggregate, not material), free and clear of ~~all Liens except for Permitted Liens and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.~~ 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: ~~(a) each Loan Party and each of its Restricted Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Restricted Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Restricted Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; (d) none of the Loan Parties or any of their respective Restricted Subsidiaries or predecessors has treated, stored, transported or Released Hazardous Materials at or from any currently or formerly owned, leased or operated real estate or facility except for such actions that were in compliance with Environmental Law; and (e),~~ 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 ~~(including satisfying its withholding tax obligations under applicable Law)~~ 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.

~~There is no Tax assessment, deficiency or other claim against any Loan Party or any of its Restricted Subsidiaries that is currently pending or that has been proposed in writing by any Governmental Authority except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate proceedings and for which adequate~~

reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.11 ERISA Compliance.

~~(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.~~

~~(2)(a) No ERISA Event has occurred or is reasonably expected to occur; and~~

~~(b) that none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.~~

~~except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not, 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.

~~(3) The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan by an amount, which, if all of such Pension Plans were terminated, would result in a Material Adverse Effect.~~

~~(4) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Laws, and (b) none of Holdings, the Borrower or any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.~~

~~SECTION 5.12 Subsidiaries.—~~

~~(1) As of the Closing Date, after giving effect to the Transactions, all of the outstanding Equity Interests in the Borrower and its Restricted Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests that constitute Collateral owned by Top Parent in Holdings, by Holdings in the Borrower, and by the Borrower or any Subsidiary Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents and (b) any nonconsensual Permitted Lien.~~

~~(2) As of the Closing Date, Schedule 5.12 sets forth:~~

~~(a) the name and jurisdiction of organization of each Subsidiary, and~~

~~(b) the ownership interests of Top Parent in Holdings, of Holdings in the Borrower and of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership.~~

SECTION 5.13 Margin Regulations; Investment Company Act.

(a) ~~As of the Closing Date, none of the Collateral is Margin Stock.~~ 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, ~~and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.~~

(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 misstatement of 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.

~~SECTION 5.15 Intellectual Property; Licenses, etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents,~~

~~patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights (collectively, “IP Rights”) that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.~~

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 USA PATRIOT Act; Anti-Terrorism Laws. To the extent applicable, each of Holdings, the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the USA PATRIOT Act, and (ii) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other applicable enabling legislation or executive order relating thereto. Neither Holdings, the Borrower nor any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer or employee of Holdings, the Borrower or any of the Restricted Subsidiaries, is currently the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”) (“Sanctions”). No proceeds of the Loans will be used by Holdings, the Borrower or any Restricted Subsidiary directly or, to the knowledge of the Borrower, indirectly, for the purpose of financing activities of or with any Person, or in any country, that, at the time of such financing, is the subject of any Sanctions administered by OFAC, except to the extent licensed or approved by OFAC or otherwise not prohibited under Sanctions.~~

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 ~~described therein~~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 Borrowing Base Certificate. —At the time of delivery of each Borrowing Base Certificate, each Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Account and the inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory.—~~

~~SECTION 5.20 Beneficial Ownership Certification. —As of the date provided by Borrower, the information included in the Beneficial Ownership Certification is true and correct in all material respects.—~~

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 ~~and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower~~, 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 thirty (30) days after the end of each fiscal month of each fiscal year of the Borrower commencing with the month ending August 31, 2017 (or, after a Reporting Trigger Date, 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 ~~month or fiscal~~ quarter, ~~as applicable~~, and the related (a) consolidated statement of income for such fiscal ~~month or fiscal~~ quarter, ~~as applicable~~, 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 ~~month or fiscal~~ quarter, as applicable, of the previous fiscal year and the corresponding portion of the previous fiscal year ~~(provided that no such comparative information will be required if such comparative data would be for a date or period prior to January 1, 2017)~~, 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 ~~, together with management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower;~~ (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); ~~provided that the requirements of this Section 6.01(3) shall not apply at any time following the consummation of the first public offering of the common equity of any Parent Company after the Closing Date;~~

(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; ~~and~~

(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 ~~the ability to ask questions thereon.~~

(6) as soon as available, but in any event within 20 days (or if such 20th 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; ~~provided, that the calculations under clause (2) of the definition of Compliance Certificate (with respect to the calculation of Fixed Charge Coverage Ratio under the first alternative of such definition) shall commence with the period ending March 31, 2018;~~

(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; ~~and~~

(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 affairs ~~condition~~ of any Loan Party or ~~any~~ Restricted Subsidiary, or compliance with the terms of ~~the~~ any Loan ~~Documents~~ 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) any event or condition that has resulted, or could reasonably be expected to result, in Eligible Accounts and/or Eligible Inventory in an aggregate amount of \$2,500,000 or more reflected on the Borrowing Base Certificate then most recently delivered 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)) ceasing to qualify as Eligible Accounts or Eligible Inventory, as applicable (including any such cessation in qualification as a result of any disposition, but excluding any such cessation in qualification as a result of a disposition of Eligible Inventory to customers in the ordinary course of business or collection of Eligible Accounts or as a result of any determination with respect to the Borrowing Base eligibility made by the Administrative Agent in its Permitted Discretion in accordance with the terms hereof);~~

~~(3) the occurrence of, or receipt by Holdings or Borrower of any written notice claiming the occurrence of, any breach or default by Holdings or Borrower under any lease or other agreement relating to any location leased by Borrower, or any third party warehouse or any consignment or bailee arrangement, in each case on, in or with which any material Inventory is located; and~~

~~(4) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any of its Subsidiaries, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any violation by any Loan Party or any of its Subsidiaries of, or liability under, any Environmental Law or Environmental Permit, or (c) the occurrence of any ERISA Event that, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(4), has resulted or would reasonably be expected to result in a Material Adverse Effect.~~

(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) ~~or~~, (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 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.~~
[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, ~~sanctions administered by OFAC~~ 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 ~~limitation~~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 (i) the formation or acquisition of any new direct or indirect wholly-owned Domestic Subsidiary (other than any Excluded Subsidiary) by any Loan Party, (ii) the designation of any existing direct or indirect wholly-owned Domestic Subsidiary (other than any Excluded Subsidiary) as a Restricted Subsidiary, (iii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly-owned Domestic Subsidiary or (iv) an Excluded Subsidiary that is a wholly-owned Domestic Subsidiary ceasing to be an Excluded Subsidiary but continuing as a Restricted Subsidiary of the Borrower, (y) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (zy) 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) ~~within sixty (60) days (or such greater number of days specified below) after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion,~~ cause each ~~such~~ Domestic Subsidiary that ~~is required to become~~the Borrower elects to designate a Subsidiary Guarantor ~~under~~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];

~~(A) within sixty (60) days after such formation, acquisition or designation, cause each such Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent, supplements to the Security Agreement, a counterpart signature page to the Intercompany Note, Intellectual Property Security Agreements and other security agreements and documents (if applicable), as reasonably requested by the Administrative Agent and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the Closing Date as amended and in effect from time to time), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;~~

~~(B) within sixty (60) days after such formation, acquisition or designation, cause each such Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and, if applicable, a joinder to the Intercompany Note substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Domestic Subsidiary and required to be pledged pursuant to the Collateral Documents;~~

- (C) within sixty (60) days after such ~~formation, acquisition or~~ designation, take and cause ~~(i) the applicable Domestic Subsidiary that is required to become~~ the Borrower elects to designate a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement ~~and (ii) to the extent applicable, each direct or indirect parent of such applicable Domestic Subsidiary, in each case,~~ to take customary action(s) (including the filing of Uniform Commercial Code financing statements ~~and delivery of stock and membership interest certificates to the extent certificated~~) 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-Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.~~[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) ~~20~~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.

~~SECTION 6.19 Location of Inventory. Each Loan Party shall maintain any Inventory located in the continental United States of America (other than Inventory in transit from one location set forth on Schedule 6.19 to another location set forth on Schedule 6.19 for a period of not more than 10 days) solely at one or more locations set forth on Schedule 6.19; provided that the Loan Parties may also maintain their Inventory at such other location as may have been specified in writing by Borrower to the Administrative Agent upon at least 10 days' prior notice, so long as such notice contains all the information with respect to such location contemplated to be provided with respect to a location by Schedule 6.19 (and, upon delivery of such notice, Schedule 6.19 shall be deemed to have been amended to set forth each such newly specified location).~~

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 ~~Indebtedness~~~~[Reserved]~~.

~~(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:~~

~~(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “**incur**” and collectively, an “**incurrence**”) with respect to any Indebtedness (including Acquired Indebtedness), or~~

~~(ii) issue any shares of Disqualified Stock or permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock;~~

~~provided that the Borrower may incur unsecured Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur unsecured Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, in each case, if the Fixed Charge Coverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire~~

~~committed amount of Indebtedness thereunder, in which case 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 this proviso) would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period (such Indebtedness, Disqualified Stock or Preferred Stock, “**Permitted Ratio Debt**”); *provided further* that Permitted Ratio Debt in the form of Indebtedness (x) shall not mature earlier than the Maturity Date and (y) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Permitted Ratio Debt.~~

~~(b) The provisions of Section 7.02(a) will not apply to:~~

~~(1) Indebtedness under the Loan Documents;~~

~~(2) the incurrence by the Borrower and any Guarantor of (i) Indebtedness represented by the Senior Secured Notes and any Guarantees thereof in an aggregate principal amount not to exceed \$600.0 million and (ii) the Term Obligations in an aggregate principal amount not to exceed the amount of Term Obligations permitted to be incurred under the Term Credit Agreement as in effect on the Closing Date;~~

~~(3) Indebtedness secured on a *pari passu* basis with the Term Obligations under the Term Credit Agreement (including any “Additional Notes” under the Senior Secured Notes Indenture) in an amount not to exceed, when combined with any Indebtedness incurred pursuant to clause 2(ii) above, the Pari Passu Secured Debt Cap; *provided* that any such Indebtedness incurred pursuant to this clause (3) is incurred in accordance with the provisions of Section 7.02(b)(3) of the Term Credit Agreement as in effect on the Closing Date;~~

~~(4) the incurrence of Indebtedness by the Borrower and any Restricted Subsidiary in existence on the Closing Date (excluding Indebtedness described in the preceding clauses (1) and (2) and clause (31) of this Section 7.02(b)); *provided* that any such item of Indebtedness with an aggregate outstanding principal amount on the Closing Date in excess of \$5.0 million shall be set forth on Schedule 7.02;~~

~~(5) the incurrence of Attributable Indebtedness and Indebtedness (including Purchase Money Obligations) and the issuance of Disqualified Stock incurred or issued by the Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock and/or Preferred Stock incurred or issued and outstanding under this clause (5), at~~

~~such time not to exceed (as of the date such Indebtedness, Disqualified Stock and/or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) \$50.0 million and (II) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);~~

~~(6) Indebtedness incurred by the Borrower or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;~~

~~(7) the incurrence of Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or property or a Person that becomes a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets, property or a Person that becomes a Subsidiary for the purpose of financing such acquisition;~~

~~(8) the incurrence of Indebtedness or the issuance of Disqualified Stock by the Borrower and owing to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to any Restricted Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Subsidiary Guarantor is expressly subordinated in right of payment to the Loans to ~~the~~ **extent permitted by applicable law** and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer **of any such Indebtedness or Disqualified Stock** (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent the Disqualified Stock is then outstanding) not permitted by this clause (8);~~

~~(9) the incurrence of Indebtedness by a Restricted Subsidiary and owing to the Borrower or another Restricted Subsidiary (or to any Parent Company which is~~

~~substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent such Indebtedness constitutes a Permitted Investment; *provided* that any such Indebtedness for borrowed money incurred by a Subsidiary Guarantor and owing to a Restricted Subsidiary that is not a Subsidiary Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Subsidiary Guarantor to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (9);~~

~~(10) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent such Preferred Stock or Disqualified Stock constitutes a Permitted Investment; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (10);~~

~~(11) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);~~

~~(12) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal, surety and similar bonds and performance, banker's acceptance facilities and completion guarantees and similar obligations (including guarantees thereof) provided by the Borrower or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;~~

~~(13) the incurrence of Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (13), together with any~~

~~Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (I) \$50.0 million and (II) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance) *plus*, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) 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 refinanced, extended, replaced, refunded, renewed or defeased *plus* (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred 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, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock;~~

~~(14) the incurrence or issuance by the Borrower of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to Refinance any Indebtedness (including any Designated Revolving Commitments) incurred or Disqualified Stock or Preferred Stock issued as permitted under Section 7.02(a) and Section 7.02(b)(2), (3), (4), (5) and (13) above, this clause (14) and Section 7.02(b)(15) below, or any successive Refinancing Indebtedness with respect to any of the foregoing;~~

~~(15) the incurrence or issuance of:~~

~~(a) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary, incurred or issued to finance an acquisition or investment (or other purchase of assets) or that is assumed by the Borrower or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets), including any Acquired Indebtedness, and~~

~~(b) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement, including any Acquired Indebtedness;~~

~~*provided that in the case of the preceding clauses (a) and (b), either:*~~

~~(i) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Borrower would be permitted to incur at least \$1.00 of additional Permitted Ratio Debt;~~

(ii) ~~after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Fixed Charge Coverage Ratio of the Borrower for the Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case 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 this proviso) would be no less than the Fixed Charge Coverage Ratio immediately prior to giving effect to such incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, in each case, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;~~

~~provided such Indebtedness must comply with the provisions set forth in Section 7.02(b)(15) (A) and (B) of the Term Credit Agreement as in effect on the Closing Date.~~

~~(16) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;~~

~~(17) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued in connection herewith, in a principal amount not in excess of the available amount of such letter of credit or bank guarantee;~~

~~(18) (a) the incurrence of any guarantee by the Borrower or a Restricted Subsidiary of Indebtedness or other obligation of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Restricted Subsidiary is permitted by this Agreement, or (b) any co-issuance by the Borrower or any Restricted Subsidiary of any Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Restricted Subsidiary is permitted by this Agreement; *provided* that in the case of clauses (a) and (b), if the underlying Indebtedness or other obligation permitted by this Agreement is not incurred by a Loan Party, then such guarantee or co-issuance shall not be incurred by a Loan Party;~~

~~(19) the incurrence of Indebtedness issued by the Borrower or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in~~

each case to finance the purchase or redemption of Equity Interests of the Borrower or any Parent Company to the extent described in Section 7.05(b)(4);

~~(20) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;~~

~~(21) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower or any Subsidiary Guarantors and (b) Indebtedness in respect of Cash Management Services, including Designated Cash Management Services Obligations;~~

~~(22) Indebtedness incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's-length commercial terms;~~

~~(23) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;~~

~~(24) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Subsidiary Guarantors in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (24), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (a) \$50.0 million and (b) 35% of Consolidated EBITDA of the Borrower for the most recently ended Test Period (calculated on a pro forma basis after giving effect to such incurrence or issuance);~~

~~(25) [reserved];~~

~~(26) [reserved];~~

~~(27) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners and guarantees required by Governmental Authorities in the ordinary course of business;~~

~~(28) [reserved];~~

~~(29) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;~~

~~(30) repayment obligations with respect to grants from Governmental Authorities;~~

~~(31) [reserved];~~

~~(32) [reserved]; and~~

~~(33) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (32) above.~~

~~(c) For purposes of determining compliance with this Section 7.02:—~~

~~(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (33) above or is entitled to be incurred pursuant to Section 7.02(a), the Borrower, in its sole discretion, may divide and classify and may subsequently re-divide and reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or a portion thereof) in such of the above clauses or under Section 7.02(a) as determined by the Borrower at such time; *provided* that all Indebtedness (x) incurred hereunder on the Closing Date, (y) incurred pursuant to the Term Facility on the Closing Date or (z) represented by the Senior Secured Notes and related Guarantees on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (2), respectively, and may not be reclassified;~~

~~(2) the Borrower is entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 7.02(a) and (b), subject to the proviso to the preceding clause (1) of this Section 7.02(c);~~

~~(3) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;~~

~~(4) in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued pursuant to Section 7.02(b) (other than Section 7.02(b)(2) or Section 7.02(b)(15)) on the same date that an item of Indebtedness,~~

~~Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued under Section 7.02(a), 7.02(b)(2) or 7.02(b)(15)), then the Fixed Charge Coverage Ratio, or applicable leverage ratio, will be calculated with respect to such incurrence or issuance under Section 7.02(a), 7.02(b)(2) or 7.02(b)(15)) without regard to any incurrence or issuance under Section 7.02(b) (other than with respect to any incurrence under Section 7.02(b)(2) or Section 7.02(b)(15)); *provided* that unless the Borrower elects otherwise, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock will be deemed incurred or issued first under Section 7.02(a), 7.02(b)(2) or 7.02(b)(15) to the extent permitted with the balance incurred under Section 7.02(b) (other than pursuant to Section 7.02(b)(2) or 7.02(b)(15)); and~~

~~(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.~~

~~The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, or an issuance of Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to clauses (1), (2), (3), (4), (5), (13), (14) and (15) of Section 7.02(b) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) 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 refinanced, extended, replaced, refunded, renewed or defeased and (II) 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 (and with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include 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 new Indebtedness).~~

~~For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the Dollar equivalent principal amount of Indebtedness, liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or~~

~~Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower Dollar equivalent)); *provided* that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued to Refinance other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased *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 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 extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include 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 new Indebtedness).~~

~~The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a **balance sheet of the Borrower** dated such date prepared in accordance with GAAP.~~

~~For purposes of determining compliance with this Section 7.02, if any Indebtedness is incurred, or Disqualified Stock or Preferred Stock is issued, in reliance on a Basket measured by reference to a percentage of Consolidated EBITDA, and any refinancing thereof would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such newly incurred Indebtedness, the liquidation preference of such newly issued Disqualified Stock or the amount of such newly issued Preferred Stock does not exceed **the sum of (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased, *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 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 extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include 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 new Indebtedness).~~

~~SECTION 7.03 Fundamental Changes.—The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:~~

~~(1) Holdings or any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); provided that~~

~~(a) the Borrower shall be the continuing or surviving Person,~~

~~(b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and~~

~~(c) in the case of a merger or consolidation of Holdings with and into the Borrower,~~

~~(i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,~~

~~(ii) Holdings shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower,~~

~~(iii) no Event of Default exists at such time or after giving effect to such transaction and~~

~~(iv) after giving effect to such transaction, a direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and (B) pledge 100% of the Equity Interests of the Borrower to the Administrative Agent as~~

~~Collateral to secure the Obligations in form reasonably satisfactory to the Administrative Agent and the Borrower;~~

~~(2) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party;~~

~~(a) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary that is a Loan Party; provided that a Loan Party shall be the continuing or surviving Person;~~

~~(b) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States will be permitted; and~~

~~(c) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;~~

~~provided that in the case of clause (c), the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of "Permitted Investments";~~

~~(3) any Restricted Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary; provided that any disposition by a Loan Party shall be to another Loan Party;~~

~~(4) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; provided that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower's assets, is the transferee of such assets) (any such Person, a "Successor Borrower"):~~

~~(i) the Successor Borrower will:~~

~~(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;~~

~~(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and~~

~~(C) deliver to the Administrative Agent (I) an Officer's Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Loan Document (as applicable) comply with this Agreement, (II) an updated pro-~~

forma Borrowing Base Certificate reflecting Excess Availability of at least 10% of the Borrowing Base after giving effect to such transaction and (H) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as agreed by the Administrative Agent);

(A) each Guarantor, unless it is the other party to such merger or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower's obligations under this Agreement);

(B) each Loan Party, unless it is the other party to such merger or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder;

(C) [reserved];

(iii) after giving *pro forma* effect to such incurrence, the Borrower would be permitted to incur at least \$1.00 of additional Permitted Ratio Debt; and

(iv) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Borrower required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

provided further that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(5) so long as no Event of Default has occurred and is continuing or would result therefrom, Holdings may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) Holdings will be the continuing or surviving Person or (b) if:

(i) the Person formed by or surviving any such merger or consolidation is not Holdings;

(ii) Holdings is not the Person into which the applicable Person has been liquidated or

(iii) in connection with a disposition of all or substantially all of Holding's assets, the Person that is the transferee of such assets is not Holdings (any such Person described in the preceding clauses (i) through (iii), a "Successor Holdings"), then the Successor Holdings will:

~~(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;~~

~~(B) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower;~~

~~(C) pledge 100% of the Equity Interests of the Borrower held by such Successor Holdings to the Administrative Agent as Collateral to secure the Obligations in accordance with the Security Agreement or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Borrower;~~

~~(D) if requested by the Administrative Agent, deliver, or cause the Borrower to deliver, to the Administrative Agent (I) an Officer's Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Collateral Document (as applicable) comply with this Agreement and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent; and~~

~~(i) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Holdings required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;~~

~~provided further that if the foregoing are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement;~~

~~(6) any Restricted Subsidiary may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05; provided that solely in the case of a merger or consolidation involving a Loan Party, no Event of Default exists or would result therefrom; provided further that the continuing or surviving Person will be (a) the Borrower or (b) a Loan Party;~~

~~(7) a merger, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 or a disposition that does not constitute any Asset Sale (other than a transaction described in clause (b) of the definition of Asset Sale); provided that as a result of any such merger, dissolution, liquidation, consolidation or disposition involving a Loan Party, any assets of such Loan Party shall be disposed of to another Loan Party; and~~

~~(8) subject to complying with the Collateral and Guarantee Requirement, the Borrower, Holdings and any Restricted Subsidiary may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the~~

laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States and (b) change its name:

~~SECTION 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consummate any Asset Sale unless:~~

~~(1) the Borrower or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of and~~

~~(2) except in the case of a Permitted Asset Swap, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):~~

~~(a) any liabilities (as shown on the Borrower's or any Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower's or a Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Restricted Subsidiary);~~

~~(b) any securities, notes or other obligations or assets received by the Borrower or any Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;~~

~~(c) any Designated Non-Cash Consideration received by the Borrower or any Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (i) \$30.0 million and (ii) 10.0% of Consolidated EBITDA of the Borrower for the most recently ended Test Period (calculated on a *pro forma* basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value; and~~

~~(d) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Borrower or a Restricted Subsidiary), to the extent that the Borrower and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale.~~

~~To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing. To the extent any ABL Priority Collateral is subject to any Asset Sale comprising more than 10% of the Borrowing Base, Borrower shall provide an updated *pro forma* Borrowing Base Certificate giving effect to such Asset Sale and demonstrating that Borrower has Excess Availability of at least \$20.0 million after giving effect to such Asset Sale.~~

~~SECTION 7.05 Restricted Payments.~~

~~(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:~~

~~(A) declare or pay any dividend or make any payment or distribution on account of the Borrower's or any Restricted Subsidiary's Equity Interests to any Person other than the Borrower or any Restricted Subsidiary of the Borrower (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:~~

~~(i) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or~~

~~(ii) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;~~

~~(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Restricted Subsidiary;~~

~~(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Subordinated Indebtedness, other than:~~

~~(i) Indebtedness permitted under clauses (8), (9) and (10) of Section 7.02(b); or~~

~~(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or~~

~~(D) make any Restricted Investment;~~

~~(all such payments and other actions set forth in clauses (A) through (C) above being collectively referred to as “**Restricted Payments**”), unless, at the time of and immediately after giving effect to such Restricted Payment either:~~

~~(1) [reserved];~~

~~(2) [reserved];~~

~~(3) [reserved];~~

~~(4)~~

~~(a) with respect to Restricted Payments, at the time such Restricted Payment is made, the Specified Restricted Payment Conditions shall be satisfied with respect thereto; provided that, neither the Borrower nor any of its Restricted Subsidiaries may make a Restricted Payment utilizing this clause (4)(a) until the first anniversary of the Closing Date; or~~

~~(b) with respect to Restricted Investments, at the time such Restricted Investment is made, the Specified Investment Payment Conditions shall be satisfied with respect thereto;~~

~~(b) The provisions of Section 7.05(a) will not prohibit:~~

~~(1) except in the case of such transactions utilizing Section 7.05(a)(4) above, the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Agreement (including this Section 7.05);~~

~~(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon (“**Treasury Capital Stock**”) or (ii) Subordinated Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Borrower or any Parent Company (in the case of proceeds, to the extent any such proceeds therefrom are contributed to the Borrower) (in each case, other than Disqualified Stock) (“**Refunding Capital Stock**”), and (y) within 120 days of such sale or issuance;~~

~~(b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Restricted Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance; and~~

~~(c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Borrower was permitted under clause (6)(a) or (b) of this Section 7.05(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount *per annum* no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;~~

~~(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:~~

~~(a) Subordinated Indebtedness of the Borrower or a Subsidiary Guarantor made (i) by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Subordinated Indebtedness of the Borrower or a Subsidiary Guarantor or Disqualified Stock of the Borrower or a Subsidiary Guarantor and (ii) within 120 days of such sale, issuance or incurrence;~~

~~(b) Disqualified Stock of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock or Subordinated Indebtedness of the Borrower or a Subsidiary Guarantor, made within 120 days of such sale, issuance or incurrence; and~~

~~(c) Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor, made within 120 days of such sale or issuance, that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 7.02; and~~

~~(d) any Subordinated Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness;~~

~~(4) a Restricted Payment or Restricted Investment, as applicable, to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower or any Parent Company held by any future, present 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 or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower or any Parent Company in connection with any such repurchase, retirement or other acquisition); provided that (x) with respect to a Restricted Payment or Restricted Investment, as applicable, the Specified Restricted Payment Conditions or Specified Investment Payment Conditions, as applicable, shall be satisfied with respect thereto and (y) the aggregate amount of Restricted Payments made under this clause (4) does not exceed \$10.0 million in any calendar year (increasing to \$20.0 million following an underwritten public Equity Offering by the Borrower or any Parent Company) with unused amounts in any calendar year being carried over to succeeding calendar years; provided further that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:~~

~~(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present 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, any of its Subsidiaries or any Parent Company, or pursuant to any Management Services Agreement, that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments or Restricted Investments by virtue of clause (3) of Section 7.05(a); plus~~

~~(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Restricted Subsidiaries or pursuant to any Management Services Agreement that are foregone in exchange for the receipt of Equity Interests of the Borrower pursuant to any compensation arrangement, including any deferred compensation plan; plus~~

~~(e) the cash proceeds of life insurance policies received by the Borrower or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Borrower (other than in the form of Disqualified Stock)) after the Closing Date; minus~~

~~(d) the amount of any Restricted Payments and Restricted Investments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);~~

~~provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; provided further that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, present 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, any Parent Company or any Restricted Subsidiary in connection with a repurchase of Equity Interests of the Borrower or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement;~~

~~(5) [reserved];~~

~~(6) [reserved];~~

~~(7) (a) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Restricted Subsidiary or any Parent Company;~~

~~(b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and~~

~~(c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any Parent Company in connection with such Person's purchase of Equity Interests of the Borrower or any Parent Company; provided that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;~~

~~(8) the declaration and payment of dividends on the Borrower's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on~~

~~such company's common equity), following the first public offering of the Borrower's common equity or the common equity of any Parent Company after the Closing Date, in an amount not to exceed the sum of (a) 6.00% per annum of the net cash proceeds received by or contributed to the Borrower in or from any such public offering, other than public offerings with respect to the Borrower's or such Parent Company's common equity registered on Form S-4 or Form S-8 and other than any public sale constituting an Excluded Contribution or CapEx Equity and (b) an aggregate amount *per annum* not to exceed 6.0% of Market Capitalization; *provided* that the Specified Restricted Payment Conditions shall be satisfied with respect thereto;~~

~~(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;~~

~~(10) Restricted Payments or Restricted Investments in an aggregate amount taken together with all other Restricted Payments and Restricted Investments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is made) the greater of (a) \$15.0 million and (b) 10.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis); *provided* that with respect to a Restricted Payment or Restricted Investment, as applicable, the Specified Restricted Payment Conditions or Specified Investment Payment Conditions, as applicable, shall be satisfied with respect thereto;~~

~~(11) [reserved];~~

~~(12) [reserved];~~

~~(13) [reserved];~~

~~(14) the declaration and payment of dividends or distributions by the Borrower or any Restricted Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:~~

~~(a) franchise, excise and similar taxes, and other fees and expenses, required to maintain their corporate or other legal existence;~~

~~(b) (i) for any taxable period (or portion thereof) for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a "**Tax Group**"), the portion of any U.S. federal, foreign, state or local income Taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and /or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries); *provided* that for each taxable period, (A) the amount of such payments made in respect of such taxable period in the aggregate will not~~

~~exceed the amount that the Borrower and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group and (B) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Borrower or any Restricted Subsidiary for such purpose, or (ii) for any taxable period (or portion thereof) for which the Borrower and any Parent Company is a partnership or disregarded entity for U.S. federal income tax purposes, cash distributions (“**Tax Distributions**”) to each direct or indirect member of the Parent Company in accordance with the terms of its relevant operating agreement, in an aggregate amount not to exceed the product of (A) the taxable income of the Borrower allocable to such member for such period reduced by any taxable loss of the Borrower allocated to such member with respect to any prior taxable periods (or portions thereof) ending after the Closing Date (*provided* that any such taxable loss will be taken into account only to the extent that (I) such taxable loss was not previously taken into account in determining the amount of any Tax Distributions pursuant to this clause (b), (II) such taxable loss would be deductible if such loss had been incurred in the current taxable period, and (III) such taxable loss would actually reduce the tax liability of such member for such taxable period, taking into account any alternative minimum tax consequences as well as the character of the taxable loss and of the Borrower’s and its Subsidiaries’ income, and assuming for the purposes of this subclause (III) that such member, for all tax years (or portions thereof) ending after the Closing Date, has been a taxable corporation that has held no assets other than such member’s direct or indirect interest in the Borrower or Parent Company), in each case, determined by taking into account any basis step-up in the assets of the Borrower or any of its Subsidiaries (including any step-up attributable to such member under section 743 of the Code), and (B) the maximum combined effective tax rate applicable to any direct or indirect equity owner of the Borrower or Parent Company for such taxable period (taking into account the character of the taxable income in question (e.g. long-term capital gain, qualified dividend income, etc.) and the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitations thereon)); *provided* that the amount of any Tax Distribution permitted under this clause (b) shall be reduced by the amount of any income taxes that are paid directly by the Borrower and attributable to such member;~~

~~(c) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management, consultants and independent contractors of any Parent Company, and any payroll, social security or similar taxes thereof;~~

~~(d) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company;~~

~~(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);~~

~~(f) amounts that would be permitted to be paid directly by the Borrower or its Restricted Subsidiaries under Section 7.07(b) (other than clause 2(a) thereof);~~

~~(g) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 7.05 if made by the Borrower; provided that:~~

~~(i) such Restricted Payment must be made within 120 days of the closing of such Investment, acquisition or investment;~~

~~(ii) such Parent Company must, promptly following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Borrower or a Restricted Subsidiary or (B) the merger, amalgamation, consolidation or sale of the Person formed or acquired into the Borrower or a Restricted Subsidiary (to the extent not prohibited by Section 7.03) in order to consummate such Investment, acquisition or investment;~~

~~(iii) such Parent Company and its Affiliates (other than the Borrower or any Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Agreement;~~

~~(iv) any property received by the Borrower may not increase amounts available for Restricted Payments pursuant to clause (3) of Section 7.05(a); and~~

~~(v) to the extent constituting an Investment, such Investment will be deemed to be made by the Borrower or such Restricted Subsidiary pursuant to another provision of this Section 7.05 (other than pursuant to clause (9) of this Section 7.05(b)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);~~

~~(15) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all ~~the assets of which are~~ cash and Cash Equivalents);~~

~~(16) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or~~

other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company;

(17) [reserved];

(18) ~~payments made for the benefit of the Borrower or any Restricted Subsidiary to the extent such payments could have been made by the Borrower or any Restricted Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.07;~~

(19) ~~payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement;~~

(20) ~~the payment of dividends, other distributions and other amounts by the Borrower to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest or principal (including AHYDO Payments) on Indebtedness, the proceeds of which have been permanently contributed to the Borrower or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with this Agreement; provided that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Borrower for the incurrence of such Indebtedness;~~

(21) ~~the making of cash payments in connection with any conversion of Convertible Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate amount since the Closing Date not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Borrower or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;~~

(22) ~~any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Borrower's common equity upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common equity upon any early termination thereof; and~~

(23) ~~the refinancing of any Subordinated Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness;~~

provided that at the time of, and after giving effect to, any Restricted Payment or Restricted Investment pursuant to clauses (6)(b) and (10) in respect of Restricted Payments and Restricted

~~Investments described in clauses (A), (B) or (C) of the definition thereof, no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.~~

~~(e) For purposes of determining compliance with this Section 7.05, in the event that any Restricted Payment or Investment (or any portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in Section 7.05(a), clauses (1) through (23) of Section 7.05(b) or one or more of the clauses contained in the definition of “Permitted Investments,” the Borrower will be entitled to divide or classify (or later divide, classify or reclassify), in whole or in part, in its sole discretion, such Restricted Payment or Investment (or any portion thereof) among Section 7.05(a), such clauses (1) through (23) of Section 7.05(b) or one or more clauses contained in the definition of “Permitted Investments,” in any manner that otherwise complies with this Section 7.05.~~

~~The amount of all Restricted Payments and Restricted Investments (other than cash) will be the fair market value on the date the Restricted Payment or Restricted Investment is made, or at the Borrower’s election, the date a commitment is made to make such Restricted Payment or Restricted Investment, of the assets or securities proposed to be transferred or issued by the Borrower or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment or Restricted Investment.~~

~~For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement.~~

~~SECTION 7.06 Change in Nature of Business. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date.~~

~~SECTION 7.07 Transactions with Affiliates.~~

~~(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an “Affiliate Transaction”) involving aggregate payments or consideration in excess of \$25.0 million, unless (A) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate of the Borrower on an arm’s-length basis or, if in the good faith judgment~~

~~of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view, and (B) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of \$50.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (A) above.~~

~~(b) The foregoing restriction will not apply to the following:~~

~~(1) (a) transactions between or among the Borrower and one or more Subsidiary Guarantors or between or among Subsidiary Guarantors or, in any case, any entity that becomes a Subsidiary Guarantor as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; provided that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance with the terms of this Agreement and effected for a bona fide business purpose;~~

~~(2) (a) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition), (b) any Permitted Investment(s) or any acquisition otherwise permitted hereunder and (c) Indebtedness permitted by Section 7.02;~~

~~(3) (a) the payment of management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreements (including any unpaid management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreements, and~~

~~(b) the payment of indemnification and similar amounts to, and reimbursement of expenses of, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors;~~

~~(4) any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any present, future 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, any of its Subsidiaries or any Parent Company that are, in each case, approved by the Borrower in good faith; and the provision of reasonable and customary compensation and other benefits (including the payment of any fees and compensation, benefit plan or arrangement, any health, disability or similar insurance plan), indemnities and reimbursements of expenses and employment and severance arrangements to, or on~~

~~behalf of, or for the benefit of 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) of the Borrower, any of its Subsidiaries or any Parent Company;~~

~~(5) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any of its Subsidiaries or any Parent Company, or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice;~~

~~(6) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower on an arm's-length basis;~~

~~(7) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date, or any amendment thereto 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 applicable agreement as in effect on the Closing Date);~~

~~(8) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; provided that the existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will only be permitted by this clause (8) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the original agreement or arrangement in effect on the Closing Date;~~

~~(9) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;~~

~~(10) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;~~

~~(11) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;~~

~~(12) [reserved];~~

~~(13) payments by the Borrower or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;~~

~~(14) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and repurchase and cancellation of any thereof) of the Borrower, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to 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 permitted transferees) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith;~~

~~(15) (a) investments by Affiliates in securities or Indebtedness of the Borrower or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Borrower or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;~~

~~(16) [reserved];~~

~~(17) payments by the Borrower (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Borrower (and any Parent Company) and~~

its Subsidiaries; ~~provided that in each case the amount of such payments by the Borrower and its Subsidiaries are permitted under Section 7.05(b)(14);~~

~~(18) any lease or sublease entered into between the Borrower or any Restricted Subsidiary, as lessee or sublessee and any Affiliate of the Borrower, as lessor or sublessor, and any transaction(s) pursuant to that lease, which lease or sublease is approved by the Board of Directors or senior management of the Borrower in good faith;~~

~~(19) (a) intellectual property licenses in the ordinary course of business or consistent with industry practice and (b) intercompany intellectual property licenses and research and development agreements;~~

~~(20) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower or any Parent Company pursuant to any equity holders agreement or registration rights agreement entered into on or after the Closing Date;~~

~~(21) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;~~

~~(22) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not (a) result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole or (b) result in any Loan Party becoming a non-Loan Party, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate;~~

~~(23) (a) transactions with a Person that is an Affiliate of the Borrower (other than an Unrestricted Subsidiary) solely because the Borrower or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Restricted Subsidiary or any Parent Company;~~

~~(24) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;~~

~~(25) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;~~

~~(26) investments by any Investor or Parent Company in securities or Indebtedness of the Borrower or any Subsidiary Guarantor;~~

~~(27) payments in respect of (a) the Obligations (or any Credit Agreement Refinancing Indebtedness), (b) the Senior Secured Notes or (c) other Indebtedness, Disqualified Stock or Preferred Stock of the Borrower and its Subsidiaries held by Affiliates; provided that such Obligations were acquired by an Affiliate of the Borrower in compliance herewith;~~

~~(28) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and~~

~~(29) any transaction on arm's length terms with a non-Affiliate that becomes an Affiliate as a result of such transaction.~~

~~SECTION 7.08 Burdensome Agreements.~~

~~(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to:~~

~~(1) (a) pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary that is a Subsidiary Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or~~

~~(b) pay any Indebtedness owed to the Borrower or to any Restricted Subsidiary that is a Subsidiary Guarantor;~~

~~(2) make loans or advances to the Borrower or to any Restricted Subsidiary that is a Subsidiary Guarantor;~~

~~(3) sell, lease or transfer any of its properties or assets to the Borrower or to any Restricted Subsidiary that is a Subsidiary Guarantor; or~~

~~(4) with respect to the Borrower or any Subsidiary Guarantor, (a) Guaranty the Obligations or (b) create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Lenders with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents;~~

~~provided that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.~~

~~(b) Section 7.08(a) will not apply to any encumbrances or restrictions existing under or by reason of:~~

~~(a) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents, the Term Facility and any Hedge Agreements, Hedging Obligations and the related documentation;~~

~~(b) the Senior Secured Notes Indenture, the Senior Secured Notes and the guarantees thereof;~~

~~(c) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in Section 7.08(a)(3) and Section 7.08(a)(4)(b) on the property so acquired;~~

~~(d) applicable Law or any applicable rule, regulation or order;~~

~~(e) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries;~~

~~(f) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;~~

~~(g) [reserved];~~

~~(h) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Permitted Liens;~~

~~(i) provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Subsidiary Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 7.02;~~

~~(j) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business;~~

~~(k) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to intellectual property and other agreements;~~

~~(l) [reserved];~~

~~(m) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;~~

~~(n) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary;~~

~~(o) customary provisions restricting assignment of any agreement;~~

~~(p) restrictions arising in connection with cash or other deposits permitted under Section 7.01;~~

~~(q) any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to the Borrower or any Restricted Subsidiary than (A) the restrictions contained in the Loan Documents, the ABL Documents, the Senior Secured Notes Indenture and the Senior Secured Notes as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to the Borrower or that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Borrower's ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;~~

~~(r) (i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 7.02(b)(5) and any permitted refinancing in respect of the foregoing and (ii) agreements entered into in~~

~~connection with any Sale-Leaseback Transaction entered into in the ordinary course of business or consistent with industry practice or a Specified Sale-Leaseback Transaction;~~

~~(s) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.08;~~

~~(t) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; *provided* that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Borrower or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;~~

~~(u) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (t) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;~~

~~(v) any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;~~

~~(w) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 7.02 is incurred; and~~

~~(x) restrictions on the sale, lease or transfer of property or assets arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or~~

~~assets of the Borrower or any Restricted Subsidiary in any manner material to the Borrower and the Restricted Subsidiaries, taken as a whole.~~

SECTION 7.03 ~~SECTION 7.09 Accounting~~ Fundamental Changes. The Borrower ~~shall not, nor shall~~ 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 ~~permit any and its~~ Restricted ~~Subsidiary to, make any change in fiscal year~~ Subsidiaries, taken as a whole, to any other Person; ~~provided, however,~~ that the Borrower may, ~~upon written notice~~ 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, ~~change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments~~ the due and punctual payment and performance of the Obligations hereunder and under the Loan Documents delivered pursuant to this Agreement ~~that are necessary to reflect such change in fiscal year.~~ 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 7.10 Modification of Terms of Indebtedness.~~ The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Subordinated Indebtedness having an aggregate outstanding principal amount greater than the Threshold Amount (other than as a result of any Refinancing Indebtedness in respect thereof) without the consent of the Administrative Agent ~~(which consent shall not be unreasonably withheld or delayed).~~ The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify, change or enter into any Indebtedness that is subject to the Intercreditor Agreement that would result in all the Obligations not being permitted under the terms of such Indebtedness.

SECTION 7.05 [Reserved].

SECTION 7.06 [Reserved].

SECTION 7.07 ~~SECTION 7.11 Holdings~~ [Reserved].

SECTION 7.08 [Reserved].

SECTION 7.09 [Reserved].

SECTION 7.10 [Reserved].

SECTION 7.11 [Reserved].

~~(1) Holdings shall not engage in any material operating or business activities; provided that the following and any activities incidental thereto shall be permitted in any event:—~~

~~(i) its ownership of the Equity Interests of the Borrower and its other Subsidiaries, including receipt and payment of Restricted Payments and other amounts in respect of Equity Interests;—~~

~~(ii) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes relating to such maintenance);—~~

~~(iii) the performance of its obligations with respect to the Loan Documents, the ABL Documents, the Senior Secured Notes and the Senior Secured Notes Indenture, and any other Pari Passu Lien Debt or equipment or commercial building financings;—~~

~~(iv) any public offering of its common equity or any other issuance, registration or sale of its Equity Interests;—~~

~~(v) financing activities, including the issuance of securities, incurrence of debt, receipt and payment of dividends and distributions, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of the Borrower and its other Subsidiaries;—~~

~~(vi) if applicable, participating in tax, accounting and other administrative matters as a member of the consolidated group and the provision of administrative and advisory services (including treasury and insurance services) to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries;—~~

~~(vii) holding any cash or property received in connection with Restricted Payments made by the Borrower in accordance with Section 7.05 pending distribution thereof to the applicable Parent Company (but not operate any property);—~~

~~(viii) providing indemnification to officers and directors;—~~

~~(ix) conducting, transacting or otherwise engaging in any business or operations of the type that it conducts, transacts or engages in on the Closing Date;—~~

~~(x) any transaction that Holdings is permitted to enter into or consummate under the Loan Documents, the Term Documents, the Senior Secured Notes Indenture, other Pari Passu Lien Obligations or equipment financings and any transaction between Holdings and the Borrower or any Restricted Subsidiary permitted under the Loan Documents, the Term Documents, the Senior Secured Notes Indenture, other Pari Passu Lien Obligations or equipment or commercial building financings;—~~

~~(xi) merging, amalgamating or consolidating with or into any Person (in compliance with Section 7.03);~~

~~(xii) repurchases of Indebtedness through open market purchases and Dutch auctions;~~

~~(xiii) activities incidental to Permitted Acquisitions or similar Investments consummated by the Borrower and the Restricted Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or Investments incidental to such Permitted Acquisitions or similar Investments;~~

~~(xiv) any transaction with the Borrower and/or any Restricted Subsidiary to the extent expressly permitted under this Section 7;~~

~~(xv) subject to the requirements of Section 7.11(2), its ownership of the Act 9 Bonds, and~~

~~(xvi) any activities incidental or reasonably related to the foregoing.~~

~~provided that, notwithstanding the foregoing, Holdings shall not create or acquire (by way of amalgamation, merger, consolidation or otherwise) any material direct Subsidiaries, other than the Borrower or any holding company for the Borrower.~~

~~(2) Neither Holdings, as owner of the Act 9 Bonds, nor any agent or designee of Holdings (including Regions Bank as trustee under the Act 9 Trust Indenture), shall, without the prior written consent of the Collateral Agent (acting at the direction of the Administrative Agent):~~

~~(i) dispose of any Act 9 Bonds or its economic interests therein;~~

~~(ii) enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff) under the Act 9 Bond Documents (including the enforcement of any right under any other agreement or arrangement to which Holdings or its agent or designee and either Osceola or the Borrower is a party), or~~

~~(iii) commence or join with any Person (other than the Secured Parties) in commencing, or petition for or vote in favor of, any action or proceeding with respect to such rights or remedies (including in any foreclosure action or any proceeding under any Debtor Relief Law).—~~

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 ~~or,~~ ~~in the case of Section 7.11, Holdings,~~ 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 ~~or 7.04~~), 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 ~~or statement of fact~~ 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; ~~or~~ 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 ~~(individually or in the aggregate with all other Indebtedness as to which such a failure shall exist)~~ 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) such failure is unremedied and is not waived by the holders of 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 prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02 and (B) this clause (5)(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. ~~(a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan, or (c) with respect to a Foreign Plan, a termination, withdrawal or noncompliance with applicable Law or plan terms occurs, except, as would not~~ 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.

~~(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery and for any reason (other than (a) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions) ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than (i) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04) or (ii) as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions; or~~

~~(10) Collateral Documents. Any Collateral Document with respect to a material portion of the Collateral after delivery thereof pursuant to Section 4.01, 6.11, 6.13 or pursuant to the provisions of any Collateral Document for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, or any Lien purported to be created by any Collateral Document with respect to a material portion of the Collateral shall be asserted in writing by any Loan Party (prior to the satisfaction of the Termination Conditions) not to be, a valid and perfected Lien with the priority required by such Collateral Document (or other security purported to be created on the applicable Collateral) on, and security interest in, any material portion of the Collateral purported to be covered thereby, subject to Permitted Liens, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents; or~~

~~(11) Change of Control. There occurs any Change of Control.~~

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) ~~and~~, 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 determination of whether the Specified Investment Payment Conditions or Specified Restricted Payment Conditions have been satisfied~~ 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 ~~or~~, 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 ~~and~~, 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 ~~Sections 7.03 and 7.04 or~~ 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 ~~or~~, 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~~-or~~, 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~~-or~~, 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~~-or~~, 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~~-or~~, 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 ~~Permitted~~ Indebtedness ~~that is Secured~~ 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) ~~[reserved]~~ 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 ~~its~~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 Indemnatee 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 Indemnities) 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 ~~provision~~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 ΠΡΟΓΡΑΦΙΣΜΟΣ ΟΦ Υ.Σ. ΣΠΕΧΙΑΛ ΠΕΡΙΟΛΥΤΙΟΝ ΠΕΡΙΜΕΣ.

(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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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BIG RIVER STEEL LLC, as the Borrower

By:_____

Name:

Title:

BRS INTERMEDIATE HOLDINGS LLC, as
Holdings

By:_____

Name:

Title:

GOLDMAN SACHS BANK USA, as
Administrative Agent and Lender

By:_____

Name:

Title: Authorized Signatory

[INSERT LENDER SIGNATURE PAGES]

By:_____

Name:

Title:

ANNEX B

Schedule 2.01

Commitments

Lender	Total Commitment
Goldman Sachs Bank USA	\$62,500,000
Bank of America, N.A.	\$62,500,000
Wells Fargo Bank, N.A.	\$62,500,000
BMO Harris Bank, N.A.	\$62,500,000
Truist Bank	\$35,000,000
ING Capital LLC	\$30,000,000
First National Bank of Pennsylvania	\$25,000,000
First Security Bank	\$10,000,000
Total	\$350,000,000

Issuing Bank	Issuing Bank Sublimit
Goldman Sachs Bank USA	\$6,111,112
BMO Harris Bank, N.A.	\$6,111,111
Wells Fargo Bank, N.A.	\$6,111,111
Bank of America, N.A.	\$4,444,444
First Security Bank	\$2,222,222
Total	\$25,000,000

ANNEX C

Schedule 1.01(3)

ESG KPI Requirements

[Omitted.]

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 30, 2021

/s/ David B. Burritt

David B. Burritt

President and Chief Executive Officer

CHIEF FINANCIAL OFFICER CERTIFICATION

I, Christine S. Breves, 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 30, 2021

/s/ Christine S. Breves

Christine S. Breves

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, 2021, 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 30, 2021

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, Christine S. Breves, 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, 2021, 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/ Christine S. Breves

Christine S. Breves

Senior Vice President and Chief Financial Officer

July 30, 2021

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, 2021

Mine (Federal Mine Safety and Health Administration (MSHA) ID)	Total # of Significant & Substantial violations under §104(a) ^(a)	Total # of orders under §104(b) ^(a)	Total # of unwarrantable failure citations and orders under §104(d) ^(a)	Total # of violations under §110(b)(2) ^(a)	Total # of orders under §107(a) ^(a)	Total dollar value of proposed assessments from MSHA	Total # of mining related fatalities	Received Notice of Pattern of Violations under §104(e) ^(a) (yes/no)?	Received Notice of Potential to have Pattern under §104(e) ^(a) (yes/no)?	Total # of Legal Actions Pending with the Mine Safety and Health Review Commission as of Last Day of Period ^(b)	Legal Actions Initiated During Period	Legal Actions Resolved During Period
Mt. Iron (2100820, 2100282)	3	—	—	—	—	\$356,666	—	no	no	64	64	3
Keewatin (2103352)	19	—	—	—	—	\$262,453	—	no	no	3	3	—

^(a) References to Section numbers are to sections of the Federal Mine Safety and Health Act of 1977.

^(b) 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 of the legal actions were initiated by us to contest citations, orders or proposed assessments issued by the Federal Mine Safety and Health administration, and if we are successful, may result in the reduction or dismissal of those citations, orders or assessments. As of the last day of the period, all 67 legal actions were to contest citations and proposed assessments.