

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-K**

(Mark One)

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

**For the Fiscal Year Ended December 31, 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 of Incorporation)

**25-1897152**

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

**600 Grant Street, Pittsburgh, PA 15219-2800**

(Address of principal executive offices)

**Tel. No. (412) 433-1121**

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

Title of Each Class	Trading Symbol	Name of Exchange on which Registered
<b>United States Steel Corporation Common Stock, par value \$1.00</b>	<b>X</b>	<b>New York Stock Exchange</b>
<b>United States Steel Corporation Common Stock, par value \$1.00</b>	<b>X</b>	<b>Chicago Stock Exchange</b>

Securities registered pursuant to Section 12(g) of the Act: None

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for at least 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 emerging growth company. See the definition of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes ☒ No ☐

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

Aggregate market value of Common Stock held by non-affiliates as of June 30, 2021 (the last business day of the registrant's most recently completed second fiscal quarter): \$6.5 billion. The amount shown is based on the closing price of the registrant's Common Stock on the New York Stock Exchange composite tape on that date. Shares of Common Stock held by executive officers and directors of the registrant are not included in the computation. However, the registrant has made no determination that such individuals are "affiliates" within the meaning of Rule 405 under the Securities Act of 1933.

There were 260,930,638 shares of United States Steel Corporation Common Stock outstanding as of February 7, 2022.

Documents Incorporated By Reference:

Portions of the Proxy Statement for the 2022 Annual Meeting of Stockholders are incorporated into Part III.

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## FORWARD-LOOKING STATEMENTS

This report contains information that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We intend the forward-looking statements to be covered by the safe harbor provisions for forward-looking statements in those sections. Generally, we have identified such forward-looking statements by using the words “believe,” “expect,” “intend,” “estimate,” “anticipate,” “project,” “target,” “forecast,” “aim,” “should,” “plan,” “goal,” “future,” “will,” “may” and similar expressions or by using future dates in connection with any discussion of, among other things, the construction or operation of new or existing facilities, 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, statements regarding our future strategies, products and innovations, statements regarding our greenhouse gas emissions intensity reduction goals, 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 in “Item 1A. Risk Factors” and those described from time to time in our future reports filed with the Securities and Exchange Commission.

References in this Annual Report on Form 10-K 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, (ii) “Big River Steel” refers to Big River Steel Holdings LLC and its direct and indirect subsidiaries unless otherwise indicated by the context and (iii) “Transtar” refers to Transtar LLC and its direct and indirect subsidiaries unless otherwise indicated by the context.

### Non-Generally Accepted Accounting Principles (non-GAAP) Financial Measures

This report contains the non-GAAP financial measure cash conversion cycle. 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.

## PART I

### Item 1. BUSINESS

United States Steel Corporation, with operations in the U.S. and Central Europe, is transforming itself into a customer-centric, world-competitive, Best for All<sup>SM</sup> steelmaker by investing in the competitive advantages that differentiate us from our competitors. We are executing on our strategy by investing where we have distinct cost and capability advantages so that we are a superior steel solutions provider for our customers. By offering the sustainable steels that our customers are increasingly demanding, we aim to achieve world-competitive positioning in strategic, high-margin end markets, and deliver high-quality, value-added products and innovative solutions utilizing a lower carbon footprint than previously available through the traditional integrated steelmaking model.

During 2021 U. S. Steel had annual raw steel production capability of 26.2 million net tons (21.2 million tons in North America and 5.0 million tons in Europe). In December 2021, U. S. Steel permanently idled the steelmaking operations at Great Lakes Works, which reduced the Company's overall and North American annual raw steel production capability by 3.8 million net tons. U. S. Steel performs a wide range of applied research, development and technical support functions at facilities in Pennsylvania, Michigan, Texas and Slovakia. U. S. Steel supplies customers throughout the world primarily in the automotive, construction, consumer (packaging and appliance), electrical, industrial equipment, service center/distribution, structural tubing and energy (oil country tubular goods (OCTG) and line pipe) markets. According to the worldsteel Association's latest published statistics, in 2020 U. S. Steel was the third largest steel producer in the United States and the thirty-eighth largest steel producer in the world. U. S. Steel is a Delaware corporation established in 1901.

### Acquisitions and Dispositions

On January 15, 2021, U. S. Steel purchased the remaining equity interest in Big River Steel. On July 28, 2021, the Company sold 100% of the equity interests in Transtar, its short-line railroad.

### Segments

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 full ownership of Big River Steel after January 15, 2021, and a new mill under construction in Osceola, Arkansas. Prior to the acquisition, the minority interest equity earnings of Big River Steel were included in the Other category. The Tubular segment includes the electric arc furnace at our Fairfield Tubular Operations in Fairfield, Alabama. The Other category includes results of our real estate business, the previously held equity method investment in Big River Steel, and our former railroad business.

#### Flat-Rolled

The Flat-Rolled segment includes the operating results of U. S. Steel's integrated steel plants and equity investees in North America involved in the production of slabs, strip mill plates, sheets and tin mill products, as well as all iron ore and coke production facilities in the United States. These operations primarily serve North American customers in the automotive, appliance, construction, container, transportation and service center markets.

During 2021 Flat-Rolled had aggregate annual raw steel production capability of 17.0 million tons produced at our Gary Works, Mon Valley Works, Great Lakes Works and Granite City Works facilities. In December 2021, U. S. Steel permanently idled the steelmaking operations at Great Lakes Works, which reduced the Company's overall annual raw steel production capability by 3.8 million net tons. Raw steel production was 9.9 million tons in 2021, 9.3 million tons in 2020 and 11.4 million tons in 2019. Raw steel production averaged 58 percent of capability in 2021, 55 percent of capability in 2020 and 67 percent of capability in 2019.

#### Mini Mill

The Mini Mill segment includes the operating results of U. S. Steel's Big River Steel facility in North America and a new mill under construction in Osceola, Arkansas. The Mini Mill segment produces hot-rolled, cold-rolled and coated sheets and electrical. This operation primarily serves North American customers in the automotive, appliance, construction, container, transportation and service center markets.

Mini Mill has aggregate annual raw steel production capability of 3.3 million tons produced at our Big River Steel facility. Raw steel production was 2.7 million tons in 2021. Raw steel production averaged 81 percent of capability in 2021.

#### European Operations

The USSE segment includes the operating results of U. S. Steel Košice (USSK), U. S. Steel's integrated steel plant and coke production facilities in Slovakia, and its subsidiaries. USSE conducts its business mainly in Central and Western Europe and primarily serves customers in the European transportation (including automotive), construction, container, appliance, electrical,

service center, conversion and oil, gas and petrochemical markets. USSE produces and sells slabs, strip mill plate, sheet, tin mill products and spiral welded pipe.

USSE has annual raw steel production capability of 5.0 million tons. USSE's raw steel production was 4.9 million tons in 2021, 3.4 million tons in 2020, and 3.9 million tons in 2019. USSE's raw steel production averaged 99 percent of capability in 2021, 67 percent of capability in 2020 and 78 percent of capability in 2019.

#### Tubular

The Tubular segment includes the operating results of U. S. Steel's tubular production facilities and an equity investee in the United States. These operations produce and sell seamless and electric resistance welded (ERW) steel casing and tubing (commonly known as OCTG), and standard and line pipe and mechanical tubing and primarily serve customers in the oil, gas and petrochemical markets. The Tubular segment has annual raw steel production capability of 900 thousand tons. Raw steel production was 464 thousand tons in 2021 and 16 thousand tons in 2020. Raw steel production averaged 52 percent of capability in 2021 and 7 percent of capability in 2020. Tubular has total production capability of 1.9 million tons. In 2020, Tubular indefinitely idled the Lone Star Tubular Operations and Lorain Tubular Operations thereby effectively reducing on-line tubular production capacity by 790 thousand and 380 thousand tons, respectively. U. S. Steel Tubular Products, Inc. (USSTP), a wholly owned subsidiary of U. S. Steel, continues to design and develop a range of premium and semi-premium connections to address our customers' needs.

For further information, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and Note 4 to the Consolidated Financial Statements.

## Steel Shipments by Market and Segment

The following table, except where noted in Footnote 1 below, does not include shipments to end customers by joint ventures and other equity investees of U. S. Steel. Shipments of materials to these entities are included in the “Further Conversion – Joint Ventures” market classification. No single customer accounted for more than 10 percent of gross annual revenue for the three consecutive years ended December 31, 2021.

<i>(Thousands of Tons)</i>	Flat-Rolled	Mini Mill	USSE	Tubular	Total
<b>Major Market – 2021</b>					
Steel Service Centers	1,539	1,121	995	—	3,655
Further Conversion – Trade Customers	1,701	684	314	—	2,699
– Joint Ventures <sup>(1)</sup>	490	—	—	—	490
Transportation and Automotive <sup>(1)</sup>	2,355	17	590	—	2,962
Construction and Construction Products	1,224	282	1,346	18	2,870
Containers and Packaging	942	17	449	—	1,408
Appliances and Electrical Equipment	570	109	266	—	945
Oil, Gas and Petrochemicals	—	—	8	426	434
All Other	197	—	334	—	531
TOTAL	9,018	2,230	4,302	444	15,994
<b>Major Market – 2020</b>					
Steel Service Centers	1,450	—	690	—	2,140
Further Conversion – Trade Customers	2,063	—	202	—	2,265
– Joint Ventures <sup>(1)</sup>	415	—	—	—	415
Transportation and Automotive <sup>(1)</sup>	2,012	—	517	—	2,529
Construction and Construction Products	1,261	—	775	34	2,070
Containers and Packaging	913	—	435	—	1,348
Appliances and Electrical Equipment	497	—	194	—	691
Oil, Gas and Petrochemicals	—	—	5	430	435
All Other	100	—	223	—	323
TOTAL	8,711	—	3,041	464	12,216
<b>Major Market – 2019</b>					
Steel Service Centers	1,902	—	740	—	2,642
Further Conversion – Trade Customers	2,823	—	214	—	3,037
– Joint Ventures <sup>(1)</sup>	819	—	—	—	819
Transportation and Automotive <sup>(1)</sup>	2,620	—	676	—	3,296
Construction and Construction Products	1,076	—	1,048	44	2,168
Containers and Packaging	652	—	440	—	1,092
Appliances and Electrical Equipment	570	—	220	—	790
Oil, Gas and Petrochemicals	—	—	—	725	725
All Other	238	—	252	—	490
TOTAL	10,700	—	3,590	769	15,059

<sup>(1)</sup> PRO-TEC automotive substrate shipments are included in the Transportation and Automotive category.

## **Steel Industry Background and Competition**

The global steel industry is cyclical, highly competitive and has historically been characterized by global overcapacity.

U. S. Steel's competitive position may be affected by, among other things, differences among U. S. Steel's and its competitors' cost structure, labor costs, environmental remediation and compliance costs, global capacity, achievement of innovations in new technologies and sustainable products and the existence and magnitude of government subsidies provided to competitors.

U. S. Steel competes with many North American and international steel producers. Competitors include 1) integrated producers, which use iron ore and coke as the primary raw materials for steel production, 2) EAF producers, which primarily use steel scrap and other iron-bearing feedstocks as raw materials and 3) slab re-rollers, who purchase mostly imported, but some domestic, semi-finished products and convert them into sheet products. In addition, other materials, such as aluminum, plastics and composites, compete with steel in several applications. According to worldsteel Association, global steel production in 2021 grew compared to 2020, increasing by 4% or approximately 70 million metric tons to 1.951 billion metric tons. Steel production generally increased across the world, with the global increase being driven collectively by countries outside of the top five steel producing countries. Among the top five steel producing countries, production increased in India, the United States, Japan and Russia. This growth was partially offset however by China, which decreased crude steel production by 32 million metric tons, or 3%, from 2020. The top five steel producing countries accounted for 72% of the world's steel production in 2021, and China was the only major steel producing country to have decreased production during 2021.

See "International Trade" below for a discussion of global overcapacity and the Company's efforts to mitigate the competitive impact.

EAF producers typically require lower capital expenditures for construction and operation of facilities and may have lower total employment costs; however, these competitive advantages may be minimized or eliminated by the cost of scrap when scrap prices are high. Some EAF producers utilize thin slab casting technology to produce flat-rolled products and are increasingly able to compete directly with integrated producers in many flat-rolled product applications previously produced only by integrated steelmakers. Slab re-rollers do not incur the cost of melting steel; their input costs are largely driven by the market price of slabs.

U. S. Steel provides defined benefit pension and/or other post-employment benefits to approximately 70,000 current employees, retirees and their beneficiaries. Many of our competitors do not have comparable retiree obligations. Participation in U. S. Steel's main defined benefit pension plan was closed to new entrants on July 1, 2003 and benefit accruals for all non-represented participants were frozen effective December 31, 2015. Participation in U. S. Steel's retiree medical and life insurance programs for United Steelworkers (USW)-represented employees were closed to employees hired or rehired (except in limited circumstances) on or after January 1, 2016. Retiree medical and life insurance benefits for non-represented employees were eliminated for those who retired after December 31, 2017.

We believe that our major North American and many European integrated steel competitors are confronted with substantially similar environmental regulatory conditions and therefore do not believe that our relative position with regard to such competitors will be materially affected by the impact of environmental laws and regulations. However, if future regulations do not recognize that the integrated steel process involves a series of chemical reactions involving carbon that create carbon dioxide (CO<sub>2</sub>) emissions without linking these emissions to steel scrap as well, the competitive position of our integrated operations will be adversely impacted compared to mini mills. Our competitive position compared to producers in developing nations such as China, Russia, Ukraine, Turkey, Brazil and India, will be harmed unless such nations require commensurate reductions in CO<sub>2</sub> emissions or there are policies to adjust for the carbon emissions disparities. Competing materials such as plastics may not be similarly impacted. The specific impact on each competitor will vary depending on a number of factors, including the age and location of its operating facilities and its production methods. U. S. Steel is also responsible for remediation costs related to former and present operating locations and disposal of environmentally sensitive materials. Many of our competitors, including North American producers, or their successors, that have been the subject of bankruptcy relief have no or substantially lower liabilities for such environmental remediation matters.

In 2022, we expect additional steelmaking capacity will enter the domestic steel market as competitors' growth projects come on-line in North America throughout the year.



## Business Strategy

We are executing on our customer-centric Best for All strategy to advance a more secure, sustainable future for U. S. Steel and its stakeholders. Our strategy is focused on product and process innovation by investing where we have distinct cost or capability competitive advantages. We are expanding our competitive advantages in low-cost iron ore, mini mill steelmaking, and world-class finishing assets with innovative solutions and commercial acumen. These competitive advantages are built on a foundation of research, innovation and deep customer relationships. In executing our strategy, we aim to enhance our earnings profile, deliver long-term cash flow through industry cycles and reduce our capital and carbon intensity. By offering the product capabilities, including the more sustainable steels (steels made with lower greenhouse gas emissions) our customers are increasingly demanding, we can achieve more competitive positioning in strategic, high-margin end markets, and deliver high-quality, sustainable, value-added products and innovative solutions.

Our strategy is informed by our critical success factors, which are the bedrock of the Best for All strategy: (1) Move Down the Cost Curve; (2) Win in Strategic Markets; and (3) Move Up the Talent Curve. We are investing in new technologies to improve our cost position and increase our capabilities, including our mini mill steelmaking and best-in-class finishing capabilities. We will focus on strategic markets, where there is the greatest opportunity to provide differentiated, innovative and value-added solutions that will help our customers succeed. We know that to accomplish our objectives, we also need to move up the talent curve. We are investing in our employees and providing the training and resources they need to succeed. This will help us reinforce a culture where accountability, fairness and respect are foundational, and high performance and inclusion in all its forms are valued and celebrated.

U. S. Steel will continue to evaluate potential strategic and organizational opportunities, which may include the acquisition, divestiture or consolidation of assets. Given the cyclicity of our industry, we are focused on strategically deploying our capital in order to invest in areas consistent with the execution of our Best for All strategy and are considering various possibilities, including exiting lines of business and the sale of certain assets, that we believe would ultimately result in greater stockholder value. The Company will pursue opportunities based on its long-term strategy, and what the Board of Directors determines to be in the best interests of the Company's stockholders at the time.

### Strategic Projects, Technology Investments and Operating Configuration Adjustments

2021 was a strategically transformational year as we move towards Best for All. On January 15, 2021, we completed the acquisition of Big River Steel, which increased our annual raw steel production capability by 3.3 million net tons. In addition, we commenced construction on a non-grain oriented (NGO) electrical steel line at Big River Steel in August 2021. We expect this \$450 million investment to make Big River Steel a leader in NGO electric steels by delivering product capabilities in this growing market. 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 North America over the coming years.

In the third quarter 2021, the Company began construction on a 325,000 ton galvaneal/galvalume line at Big River Steel. This \$280 million investment is expected to grow the Company's best-in-class finishing capabilities, by expanding the Company's presence in value-added construction applications and enhancing Big River Steel's product mix.

On January 11, 2022, we announced Osceola, Arkansas as the site of a new highly sustainable and technologically advanced steel mill. The planned mini mill is expected to have 3 million tons per year of steelmaking capability, and will combine two state-of-the-art EAFs with differentiated steelmaking and finishing technology, including our already purchased endless casting and rolling equipment. The Company is working with the same technical advisors and engineers who were instrumental in the successful construction of the facilities at Big River Steel. The continued adoption of mini mill technology will expand our ability to produce the next generation of highly profitable proprietary sustainable steel solutions, including Advanced High Strength Steels.

As the Company advances and expands its mini mill capability, it seeks to become better, not bigger and will adjust its footprint accordingly by re-evaluating non-core and less efficient capabilities. In December 2021, the Company permanently idled the steelmaking operations at its Great Lakes Works facility. The coil finishing process continues to operate and the iron making process at Great Lakes Works remains idled for an indefinite period of time.

On July 28, 2021, we continued the transition to Best for All by monetizing non-core assets with the sale of Transtar, our wholly owned short-line railroad, while concurrently entering into a long-term rail services agreement with the purchaser of Transtar.

## Commercial Strategy

Our commercial strategy is focused on providing customer-centric solutions with differentiated and value-added steel products, which includes advanced high strength steels such as our newer grades of GEN3 steel, coated sheets for the automotive and appliance industries, electrical steel sheets for the manufacture of motors and electrical equipment, both bare and prepainted galvanized and Galvalume® sheets for construction, heavy gauge hot rolled coils used in the production of construction and agricultural-related heavy machinery as well as skelp for line pipe used for energy transmission, tin mill products for the packaging industry and OCTG pipe, connections, accessories and rig site services for use in drilling for oil and gas. In addition,



our portfolio of customers serve a variety of different traditional and emerging industries meeting the needs of numerous markets.

Throughout 2021, the Company integrated the commercial teams from United States Steel and Big River Steel into a single, customer-focused commercial team to better serve our customers and leverage the collective footprint of our legacy and mini mill capabilities. The aligned commercial structure allows us to increase our relationships with customers, provide seamless customer access to application and product engineering, and to be nimble and more responsive in the marketplace.

U. S. Steel is committed to leveraging our Best for All strategy to develop and commercialize low-carbon footprint and advanced high-strength steels for our current and future customers. Over the next five years, U. S. Steel plans to develop and commercialize numerous differentiated grades of low-carbon footprint, high rate of recycled-content steels, providing compelling new options for customers in automotive, appliance, industrial equipment, construction, renewable energy and other markets to enhance the sustainability of their products. For example, in April 2021, we announced a new sustainable steel product line, verdeX™, which is produced with up to 70% less greenhouse gas emissions compared to similar products produced through integrated steelmaking. In addition, we are collaborating with Norfolk Southern Corporation and The Greenbrier Companies, Inc. on a new, sustainable high-strength steel railcar designed to extend the useful life of each gondola and increase freight capacity.

We are responsive to our customers' changing needs by developing new steel products and uses for steel that meet their evolving markets and regulatory demands. We have research centers in Munhall, Pennsylvania, Košice, Slovakia, and Houston, Texas, as well as a technology center in Troy, Michigan. The focus of these centers is to engineer new products and to co-create innovative solutions that meet our customers' toughest challenges to reduce carbon emissions, increase strength, improve longevity and serve the needs of their customers.

For automotive customers leveraging advanced high strength steels, we commissioned a first of its kind GEN3 hot dipped galvanize line at our PRO-TEC Coating Company (PRO-TEC) joint venture in 2020, and have embedded application engineers at original equipment manufacturers to demonstrate how to best utilize the high strength, highly formable, cost effective material in body design to meet passenger safety requirements while significantly reducing weight to meet future vehicle fuel efficiency standards.

In our tubular markets, we continue development of premium and semi-premium tubular connections designed for our customers that operate in challenging drilling environments. These connections optimize well construction activities and provide outstanding sealing capabilities for onshore and offshore oil and gas drilling in North America. An example is the USS-TALON HTQ™, which was introduced in 2020 for customers that are constructing onshore natural gas and oil wells with long laterals requiring best-in-class torque capacity and optimized well-bore clearances.

### Commercial Sales of Product

U. S. Steel characterizes sales as contract sales if sold pursuant to an agreement with a defined volume and pricing and a duration of longer than three months, and as spot if sold without a defined volume and pricing agreement, typically three months or less. In 2021, approximately 73 percent, 81 percent, 49 percent and 48 percent of sales by Flat-Rolled, Mini Mill, USSE and Tubular, respectively, were contract sales. Some contract pricing agreements include fixed prices while others are adjusted periodically based upon published prices of steel products or cost components.

### Human Capital Management

At U. S. Steel, we are focused on attracting and retaining the top talent needed to support our strategic transformation and meet our customers' evolving needs as a sustainable steel solutions provider. The support and development of our people is foundational to achieving our Best for All strategy. We refer to this strategic talent pillar as "Moving Up the Talent Curve."

Our focus on people extends to our current and future employees. We aim to have an engaged and diverse workforce to promote new ideas and innovation, reflect the communities where we operate, and deliver exceptional customer service. We seek to build an inclusive environment where people feel free to bring their whole selves to work. To achieve the Best for All strategy, we must have the "Best from All."

#### Approximate Active Employees as of December 31, 2021

North America	15,590
Slovakia	8,950
Total	24,540

### Ethics & Compliance

Our culture is based on our S.T.E.E.L. Principles: **S**afety First; **T**rust and Respect; **E**nvironmental Stewardship; **E**xcellence and Accountability; and **L**awful and Ethical Conduct. We expect our employees and members of our board of directors to take

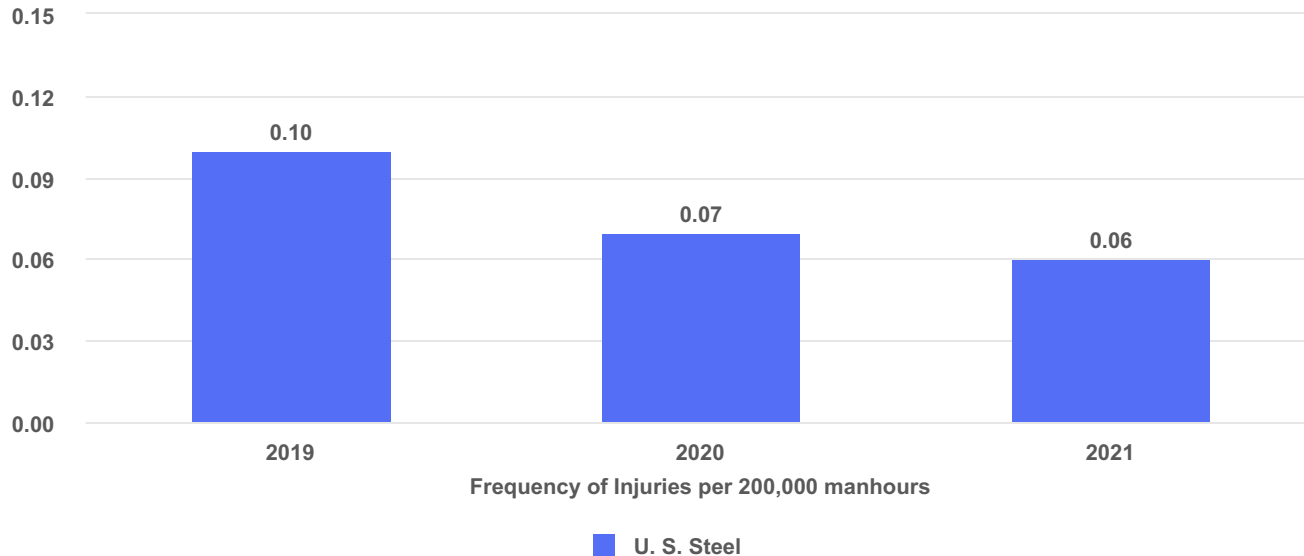
personal responsibility to “do what’s right,” and our Code of Ethical Business Conduct serves as the foundation for the actions of our employees and directors. To further ensure that employees understand the Company’s expectations and all applicable rules, we provide formal ethics and compliance training to our employees and have frequent communication with information about key compliance topics, which include messages from senior management underscoring the importance of doing business with integrity. Employees also receive summaries of current events that demonstrate the need to do business lawfully that include reminders of the company’s expectations for all employees. In addition, through our annual policy certification process, employees and directors certify their ongoing compliance with our Code of Ethical Business Conduct.

### Employee Health & Safety

At U. S. Steel, we have a long-standing commitment to the safety and health of every person who works in our facilities. Every employee deserves to return home safely at the end of every day, and we are working to eliminate all injuries and incidents. In addition, the psychological safety of all employees is important to us. We have combined physical safety and psychological safety into the construct of 360° safety. Ensuring a safe workplace also improves productivity, quality, reliability and financial performance. By making safety and health a personal responsibility, our employees are making a daily commitment to follow safe work practices, look out for the safety of co-workers and ensure safe working conditions for everyone. A “Safety First” mindset is as essential to our success as the tools and technologies we rely on to do business. This past year, we relied on our strong safety culture to ensure the health and safety of our employees during the COVID-19 pandemic, as described below.

Our objective is to attain a sustainable zero harm culture supported by leadership and owned by an engaged and highly skilled workforce, empowered with the capabilities and resources needed to assess, reduce, and eliminate workplace risks and hazards. In support of these objectives, we have developed an enhanced Safety Management System, initiated new safety communication methods and enhanced contractor safety processes. One of our most important safety protocols is our fatality prevention audit program. These proactive assessments of the processes and protocols we have in place, and adherence to them, to avoid fatalities and severe injuries are conducted annually at the enterprise level and more frequently at each of our facilities. We assess our safety performance through a variety of lagging and leading indicators, including OSHA Days Away From Work (DAFW). This measurement allows us to evaluate the frequency of injuries sustained at our facilities requiring an employee to stay at home for more than one day. U. S. Steel has achieved record-safety performance in this measurement in the last several years, routinely achieving performance better than industry benchmarks.

**Global Days Away From Work Incidence Rates  
January 2019 through December 2021**



For 2021, we had a corporate DAFW rate of 0.06, which is 0.64 better than the U.S. Bureau of Labor Statistics' Iron and Steel benchmark DAFW rate of 0.70.

The health and safety of our workforce remains our top priority as we continue to monitor the spread of the coronavirus pandemic across the globe. Building on the steps we took at the onset of the pandemic in 2020, some of the measures we implemented in 2021 included:

- Issuing regular communications and videos, including preventive tips;
- Providing employees with protective equipment, masks, and sanitizing and cleaning supplies and enhanced cleaning frequency; and
- Hosting vaccination clinics at our facilities, offering our employees convenient access to the COVID-19 vaccine.

## Diversity, Equity, & Inclusion

Attracting, developing, and retaining a workforce of talented, diverse people is essential to having high-performing teams that drive results for our Company's stakeholders. As part of our commitment to cultivating a culture of caring, we have inclusive benefits available for our U.S. non-represented workforce, including expanded parental leave, back-up dependent care, infertility coverage, gender reassignment coverage and healthcare continuation for the families of employees who suffered work-related or military service fatalities. In 2021, U. S. Steel again earned a 100 percent score on the Human Rights Campaign's annual Corporate Equality Index in recognition of our comprehensive benefits, non-discrimination policies and inclusive culture support. We also support several employee resource groups (ERGs) to enhance employee engagement, promote a culture of belonging, foster diversity in the workplace, and raise awareness related to issues of identity and intersectionality. Our ERGs also provide training and education, mentorship and networking opportunities for their members.

## Talent Attraction, Development and Retention

We believe that attraction, development and retention of talent is essential to our success, especially in today's environment. We offer internship programs, partner with universities, community colleges, and technical schools; and collaborate with community employment centers and economic development nonprofit organizations to build strong and diverse internal and external sources for potential employees.

Once at U. S. Steel, we seek to provide opportunities for continuous learning and development. All of our employees at a director-level and above have a formal professional development plan that is assessed at least annually. In addition, we proactively monitor our attrition rates and take targeted actions to ensure our highest potential and performing employees are motivated to remain with the Company. Over the past five years, our regrettable voluntary turnover rate has been at or below 5 percent.

We offer a competitive total rewards package of compensation and benefits that we regularly evaluate and benchmark across the manufacturing industry to ensure that we position U. S. Steel as an employer of choice.

At the onset of the pandemic in early 2020, we quickly transitioned our corporate and administrative employees, approximately 10% of our workforce, to a work-from-home environment. We've invested in technology to maintain this virtual community and found that our employees are more productive and have more flexibility and autonomy in managing their workload in a way that best fits their situation. We plan to maintain a virtual / hybrid working option for these employees in order to promote workplace flexibility and attract and retain highly qualified employees across the country.

## Labor Relations

Approximately 80% of our employees in North America and Slovakia are covered by collective bargaining agreements. We work closely with union representatives to provide safe and productive workplaces that enable our employees to deliver high-quality products and meet the needs of our customers. Our partnership with the United Steelworkers includes not only a commitment to safety programs, but also a common approach to combating the unfairly traded imports that threaten our industry, our company, and ultimately the jobs of our employees.

## **Capital Structure, Liquidity and Capital Allocation**

Our Best for All strategy's primary financial goal is to enhance stockholder value by utilizing our capital structure, liquidity and enhanced capital allocation priorities to advance the Company's strategic objectives, generate long-term value, and reward stockholders. Our cash deployment strategy is aligned with our corporate strategy and includes: executing on strategic projects and portfolio moves; maintaining a strong balance sheet and a healthy pension plan; and delivering sustainable growth with a focus on core values such as safety and environmental stewardship and rewarding stockholders for the continued progress we make. Cash deployment is also performed with a customer-centric focus on improving safety, quality, delivery and cost.

Our liquidity supports our ability to satisfy short-term obligations, fund working capital requirements, and provides a foundation to execute key strategic priorities. We are focused on maintaining a strong balance sheet and may proactively refinance or repay our debt from time to time to protect our capital structure from unforeseen external events and re-financing risks.

In 2021, we undertook several steps to support these goals.

We transformed our balance sheet and enhanced the Company's financial flexibility by repaying approximately \$3.1 billion in debt.

We designated our three global syndicated revolving credit facilities as Sustainability Linked Loans to incorporate our sustainability related goals and values into our global syndicated revolving credit facilities:

- On July 23, 2021, Big River Steel entered into an amendment to its senior secured asset-based revolving credit facility (Big River Steel ABL Facility), which extended the maturity by 5 years and added sustainability targets related to carbon reduction, safety performance and facility certification by ResponsibleSteel™. The Big River Steel ABL Facility provides for borrowings for working capital and general corporate purposes in an amount equal 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 July 23, 2026.
- On July 23, 2021, U. S. Steel amended the Fifth Amended and Restated Credit Facility Agreement (Credit Facility Agreement) to include targets related to carbon reduction, safety performance and facility certification by ResponsibleSteel™. In addition to the new sustainability link, the Credit Facility Agreement was amended to reduce the facility size to \$1.75 billion from \$2 billion, which supports the Company's current footprint and is consistent with its efforts to optimize its global liquidity position.
- On September 29, 2021, USSK entered into a €300 million (approximately \$340 million) unsecured sustainability linked credit agreement (USSK Credit Agreement), replacing the previous €460 million credit facility agreement. The USSK Credit Agreement matures in 5 years and contains sustainability targets related to carbon reduction, safety performance and facility certification by ResponsibleSteel™.

We ended 2021 with \$4.971 billion of total liquidity.

In the fourth quarter of 2021, we announced enhancements to our capital allocation strategy as we pursue a more balanced plan that rewards stockholders for the continued progress we are making towards our Best for All future. Enhancements made to our capital allocation strategy in October 2021 include:

- Reinstating the Company's \$0.05/share quarterly dividend, beginning in the fourth quarter 2021
- Authorizing a \$300 million stock repurchase program

As of January 31, the Company has repurchased approximately \$203 million of common stock, and there is approximately \$597 million remaining under its stock repurchase program.

In January 2022, the Board of Directors expanded the repurchase authorization by \$500 million.

## Facilities and Locations as of December 31, 2021

### Location Overview

#### Flat-Rolled Segment

- ① Gary Works
- ② Great Lakes Works
- ③ ④ Mon Valley Works
- ⑤ Granite City Works
- ⑥ Fairfield Sheet
- ⑦ Minntac
- ⑦ Keetac
- ⑦ Hibbing Taconite
- ⑧ USS-UPI, LLC
- ⑨ PRO-TEC Coating Company

- ⑩ Double G Coatings Company
- ② ⑪ Worthington Specialty Processing
- ① Chrome Deposit\*
- ② Automotive Center

#### Mini Mill Segment

- ⑱ Big River Steel

#### Tubular Segment

- ⑥ Fairfield Tubular
- ⑮ Lorain Tubular
- ⑯ Offshore Operations Houston
- ⑰ Lone Star Tubular
- ⑫ ⑰ Wheeling Machine Products
- ⑬ Patriot Premium Threading Services

#### USSE Segment

- ⑭ U. S. Steel Košice

#### Administrative and Research

- ③ Corporate Headquarters
- ③ Research and Technology Center
- ⑯ U. S. Steel Tubular Products Innovation
- ⑭ USSE Research



\*Chrome Deposit locations are near major steel mills and are not all reflected on the map above.

Map of Europe not drawn to scale

## Flat-Rolled

The operating results of all U. S. Steel's integrated steel and sheet plants, coke and iron ore operations and ore and sheet production joint ventures are included in Flat-Rolled. Also, included within Flat-Rolled is a research and technology center located in Munhall, Pennsylvania, (near Pittsburgh) and a technology center in Troy, Michigan. The research and technology center carries out a wide range of applied research, development and technical support functions. The technology center brings automotive sales, service, distribution and logistics services, product technology and applications research into one location and much of U. S. Steel's work in developing new grades of steel to meet the demands of automakers for high-strength, light-weight and formable materials is carried out at this location.

**Flat-Rolled Operations Table**

<b>Operations, (Property Location)</b>	<b>Annual Production Capability</b>	<b>Principal Products and/or Services</b>
<b>Gary Works</b> , (Gary, Indiana)	7.5 million tons of raw steel	strip mill plate in coil; hot-rolled, cold-rolled and coated sheets; and tin mill products
<b>Midwest</b> , (Portage, Indiana)	finishing facility	hot-rolled, cold-rolled and coated sheets; tin mill products; and electrical lamination sheets
<b>East Chicago Tin</b> <sup>(a)</sup> , (Portage, Indiana)	finishing facility	tin mill products
<b>Great Lakes Works</b> <sup>(b)</sup> , (Ecorse, River Rouge and Dearborn, Michigan)	finishing facility	cold-rolled and coated sheets; and tin mill products
<b>Mon Valley Works</b> <sup>(c)</sup> : Edgar Thompson, (Braddock, Pennsylvania), Irvin, (West Mifflin, Pennsylvania), Fairless, (Fairless Hills, Pennsylvania), and Clairton, (Clairton, Pennsylvania)	2.9 million tons of raw steel and 4.3 million tons of coke	hot-rolled, cold-rolled and coated sheets; and coke and coke by-products
<b>Granite City Works</b> <sup>(d)</sup> , (Granite City, Illinois)	2.8 million tons of raw steel	slabs and hot-rolled, cold-rolled and coated sheets
<b>Granite City Works</b> , (Granite City, Illinois); Gateway Energy and Coke Company LLC (Gateway)	coke supply agreement	not applicable
<b>USS-UPI, LLC</b> (UPI) <sup>(e)</sup> , (Pittsburg, California)	finishing facility	cold-rolled and coated sheets; tin mill products
<b>Fairfield Works</b> , (Fairfield, Alabama)	finishing facility	coated sheets
<b>Minnesota Ore Operations</b> : Minntac, (Mt. Iron, Minnesota) and Keetac, (Keewatin, Minnesota)	22.4 million tons of iron ore pellets	iron ore pellets

<sup>(a)</sup> In the fourth quarter of 2019, East Chicago Tin was indefinitely idled.

<sup>(b)</sup> The iron and steelmaking production facilities were indefinitely idled in March and June of 2020, respectively. In December 2021, U. S. Steel permanently idled the steelmaking operations at Great Lakes Works, including the Basic Oxygen Process (BOP), caster and hot strip mill rolling facility. Great Lakes Works' pickle line, cold mill and CGL continue to operate, while the DESCO and electrolytic galvanizing lines are indefinitely idled.

<sup>(c)</sup> From time to time, we may swap coke with other domestic steel producers or sell on the open market. Coke by-products are sold to the chemicals and raw materials industries.

<sup>(d)</sup> In March 2020, one of the blast furnaces at Granite City Works was indefinitely idled.

<sup>(e)</sup> In February 2020, UPI was added with the purchase of the remaining 50% ownership interest from POSCO.

## Joint Ventures Within Flat-Rolled

U. S. Steel participates in a number of joint ventures that are included in Flat-Rolled, most of which are conducted through subsidiaries. All of these joint ventures are accounted for under the equity method. The significant joint ventures and other investments are described below.

### Joint Ventures <sup>(a)</sup> Within Flat-Rolled Table

Joint Venture, (Property Location)	U. S. Steel's Ownership Percentage	Annual Production Capability
<b>Hibbing Taconite Company</b> (Hibbing); (Hibbing, Minnesota)	14.7%	9 million tons of which U. S. Steel's share is 1.3 million tons
<b>PRO-TEC Coating Company</b> (PRO-TEC), (Leipsic, Ohio)	50.0%	2.0 million tons <sup>(b)</sup>
<b>Double G Coatings Company</b> (Double G) <sup>(c)</sup> ; Jackson, Mississippi	50.0%	315 thousand tons
<b>Worthington Specialty Processing</b> (Worthington), (Jackson and Taylor, Michigan)	49.0%	890 thousand tons
<b>Chrome Deposit Corporation</b> (CDC), (six locations near major steel plants)	50.0%	not applicable

<sup>(a)</sup> See further information about our equity investees in Note 12 to the Consolidated Financial Statements.

<sup>(b)</sup> U. S. Steel's domestic production facilities supply PRO-TEC with cold-rolled sheets and U. S. Steel markets all of PRO-TEC's products.

<sup>(c)</sup> Each partner supplies its own steel to Double G and markets what is processed by Double G.

### Mini Mill

The operations of Big River Steel are included in Mini Mill. Big River Steel, located in Osceola, Arkansas, is an EAF sheet steel production facility.

#### Mini Mill Operations Table

Operations, (Property Location)	Annual Production Capability	Principal Products and/or Services
<b>Big River Steel</b> , (Osceola, Arkansas)	3.3 million tons of raw steel	hot-rolled, cold-rolled and coated sheets; and electrical steels

### USSE

USSE operates in Košice, Slovakia an integrated facility and a research laboratory, which, in conjunction with our Research and Technology Center, supports efforts in coke making, electrical steels, and design and instrumentation.

#### USSE Operations Table

Operations, (Property Location)	Annual Production Capability	Principal Products and/or Services
<b>U. S. Steel Košice</b> , (Košice, Slovakia)	5.0 million tons of raw steel	coke; slabs; strip mill plate; hot, cold and coated sheets; tin mill products; and spiral welded pipe

### Tubular

Tubular manufactures seamless and welded OCTG, standard pipe, line pipe and mechanical tubing.



**Tubular Operations Table**

Operations, (Property Location)	Production Capability	Principal Products and Services
<b>Fairfield Tubular Operations</b> <sup>(a)</sup> , (Fairfield, Alabama)	0.9 million tons of raw steel <sup>(b)</sup> and 750 thousand tons of tubular	seamless tubular pipe
<b>Lorain Tubular Operations</b> <sup>(c)</sup> , (Lorain, Ohio)	380 thousand tons of tubular	seamless tubular pipe
<b>Lone Star Tubular</b> <sup>(d)</sup> , (Lone Star, Texas)	#1 electric-weld pipe mill (EWPM) 400 thousand tons and #2 EWPM 380 thousand tons of tubular	welded tubular pipe
<b>Wheeling Machine Products</b> <sup>(e)</sup> , (Pine Bluff, Arkansas and Hughes Springs, Texas)	not applicable	tubular couplings
<b>Offshore Operations</b> , (Houston, Texas)	not applicable	tubular threading, inspection, accessories and storage services and premium connections
<b>Tubular Processing</b> <sup>(f)</sup> , (Houston, Texas)	not applicable	tubular processing

<sup>(a)</sup> The EAF commenced operation in October 2020.

<sup>(b)</sup> Based on the rounds caster capacity which is its constraining production unit.

<sup>(c)</sup> In April 2020, the Lorain Tubular Operations was temporarily idled for an indefinite period of time.

<sup>(d)</sup> In April 2020, Lone Star Tubular Operations was temporarily idled for an indefinite period of time

<sup>(e)</sup> In April 2020, the Wheeling Machine Products at Hughes Springs, Texas was temporarily idled for an indefinite period of time.

<sup>(f)</sup> Tubular Processing has been temporarily idled since 2015.

**Joint Ventures <sup>(a)</sup> Within Tubular Table**

Operations, (Property Location)	U. S. Steel's Ownership Percentage	Production Capability	Principal Products and/or Services
<b>Patriot Premium Threading Services</b> , (Midland, Texas)	50%	not applicable	Tubular threading, accessories and premium connections

<sup>(a)</sup> See further information about our equity investees in Note 12 to the Consolidated Financial Statements.

## Other

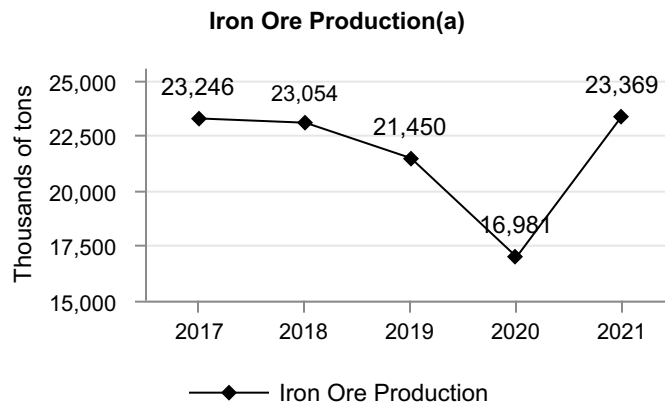
U. S. Steel's Other category includes the operating results relating to our real estate operations, the previously held equity method investment in Big River Steel, and our former railroad business. The Company owns approximately 45,000 acres of real estate assets, either held for development or managed, in Alabama, Illinois, Michigan, Minnesota, and Pennsylvania.

## Raw Materials and Energy

As an integrated producer, U. S. Steel's primary raw materials are iron units in the form of iron ore pellets and sinter ore, carbon units in the form of coal and coke (which is produced from coking coal) and steel scrap. As an EAF producer, our primary raw material is scrap. U. S. Steel's raw materials supply strategy consists of acquiring and expanding captive sources of certain primary raw materials and entering into flexible supply contracts for certain other raw materials at competitive market prices which are subject to fluctuations based on market conditions at the time.

The amounts of such raw materials needed to produce a ton of steel will fluctuate based upon the specifications of the final steel products, the quality of raw materials and, to a lesser extent, differences among steel producing equipment. In broad terms, the Company's integrated steel process consumes approximately 1.4 tons of coal to produce one ton of coke and then it consumes approximately 0.3 tons of coke, 0.3 tons of steel scrap (approximately 60 percent of which is internally generated) and 1.3 tons of iron ore pellets to produce one ton of raw steel. At normal operating levels, we also consume approximately 6 mmbtu's of natural gas per ton produced. Generally, the Company's mini mill operations consumes approximately 0.8 tons of steel scrap, 0.3 tons of pig iron, and 0.1 tons of HBI to produce one ton of raw steel. In addition, the mini mill operations consume approximately 0.6 MKWH of electricity per ton of raw steel produced. While we believe that these estimated consumption amounts are useful for planning purposes, and are presented to give a general sense of raw material and energy consumption related to steel production, substantial variations may occur.

## Iron Ore



<sup>(a)</sup> Includes our share of production from Hibbing through December 31, 2020 and Tilden Mining Company, L.C. (Tilden) to September 29, 2017. U. S. Steel's ownership interest in Tilden was sold on September 29, 2017.

The iron ore facilities at Minntac and Keetac contain approximately 900 million short tons of indicated resources and probable reserves and our share of recoverable reserves at the Hibbing joint venture is approximately 5 million short tons. Refer to Supplementary Information on Mineral Reserves Other than Oil and Gas in Item 8 of this Form 10-K for additional information. Recoverable reserves are defined as the tons of product that can be used internally or delivered to a customer after considering mining and beneficiation or preparation losses. Minntac and Keetac's annual capability and our share of annual capability for the Hibbing joint venture total approximately 24 million tons. We have iron ore pellet production capability that exceeds our steelmaking capability in the U.S.

We sold iron ore pellets in 2021, 2020 and 2019 to third parties. The Company has agreements to supply iron ore pellets to third-party customers over the next several years.

Substantially all of USSE's iron ore requirements are purchased from outside sources, primarily Russian and Ukrainian mining companies. Prices are determined in long-term contracts with strategic suppliers or as spot prices negotiated monthly or quarterly. USSE also has received iron ore from U. S. Steel's iron ore facilities in North America. We believe that supplies of iron ore adequate to meet USSE's needs are available at competitive market prices.

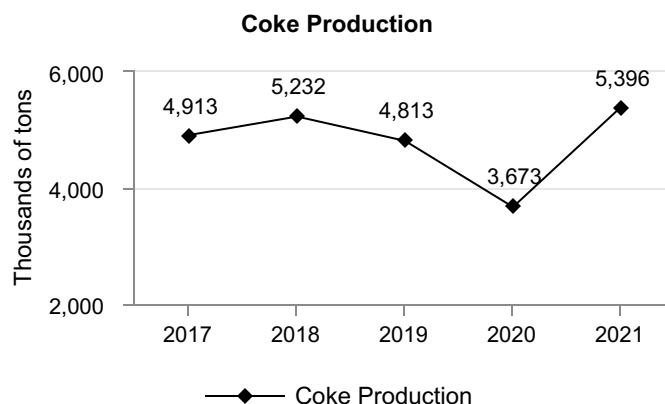
### Coking Coal

All of U. S. Steel's coal requirements for our cokemaking facilities are purchased from outside sources. Pricing for Flat-Rolled's coking coal contracts are typically negotiated on a yearly basis, and from time to time we have entered into multi-year agreements for a portion of our coking coal requirements.

Prices for European contracts are negotiated quarterly, annually or determined as index-based prices.

We believe that supplies of coking coal adequate to meet our needs are available from outside sources at competitive market prices. The main source of coking coal for Flat-Rolled is the United States, and sources for USSE include Poland, the Czech Republic, Russia, Ukraine, Canada, Mozambique and the United States.

## Coke



In North America, the Flat-Rolled segment operates a cokemaking facility at the Clairton Plant of Mon Valley Works. At our Granite City Works, we have a 15-year coke supply agreement with Gateway that expires on December 31, 2024. Blast furnace injection of coal, and self-generated coke oven gas is also used to reduce coke usage.

With Flat-Rolled's cokemaking facilities and the Gateway long-term supply agreement, it has the capability to be nearly self-sufficient with respect to its annual coke requirements at normal operating levels. Coke from time to time has been purchased from, sold to, or swapped with suppliers and other end-users to adjust for production needs and reduce transportation costs.

In Europe, the USSE segment operates cokemaking facilities at USSK. While USSE is self-sufficient for coke at normal operating levels, it periodically purchases coke from Polish and Czech coke producers to meet production needs. Volume and price are negotiated quarterly.

### *Steel Scrap and Other Materials*

We believe that supplies of steel scrap and alloys that are adequate to meet our needs are readily available from outside sources at competitive market prices for the Flat-Rolled, Mini Mill, and USSE segments. Generally, approximately 55 percent of our steel scrap requirements were internally generated through normal operations for these segments.

### *Limestone*

All of Flat-Rolled's limestone requirements and USSE's lime and limestone requirements are purchased from outside sources. We believe that supplies of limestone and lime adequate to meet our needs are readily available from outside sources at competitive market prices.

### *Zinc and Tin*

We believe that supplies of zinc and tin required to fulfill the requirements for Flat-Rolled, Mini Mill, and USSE are available from outside sources at competitive market prices. For Flat-Rolled and Mini Mill the main sources of zinc are Canada, Mexico, and the United States and the main sources of tin are Bolivia, Brazil, and Peru. For USSE, the main sources of zinc are Finland, Netherlands, Germany, Poland and Slovakia and the main sources of tin are Bolivia, Indonesia, Peru and China.

During 2021, Flat-Rolled protected approximately 40% and 50% of its operation's zinc and tin purchases, respectively, with financial swap derivatives to manage exposure to zinc and tin price fluctuations. During 2021, USSE protected approximately 12% of its operation's zinc purchases with forward physical contracts to manage our exposure to zinc price fluctuations and protected approximately 41% of its operation's tin purchases with financial swaps to manage our exposure to tin price fluctuations. For further information, see Note 16 to the Consolidated Financial Statements.

### *Natural Gas*

All of U. S. Steel's natural gas requirements are purchased from outside sources.

We believe that adequate supplies to meet Flat-Rolled's, Mini Mill's, and Tubular's needs are available at competitive market prices. For 2021, approximately 66 percent of our natural gas purchases in Flat-Rolled were based on bids solicited on a monthly basis from various vendors; the remainder were made daily or with term agreements.

We believe that adequate natural gas supplies to meet USSE's needs are available at competitive market prices. During 2021, we routinely executed fixed-price forward physical purchase contracts for natural gas to partially manage our exposure to natural gas price increases. For 2021, approximately 48 percent of our natural gas purchases in USSE were made with fixed-price forward physical purchase contracts; the remainder were based on bids solicited on a quarterly or monthly basis from various vendors.

Both Flat-Rolled and USSE use self-generated coke oven and blast furnace gas to reduce consumption of natural gas. USSE also captures and consumes converter gas from its four steelmaking vessels.

#### *Industrial Gases*

U. S. Steel purchases industrial gas in the U.S. under long-term contracts with various suppliers. USSE owns and operates its own industrial gas facility, but also may purchase industrial gases from time to time from third parties.

#### **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 400 million metric tons per year—more than four times the entire U.S. steel market and over thirteen times total U.S. steel imports. These imports 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: (1) imports from Argentina, Brazil, and South Korea, which are subject to restrictive quotas; (2) imports from the European Union (EU) that are melted and poured in the EU, within quarterly tariff-rate quota (TRQ) limits; (3) imports from Canada and Mexico, which are not subject to tariffs or quotas, but tariffs could be re-imposed on surging product groups after consultations; and (4) imports from Australia, which are 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 temporary product exclusions from the Section 232 tariffs and quotas. Over 312,000 exclusions have been requested for steel products. U. S. Steel opposes exclusion requests for imported products that are the same as, or substitutes for, products manufactured by U. S. Steel.

Multiple legal challenges to the Section 232 action continue before the U.S. Court of International Trade (CIT), the U.S. Court of Appeals for the Federal Circuit (CAFC), and the Supreme Court of the United States. U.S. courts have consistently rejected constitutional and statutory challenges to the initial 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 October 2021, the United States and EU announced agreements to replace the Section 232 tariffs with a TRQ, extend certain EU product exclusions, eliminate the EU's Section 232 retaliation on U.S. imports, suspend WTO disputes related to the Section 232 action, and commit to negotiate a global arrangement on steel overcapacity and carbon intensity within two years. Effective January 1, 2022, the TRQ allows certain quantities of products made from steel melted and poured in the EU to enter the United States Section 232 tariff-free, with quantities that exceed the quota still subject to 25 percent tariffs. In December 2021, the United States began consultations with Japan regarding the Section 232 action and global overcapacity.

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) implemented a definitive safeguard on global steel imports in the form of TRQs. The TRQs, which impose 25 percent tariffs on steel imports that exceed the TRQ limit, are currently effective through June 2024. In December 2021, the EC initiated its third periodic review of this safeguard, which will consider the impact of the agreement to replace U.S. Section 232 tariffs with a TRQ for certain EU steel products and may result in adjustments to the safeguard TRQ limits.

Antidumping duties (AD) and countervailing duties (CVD or antisubsidy duties) apply in addition to the Section 232 tariffs and quotas and the EC's safeguard, and AD/CVD orders will continue beyond the Section 232 action and the EC's safeguard. Thus, U. S. Steel continues to actively defend and maintain the 60 U.S. AD/CVD orders and 12 EU AD/CVD orders covering U. S. Steel products in multiple proceedings before the DOC, U.S. International Trade Commission (ITC), CIT, CAFC, the EC and European courts, and the WTO.

Between April and August 2021, the United States imposed six new AD/CVD orders on imports of seamless pipe from Czechia, Korea, Russia, and Ukraine, setting duties ranging from 6 to 258 percent. This year, DOC also made two final affirmative AD/CVD circumvention determinations, concluding: (1) that corrosion-resistant steel (CORE) from Malaysia made from Chinese and Taiwanese substrate circumvents AD/CVD orders on CORE from China and Taiwan and (2) that oil country tubular goods (OCTG) from Brunei and the Philippines made from Chinese hot-rolled steel (HRS) circumvent the existing AD/CVD orders on OCTG from China. In October 2021, DOC initiated new AD/CVD investigations on imports of OCTG from Argentina, Mexico, Korea, and Russia that are expected to conclude in the second half of 2022. The ITC is conducting five-year "sunset" reviews of AD/CVD orders on HRS, cold-rolled steel (CRS), and CORE from twelve countries, with decisions expected in the second half of 2022.

In Europe, the EC imposed an AD order on EU imports of HRS from Turkey, effective July 2021. The EC also initiated AD investigations of EU imports of hot-dipped galvanized steel from Turkey and Russia in June 2021, with final determinations expected in the third quarter of 2022. The EC is currently conducting five year "expiry" (sunset) reviews of AD/CVD orders on CRS from China and Russia, which are expected to conclude in the second half of 2022.

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.

The Global Forum on Steel Excess Capacity, the Organisation for Economic Co-operation and Development Steel Committee, and trilateral negotiations between the United States, EU and Japan continue to address steel overcapacity.

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.

### **Environmental Stewardship**

U. S. Steel is committed to effective environmental stewardship. We have implemented and continue to develop business practices that are designed to reduce negative environmental impacts. We believe part of being a good corporate citizen requires a dedicated focus on how our industry affects the environment. U. S. Steel's environmental expenditures totaled \$302 million in 2021, \$278 million in 2020 and \$376 million in 2019. Overall, environmental compliance expenditures represent approximately 2 percent of U. S. Steel's total costs and expenses in 2021, 2020 and 2019. For further information, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Environmental Matters." We have taken the actions described below in furtherance of that goal.

We continue to work on the promotion of cost-effective environmental strategies by supporting the development of appropriate air, water and waste laws and regulations at the local, state, national and international levels. We are committed to reducing our emissions and are investigating, creating and implementing innovative, best practice solutions throughout our operations to improve our environmental performance and to manage and reduce energy consumption.

U. S. Steel recycled 5.3 million tons and 3.0 million tons of purchased and produced steel scrap in 2021 and 2020, respectively. Because of steel's physical properties, our products can be recycled at the end of their useful life without loss of quality, contributing to steel's high recycling rate and affordability.

Many of our major production facilities have Environmental Management Systems that are certified to the ISO 14001 Standard. This standard, published by the International Organization for Standardization (ISO), provides the framework for the measurement and improvement of environmental impacts of the certified facility.

In 2019, and in each succeeding year since, we published the Clairton Operating and Environmental Report related to our Clairton Plant of Mon Valley Works. While U. S. Steel agreed to publish an annual report as part of the 2019 Allegheny County Health Department Settlement Order and Agreement, we took the opportunity to enhance the report by including detailed descriptions of our operations, our safety and environmental performance and community involvement in order to provide easily accessible information for the public. The Report details battery combustion stack and fugitive emission performance at Clairton and Clairton's continued commitment to environmental stewardship. In 2021, we published a similar report for the Edgar Thomson facility.

By using the blast furnace and coke oven gas generated in our cokemaking and steelmaking activities to power our facilities, we avoided consuming natural gas and other fuels from 2019 through 2021 equivalent to the amount it would take to heat more than 3.2 million households each year. In 2021, we recycled approximately 2.2 million tons of blast furnace slag, 85 thousand tons of Basic Oxygen Process steel slag, and 16 thousand tons of electric arc furnace slag by selling it for use as aggregate and in highway construction.

### **Reduction of Greenhouse Gas Emissions**

In 2019, the Company announced its commitment to reduce greenhouse gas emissions intensity across its global footprint by 20 percent, as measured by the rate of CO2 equivalents emitted per ton of finished steel shipped, by 2030 based on 2018 baseline

levels. Then, in 2021, the Company announced its goal to achieve net-zero emissions by 2050, as measured by the rate of CO<sub>2</sub> equivalents emitted per ton of finished steel shipped. The Company has provided information on paths to achieve this goal on its website. These targets will apply to U. S. Steel's global operations.

U. S. Steel plans to achieve its greenhouse gas emissions intensity reduction goals through the execution of multiple initiatives. These include the use of EAF steelmaking technology at U. S. Steel's Fairfield Works and at Big River Steel, the first LEED-certified steel mill in the nation. EAF steelmaking relies on scrap recycling to produce new steel products, leveraging the ability to continuously recycle steel. Further carbon intensity reductions are expected to come from the implementation of ongoing energy efficiency measures, continued use of renewable energy sources and other process improvements to be developed.

The carbon intensity reduction targets reflect our continued commitment to improvement in production efficiency and the manufacture of products that are environmentally friendly. In addition to a commitment to reduce its own greenhouse gas emissions intensity, U. S. Steel is committed to helping its customers achieve their environmental goals. Our industry-leading XG3™ advanced high-strength steel enables automakers to manufacture lighter weight vehicles that meet federal Corporate Average Fuel Economy (CAFE) standards with reduced carbon emissions. As part of our innovation efforts, we continue to look at new steelmaking technologies so that we can produce green steels and further reduce carbon emissions.

## **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 EU ETS is a component of the European Union's policy to combat climate change and is the world's largest carbon market. The EU ETS operates on a cap and trade principle, and our operations in USSE are required to participate. The European Commission issued final approval of the Slovak National Allocation table in July 2021. The Slovak Ministry of Environment, after consent from the European Commission, allocated free allowances to USSE in December 2021. The final volume was reduced to reflect USSE production cuts in 2019 and 2020. In the fourth quarter of 2020 USSE started purchasing EUA for the Phase IV period. As of December 31, 2021, we have purchased approximately 4 million EUA totaling €176 million (approximately \$199 million) to fully cover the estimated 2021 shortfall and 1.1 million EUA totaling €68 million (approximately \$77 million) to cover the expected 2022 shortfall of emission allowances.

The EU's Industrial Emissions Directive requires implementation of EU determined best available techniques (BAT) for Iron and Steel production to reduce environmental impacts as well as compliance with BAT associated emission levels. Total capital expenditures for projects to comply with or go beyond BAT requirements were €138 million (approximately \$156 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 December 31, 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 26 to the 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 CO<sub>2</sub> 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 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 for the first subperiod are finalized, however we expect that rules for the second subperiod may be more stringent than those for the first subperiod. Currently, the overall EU target is a 40 percent reduction of 1990 emissions by 2030. Free allocation of CO<sub>2</sub> allowances for the first subperiod is based on reduced benchmark values which were 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 in March 2021 shows that USSE missed the 15 percent threshold in 2019-20; therefore, the free allocation for 2021 was decreased accordingly. Additionally, lower production in 2019 and 2020 will have an impact on the future free allocation for 2026-2030, where the updated historical production average for years 2019-2023 will be assessed. Once approved, the rules may impact subperiod 2026-2030.

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 CO<sub>2</sub> 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 at this time.

#### 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 while 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 published 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 PM<sub>10</sub> and PM<sub>2.5</sub>, lead, carbon monoxide, nitrogen dioxide, sulfur dioxide (SO<sub>2</sub>), and ozone.

In October 2015, the U.S. EPA lowered the NAAQS for ozone from 75 parts per billion (ppb) to 70 ppb. On November 6, 2017, the U.S. EPA designated most areas in which we operate as attainment with the 2015 standard. In a separate ruling, on June 4, 2018, the U.S. EPA designated other areas in which we operate as "marginal nonattainment" with the 2015 ozone standard. On December 6, 2018, the U.S. EPA published a final rule regarding implementation of the 2015 ozone standard. Because no state regulatory or permitting actions to bring the ozone nonattainment areas into attainment have yet to be proposed or developed for U. S. Steel facilities, the operational and financial impact of the ozone NAAQS cannot be reasonably estimated at this time. On December 31, 2020, the U.S. EPA published a final rule pursuant to its statutorily required review of NAAQS that retains the ozone NAAQS at 70 ppb. In January 2021, New York, along with several states and non-governmental organizations filed petitions for judicial review of the action with the United States Court of Appeals for the 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<sub>2.5</sub> from 15 micrograms per cubic meter (ug/m<sup>3</sup>) to 12 ug/m<sup>3</sup>, and retained the PM<sub>2.5</sub> 24-hour and PM<sub>10</sub> 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<sub>2.5</sub> standard. On April 6, 2018, the U.S. EPA published a notice that Pennsylvania, California and Idaho failed to submit a State Implementation Plan (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 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<sub>2.5</sub> 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<sub>2.5</sub> standards without revision. In early 2021, several states and non-governmental organizations filed petitions for judicial review of the action with the United States Court of Appeals for the 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<sub>2.5</sub> and PM<sub>10</sub>).

## **Environmental Remediation**

For further discussion of relevant environmental matters, including environmental remediation obligations, see "Item 3. Legal Proceedings, Environmental Proceedings."

## **Property, Plant and Equipment Additions**

For property, plant and equipment additions, including finance leases, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Financial Condition, Liquidity and Capital Resources" and Note 13 to the Consolidated Financial Statements.

## **Available Information**

U. S. Steel's Internet address is [www.ussteel.com](http://www.ussteel.com). We post our Annual Report on Form 10-K, our quarterly reports on Form 10-Q, our proxy statement, our current reports on Form 8-K, amendments to those reports and our interactive data files to our website free of charge as soon as reasonably practicable after such reports are filed, or furnished to, with the Securities and Exchange Commission (SEC). We also post all press releases and earnings releases to our website.

All other filings with the SEC are available via a direct link on the U. S. Steel website to the SEC's website, [www.sec.gov](http://www.sec.gov).

Also available on the U. S. Steel website are U. S. Steel's Corporate Governance Principles, Code of Ethical Business Conduct and the charters of the Audit Committee, the Compensation & Organization Committee and the Corporate Governance & Sustainability Committee of the Board of Directors. These documents and the Annual Report on Form 10-K and proxy statement are also available in print to any stockholder who requests them. Such requests should be sent to the Office of the Corporate Secretary, United States Steel Corporation, 600 Grant Street, Suite 1844, Pittsburgh, Pennsylvania, 15219-2800 (telephone: 412-433-1121).

U. S. Steel does not incorporate into this document the contents of any website or the documents referred to in the immediately preceding paragraphs.

## Other Information

Information on net sales, depreciation, capital expenditures, earnings (loss) before interest and income taxes and assets by reportable segment and for business in the Other category and on net sales and assets by geographic area are set forth in Note 4 to the Consolidated Financial Statements.

For significant operating data for U. S. Steel for each of the last five years, see “Five-Year Operating Summary (Unaudited)” within this document.

## Item 1A. RISK FACTORS

### Strategic Risk Factors

#### ***Our Investments in new technologies and products may not be fully successful.***

Execution of our Best for All<sup>SM</sup> strategy depends, in part, on the success of a number of investments we have made and plan to make in new technologies and products. All of our investments are expected to drive stockholder value creation and deliver an enhanced business model that delivers cost and/or capability differentiation for our stakeholders. Our Best for All strategy is centered around adding mini mill capabilities, including through the construction of a mini mill facility in Osceola, Arkansas, non-grain oriented steel line at Big River Steel, a galvanizing construction line at Big River Steel and marketing of our new verdeX<sup>TM</sup> product line and new advanced high strength steel XG3<sup>TM</sup> products, which are completed at our PRO-TEC joint venture. Additionally, as with any significant construction project like the construction of the new mini mill in Osceola, Arkansas, we may be subject to changing market conditions and demand for our completed projects, delays and cost overruns, work stoppages, labor shortages, engineering issues, weather interferences, supply chain delays, changes required by governmental authorities, delays or the inability to acquire required permits or licenses, the ability to finance the projects or disruption of existing operations, any of which could have an adverse impact on our operational and financial results. Furthermore, new product development or modification is costly, may be restricted by regulatory requirements, involves significant research, development, time, expense and human capital and may not necessarily result in the successful commercialization of new products, or new technologies may not perform as intended or expected. Unsuccessful execution of these strategic projects, underperformance of any of these assets or failure of new products to gain market acceptance could adversely affect our business, results of operations and financial condition and may limit the benefits of our stockholder value creation strategy.

#### ***From time to time, we engage in acquisitions, divestitures and joint ventures and may encounter difficulties in integrating and separating these businesses and therefore we may not realize the anticipated benefits.***

We seek growth through strategic acquisitions as well as evaluate our portfolio for potential divestitures to optimize our business footprint and portfolio. The success of these transactions will depend on our ability to integrate or separate, as applicable, assets and personnel in these transactions and to cooperate with our strategic partners. We may encounter difficulties in integrating acquisitions with our operations as well as separating divested businesses, and in managing strategic investments. Furthermore, we may not realize the degree, or timing, of benefits we anticipate when we first enter into a transaction.

Additionally, we seek opportunities to monetize non-core and excess iron assets, including through real estate sales, third party agreements and option agreements. These opportunities may not materialize or generate the financial benefits expected. For example, Stelco Inc. holds an option (Option) to acquire an undivided 25 percent interest in a to-be-formed entity that will own the Company's current iron ore mine located in Mt. Iron, Minnesota. There is a possibility that Stelco may not exercise its Option in the anticipated timeframe or at all. If the proposed joint venture with Stelco is not successful, fails to provide the benefits we expect, or is not created at all, we may in the future have more iron ore than we need to support the business. Additionally, the existence of the Option may deter future potential opportunities to monetize the iron ore assets. Any of the foregoing could adversely affect our business and results of operations.

### Operational Risk Factors

#### ***The outbreak of COVID-19 has had, and could continue to have, an adverse impact on the Company's results of operations, financial condition and cash flows.***

The global pandemic resulting from the novel coronavirus designated as COVID-19 has had a significant impact on economies, businesses and individuals around the world. Governments around the world have made efforts to contain the virus, including: border closings and other significant travel restrictions; mandatory stay-at-home and work-from-home orders; mandatory business closures; public gathering limitations; and prolonged quarantines. We have also taken actions to protect our employees and to mitigate the spread of COVID-19, including embracing guidelines set by the Centers for Disease Control and Prevention on physical distancing, good hygiene, limitations on employee travel and in-person meetings, and changes to employee work arrangements including remote work arrangements where appropriate. Evolving government plans around the world to institute vaccination and/or testing requirements as well as various related state and local directives or challenges, may cause disruptions to operations, and result in labor shortages and unforeseen costs, including increased compliance costs, which could negatively affect our results. Evolving standards and judicial and regulatory interpretations may impede U. S. Steel's ability to fully comply with applicable legal requirements.

These actions have and may continue to impact our employees, customers and suppliers, and future developments could cause further disruptions to our business, including significant disruptions to commerce, lower consumer demand for goods and services and general uncertainty regarding the near-term and long-term impact of the COVID-19 virus on the domestic and international economy and on public health. These developments and other consequences of the outbreak have materially adversely impacted the Company's results of operations, financial condition and cash flows in the past and could have similar adverse impacts in the future.

The Company may be susceptible to increase litigation related to, among other things, the financial impacts of the pandemic on its business, its ability to meet contractual obligations due to the pandemic, employment practices or policies adopted during the health crisis or in response to laws, regulations, or directives, or litigation related to individuals contracting COVID-19 as result of alleged exposures on Company premises.

The impact of the COVID-19 outbreak may also have the effect of exacerbating many of the other risks described herein.

***Our operational footprint, unplanned equipment outages and other unforeseen disruptions may adversely impact our results of operations.***

U. S. Steel has adjusted its operating configuration in response to market conditions, including the COVID-19 pandemic, oil and gas industry disruption, global overcapacity and unfairly traded imports, and to optimize capability and cost performance, by idling and restarting production at certain facilities. Due to our operational footprint, the Company may not be able to respond in an efficient manner to fully realize the benefits from changing market conditions that are favorable to integrated steel producers or most efficiently mitigate the negative impacts of such changes.

Our steel production depends on the operation of critical structures and pieces of equipment, such as blast furnaces, electric arc furnaces, steel shops, casters, hot strip mills and various structures and operations, including information technology systems, that support them, as well as finishing lines at our facilities and certain of our joint ventures. While we invested in operational and reliability enhancements to our assets through the asset revitalization program, launched in 2017, and continue to implement initiatives focused on proactive maintenance of key machinery and equipment at our production facilities, we may experience prolonged periods of reduced production and increased maintenance and repair costs due to equipment failures at our facilities or those of our key suppliers.

It is also possible that operations may be disrupted due to other unforeseen circumstances such as power outages, explosions, fires, floods, pandemics, terrorism, accidents, severe weather conditions, and changes in U.S., European Union and other foreign tariffs, free trade agreements, trade regulations, laws, and policies. We are also exposed to similar risks involving major customers and suppliers such as force majeure events of raw materials suppliers that have occurred and may occur in the future. Availability of raw materials and delivery of products to customers could be affected by logistical disruptions, such as shortages of barges, ocean vessels, rail cars or trucks, or unavailability of rail lines or of the locks on the Great Lakes or other bodies of water. To the extent that lost production could not be compensated for at unaffected facilities and depending on the length of the outage, our sales and our unit production costs could be adversely affected.

***U. S. Steel continues to incur costs when production capacity is idled or costs to idle facilities.***

From time to time, we have indefinitely or permanently idled certain of our assets or facilities and may decide to do so in the future. Our decisions concerning which facilities to operate and at what levels are made based upon market conditions, our customers' orders for products as well as the capabilities and cost performance of our locations. We may concentrate production operations at several plant locations and not operate others, and as a result we will incur idle facility costs or impairment charges.

***U. S. Steel has been and continues to be adversely affected by unfairly traded imports and global overcapacity, which may cause downward pricing pressure, lost sales and revenue, market share, decreased production, investment, and profitability.***

Currently, global steel production capacity significantly exceeds global steel demand, which adversely affects U.S. and global steel prices. Global overcapacity continues to result in high levels of dumped and subsidized steel imports into the markets we serve. Domestic and international trade laws provide mechanisms to address the injury caused by such imports to domestic industries. Excessive steel imports have resulted and may continue to result in downward pricing pressure and lost sales and revenue, which adversely impacts our business, operations, financial condition and cash flows.

Although U. S. Steel currently benefits from 60 U.S. antidumping duty (AD) and countervailing duty (CVD or anti-subsidy duty) orders and 12 European Union (EU) AD/CVD orders, petitions for trade relief are not always successful or effective. When implemented, such relief is generally subject to periodic reviews and challenges, which can result in revocation of AD/CVD

orders or reduction of effective duty rates. There can be no assurance that any relief will be obtained or continued in the future or that such relief will adequately combat unfairly traded imports.

In the United States, AD/CVD investigations on imports of oil country tubular goods from Argentina, Mexico, Korea, and Russia and five year “sunset” reviews of AD/CVD orders on hot-rolled, cold-rolled, and corrosion-resistant steel from twelve countries are expected to conclude in the second half of 2022. In the EU, AD investigations on imports of hot-dipped galvanized steel from Russia and Turkey will also conclude in 2022.

Through a series of Presidential Proclamations pursuant to Section 232 of the Trade Expansion Act of 1962, U.S. imports of certain steel products are subject to a 25 percent tariff, except: (1) imports from Argentina, Brazil, and South Korea, which are subject to restrictive quotas; (2) imports from the EU that are melted and poured in the EU, within quarterly tariff-rate quota (TRQ) limits; (3) imports from Canada and Mexico, which are not subject to tariffs or quotas, but tariffs could be re-imposed on surging product groups after consultations; and (4) imports from Australia, which is not subject to tariffs, quotas, or an anti-surge mechanism. The Section 232 national security action on steel imports currently provides U. S. Steel and other domestic steel producers critical relief from imports. With no scheduled end date, the future coverage and duration of the Section 232 action is not known. Further, the U.S. government may negotiate alternatives to the Section 232 tariffs for certain countries, similar to its recent TRQ agreement with the EU. The Section 232 action on aluminum and steel imports, potential Section 232 action on other products, and recent and potential additional U.S. import tariffs imposed under Section 301 of the Trade Act of 1974 have resulted in the possibility of tariffs being applied to materials and/or items we purchase from subject countries or regions as part of our manufacturing process and may result in additional, retaliatory action by foreign governments on U.S. exports of a range of products, including products produced by our customers.

In February 2019, the European Commission (EC) implemented a definitive safeguard on global steel imports in the form of TRQs. The TRQs, which impose 25 percent tariffs on steel imports that exceed the TRQ limit, are currently effective through June 2024. In December 2021, the EC initiated its third periodic review of this safeguard, which will consider the impact of the agreement to replace U.S. Section 232 tariffs with a TRQ for certain EU steel products and may result in adjustments to the safeguard TRQ limits.

All of the above factors present a degree of uncertainty to our financial and operational performance, our customers, and overall economic conditions, all of which could impact steel demand and our performance. Faced with significant import competition and overcapacity in various markets, we will continue to evaluate potential strategic and organizational opportunities, which may include exiting lines of business and the sale of certain assets, temporary shutdowns or closures of facilities.

***The steel industry, as well as the industries of our customers and suppliers upon whom we are reliant, is highly cyclical, which may have an adverse effect on our results of operations.***

Steel consumption is highly cyclical and generally follows economic and industrial conditions both worldwide and in regional markets. Price fluctuations are impacted by the timing, magnitude and duration of these cycles, and are difficult to predict. This volatility makes it difficult to balance the procurement of raw materials and energy with global steel prices, our steel production and customer product demand. U. S. Steel has implemented strategic initiatives to produce more stable and consistent results, even during periods of economic and market downturns, but this may not be enough to mitigate the effect that the volatility inherent in the steel industry has on our results of operations.

Additionally, our business is reliant on certain other industries that are cyclical in nature. We sell to the automotive, service center, converter, energy and appliance and construction-related industries. Some of these industries exhibit a great deal of sensitivity to general economic conditions and may also face meaningful fluctuations in demand based on a number of factors outside of our control, including regulatory factors, supply chain disruptions, economic conditions, and raw material and energy costs. As a result, downturns or volatility in any of the markets we serve could adversely affect our financial position, results of operations and cash flows.

***We face increased competition from alternative materials and risks concerning innovation, new technologies, products and increasing customer requirements.***

As a result of increasingly stringent regulatory requirements and increased market and technological changes driven by broader trends such as decarbonization and electrification efforts in response to climate change, designers, engineers and industrial manufacturers, especially those in the automotive industry, are increasing their use of lighter weight, less carbon intense and alternative materials, such as aluminum, composites, plastics, and carbon fiber. Use of such materials could reduce the demand for steel products, which may reduce our profitability and cash flow.

Additionally, technologies such as direct iron reduction, oxygen-coal injection and experimental technologies such as molten oxide electrolysis and hydrogen flash smelting may be more cost effective than our current production methods. However, we may not have sufficient capital to invest in such technologies and may incur difficulties adapting and fully integrating these

technologies into our existing operations. We may also encounter production restrictions, or not realize the cost benefit from such capital intensive technology adaptations to our current production processes.

***Limited availability, or volatility in prices of raw materials, scrap and energy may constrain operating levels and reduce profit margins.***

U. S. Steel and other steel producers have periodically faced problems obtaining sufficient raw materials and energy in a timely manner due to delays, defaults, severe weather conditions, or force majeure events, shortages or transportation problems (such as shortages of barges, ore vessels, rail cars or trucks, or disruption of rail lines, waterways, or natural gas transmission lines), resulting in production curtailments. As a result, we may be exposed to risks concerning pricing and availability of raw materials and energy resources from third parties as well as logistics constraints moving our own raw materials and scrap to our plants. USSE purchases substantially all of its iron ore and coking coal requirements from outside sources. Any curtailments or escalated costs may further reduce profit margins.

U. S. Steel has agreed, and may continue to agree, to purchase raw materials and energy at prices that have been, and may be, above future market prices or in greater volumes than required in the future. Additionally, any future decreases in iron ore, scrap, natural gas, electricity and oil prices may place downward pressure on steel prices. If steel prices decline, our profit margins on indexed contracts and spot business could be reduced.

***Changes in the global economic environment, prolonged periods of slow economic growth, and global instability and actual and threatened geopolitical conflict, could have an adverse effect on our industry and business, as well as those of our customers and suppliers.***

Overall economic conditions in the U.S. and globally, including Europe, such as the disruption caused by the COVID-19 pandemic, significantly impact our business. Periods of economic downturn or continued uncertainty could result in difficulty increasing or maintaining our level of sales or profitability and we may experience an adverse effect on our business, results of operations, financial condition and cash flows.

Our U.S. operations are subject to economic conditions, including credit and capital market conditions, and political factors in the U.S., which if changed could negatively affect our results of operations, cash flows and liquidity. Political factors include, but are not limited to, changes to tax laws and regulations resulting in increased income tax liability, inflation, increased regulation, limitations on exports of energy and raw materials, and trade remedies. Actions taken by the U.S. government could affect our results of operations, cash flows and liquidity.

USSE is subject to economic conditions and political factors associated with the EU, Slovakia and neighboring countries, and the euro currency. Changes in any of these economic conditions or political factors could negatively affect our results of operations, cash flows and liquidity. Political factors include, but are not limited to, taxation, nationalization, inflation, government instability, regional conflict, civil unrest, increased regulation and quotas, tariffs, sanctions and other market-distorting measures. Escalating tensions along the Russia-Ukraine border may disrupt our operations and could negatively affect our results of operations, cash flows and liquidity. USSE purchases natural gas from suppliers in the EU who purchase a significant portion of their supply from Russia. USSE purchases a significant portion of its iron ore and coal from suppliers based in Russia and Ukraine.

Additionally, we are also exposed to risks associated with the business success and creditworthiness of our suppliers and customers. If our customers or suppliers are negatively impacted by a slowdown in economic markets, we may face the reduction, delay or cancellation of customer orders, delays or interruptions of the supply of raw materials, and bankruptcy of customers or suppliers. The occurrence of any of these events may adversely affect our business, results of operations, financial condition and cash flows.

***Shortages of skilled labor, increased labor costs, or our failure to attract and retain other highly qualified personnel in the future could disrupt our operations and adversely affect our financial results.***

We depend on skilled labor for the manufacture of our products. Some of our facilities are located in areas where demand for skilled labor often exceeds supply. Shortages of some types of skilled labor, such as electricians and qualified maintenance technicians, could restrict our ability to maintain or increase production rates, lead to production inefficiencies and increase our labor costs. Our shift to the Best for All strategy would also require a set of job skills that is different from our prior needs. Our continued success depends on the active participation of our key employees. We have recently observed an overall tightening and increasingly competitive labor market. The competitive nature of the labor markets in which we operate, the cyclical nature of the steel industry and the resulting employment needs increase our risk of not being able to recruit, train and retain the employees we require at efficient costs and on reasonable terms, and could lead to increased costs, such as increased overtime to meet demand and increased wage rates to attract and retain employees. Many companies, including U. S. Steel, have had employee lay-offs as a result of reduced business activities in an industry downturn. The loss of our key people or our inability to attract new key employees could adversely affect our operations. Additionally, layoffs or other adverse actions could result in an adverse relationship with our workforce or third-party labor providers. If we are unable to recruit, train and retain adequate



numbers of qualified employees and third-party labor providers on a timely basis or at a reasonable cost or on reasonable terms, our business and results of operations could be adversely affected. Additionally, an overall labor shortage, lack of skilled labor, increased turnover or labor inflation caused by COVID-19 or as a result of general macroeconomic factors that affect our customers or suppliers could have a material adverse impact on the company's operations, results of operations, liquidity or cash flows.

***Our 2018 Labor Agreements with the USW contain provisions that may impact certain business activities.***

Our 2018 Labor Agreements with the USW contain provisions that grant the USW a limited right to bid on the Company's sale of a facility (or sale of a controlling interest in an entity owning a facility) covered by the 2018 Labor Agreements, excluding public equity offerings and/or the transfer of assets between U. S. Steel and its wholly owned subsidiaries. These agreements also require a minimum level of capital expenditures (subject to approval of the Board of Directors) to maintain the competitive status of the covered facilities, and place certain limited restrictions on our ability to replace product produced at a covered facility with product produced at other than Company facilities or affiliates or U.S. or Canadian facilities with employee protections similar to the protections found in the 2018 Labor Agreements when the Company is operating covered facilities below capacity. The provisions in the 2018 Labor Agreements, as well as current or future proposed legislation or regulations, could favorably or unfavorably impact certain business activities including pricing, operating costs, margins, and/or our competitiveness in the marketplace.

The 2018 Labor Agreements covering most USW represented employees have a termination date of September 1, 2022 and to the extent that successor agreements or extensions are not agreed upon as of this date, there exists a potential risk of labor disruption at covered plants.

***A failure of our information technology infrastructure and cybersecurity threats may adversely affect our business operations.***

Despite efforts to protect confidential business information, personal data of employees and contractors, and the control systems of manufacturing plants, U. S. Steel systems and those of our third-party service providers have been and may be subject to cyber-attacks or system breaches. System breaches can lead to theft, unauthorized disclosure, modification or destruction of proprietary business data, personally identifiable information (PII), or other sensitive information, to defective products, production downtime and damage to production assets, and the inaccessibility of key systems, with a resulting impact to our reputation, competitiveness and operations. We have experienced cybersecurity attacks that have resulted in unauthorized persons gaining access to our information technology systems and networks, and we could in the future experience similar attacks. To date, no cybersecurity attack has had a material impact on our financial condition, results of operations or liquidity.

While the Company continually works to safeguard our systems and mitigate potential risks, there can be no assurance that such actions will be sufficient to prevent cyber-attacks or security breaches or mitigate all potential risks to our systems, networks and data, particularly with the recent proliferation of ransomware attacks around the world. The potential consequences of a material cybersecurity attack include reputational damage, investigations and/or adverse proceedings with government regulators or enforcement agencies, litigation with third parties, disruption to our systems, unauthorized release of confidential, personally identifiable, or otherwise protected information, corruption of data, diminution in the value of our investment in research, development and engineering, and increased cybersecurity protection and remediation costs, which in turn could adversely affect our competitiveness, results of operations and financial condition. The amount of insurance coverage we maintain may be inadequate to cover claims or liabilities resulting from a cybersecurity attack.

***We depend on third parties for transportation services and increases in costs or the availability of transportation may adversely affect our business and operations.***

Our business depends on the transportation of a large number of products, both domestically and internationally. We rely primarily on third parties, including the recently divested Transtar business, for transportation of the products we manufacture as well as delivery of our raw materials. Any increase in the cost of the transportation of our raw materials or products, as a result of increases in fuel or labor costs, higher demand for logistics services, consolidation in the transportation industry or otherwise, may adversely affect our results of operations as we may not be able to pass such cost increases on to our customers.

If any of these providers were to fail to deliver raw materials to us in a timely manner, we may be unable to manufacture and deliver our products in response to customer demand. In addition, if any of these third parties were to cease operations or cease doing business with us, we may be unable to replace them at a reasonable cost.

In addition, such failure of a third-party transportation provider could harm our reputation, negatively affect our customer relationships and have a material adverse effect on our financial position and results of operations.

**Financial Risk Factors**

***Our business and execution of our strategy require substantial expenditures for capital investments, debt service obligations, operating leases and maintenance that we may be unable to fund, which may require other actions to satisfy our obligations under our debt.***

We have approximately \$3.9 billion of total debt (see Note 17 to the Consolidated Financial Statements). If our cash flows and capital resources are insufficient to fund our planned capital expenditures or debt service obligations, we may face substantial liquidity problems and may be forced to reduce or delay investments and capital expenditures, terminate strategic projects, or to dispose of material assets or operations or issue additional debt or equity. We may not be able to take such actions, if necessary, on commercially reasonable terms or at all. The Credit Facility Agreement, the documents governing the USSK Credit Facilities, the documents governing the Big River Steel credit facility and Big River Steel notes, and the indentures governing our existing senior unsecured notes may restrict our ability to dispose of assets and may also restrict our ability to raise debt or equity capital to be used to repay other debt when it becomes due. We may not be able to consummate those dispositions or to obtain proceeds in an amount sufficient to meet any debt service obligations then due. Our inability to generate sufficient cash flows to satisfy our debt obligations, or to refinance our indebtedness on commercially reasonable terms or at all, would materially and adversely affect our financial position and results of operations and may place us at a competitive disadvantage with competitors who may have less indebtedness and other obligations or greater access to financing.

Our ability to service or refinance our debt or fund investments and capital expenditures required to maintain or expand our business operations depends on our financial condition and operating performance, which are subject to prevailing economic and competitive conditions and to certain financial, business, legislative, regulatory and other factors beyond our control, such as the disruption caused by the COVID-19 pandemic and supply chain disruptions such as the chip supply shortage in the automotive industry. We may not be able to maintain a level of cash flows from operating activities sufficient to permit us to satisfy our liquidity needs. In addition, the availability under certain of our debt instruments may be limited if we do not meet certain financial covenants. Furthermore, the agreements governing the BRS ABL Facility and other outstanding indebtedness of Big River Steel LLC and its subsidiaries limit their ability, subject to certain exceptions, to pay dividends or distributions or make other restricted payments, such that we may not be able to access the cash generated by these recently acquired subsidiaries to fund our other expenditures.

If we cannot make scheduled payments on our debt, we will be in default and holders of our senior unsecured notes could declare all outstanding principal and interest to be due and payable, the lenders under the Fifth Amended and Restated Credit Agreement, the USSK Credit Facilities, and the Export Credit Facility could terminate their commitments to loan money, accelerate full repayment of any or all amounts outstanding (which may result in the cross acceleration of certain of our other debt obligations) and the lenders could foreclose against the assets securing their borrowings and we could be forced into bankruptcy or liquidation. All of these events would materially and adversely affect our financial position and results of operations.

Furthermore, ratings agencies could downgrade our ratings either due to factors specific to our business, a prolonged cyclical downturn in the steel industry, macroeconomic trends such as global or regional recessions and trends in credit and capital markets more generally. Our credit ratings were downgraded in 2020 by three credit ratings agencies, all citing among other things, the uncertainty in duration and impact of the COVID-19 outbreak on our business. During 2021, Moody's and S&P upgraded U. S. Steel and Big River Steel's credit ratings, while Fitch upgraded U. S. Steel's credit ratings. Ratings agencies also may lower, suspend or withdraw ratings on the outstanding securities of U. S. Steel or Big River Steel. Any lowering, suspension or withdrawal of such ratings may have an adverse effect on the market prices of such securities.

Any decline in our operating results or downgrades in our credit ratings may make raising capital or entering into any business transaction more difficult, lead to reductions in the availability of credit or increased cost of credit, adversely affect the terms of future borrowings, may limit our ability to take advantage of potential business opportunities, and lead to reductions in the availability of credit.

***We have significant retiree health care, retiree life insurance and pension plan costs, which may negatively affect our results of operations and cash flows.***

We maintain retiree health care and life insurance and defined benefit pension plans covering many of our domestic employees and former employees upon their retirement. Some of these benefit plans are not fully funded, and thus will require cash funding in future years. Minimum contributions to domestic qualified pension plans (other than contributions to the Steelworkers Pension Trust (SPT) described below) are regulated under the Employee Retirement Income Security Act of 1974 (ERISA) and the Pension Protection Act of 2006 (PPA).

The level of cash funding for our defined benefit pension plans in future years depends upon various factors, including voluntary contributions that we may make, future pension plan asset performance, actual interest rates under the law, the impact of business acquisitions or divestitures, union negotiated benefit changes and future government regulations, many of which are not within our control. In addition, assets held by the trusts for our pension plan and our trust for retiree health care and life insurance benefits are subject to the risks, uncertainties and variability of the financial markets. Future funding requirements could also be materially affected by differences between expected and actual returns on plan assets, actuarial data and



assumptions relating to plan participants, the discount rate used to measure the pension obligations and changes to regulatory funding requirements. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and Note 18 to the Consolidated Financial Statements for a discussion of assumptions and further information associated with these benefit plans.

U. S. Steel contributes to a domestic multiemployer defined benefit pension plan, the SPT, for USW-represented employees formerly employed by National Steel and represented employees hired after May 2003. We have legal requirements for future funding of this plan should the SPT become significantly underfunded or we decide to withdraw from the plan. Either of these scenarios may negatively impact our future cash flows. The 2018 Labor Agreements increased the contribution rate for most steelworker employees. Collectively bargained company contributions to the plan could increase further as a result of future changes agreed to by the Company and the USW.

***The accounting treatment of equity method investments and other long-lived assets could result in future asset impairments, which would reduce our earnings.***

We periodically test our equity method investments and other long-lived assets to determine whether their estimated fair value is less than their value recorded on our balance sheet. The results of this testing for potential impairment may be adversely affected by uncertain market conditions for the global steel industry and general economic conditions. If we determine that the fair value of any of these assets is less than the value recorded on our balance sheet, and, in the case of equity method investments the decline is other than temporary, we would likely incur a non-cash impairment loss that would negatively impact our results of operations. We have incurred asset impairment charges in recent years, including during the year ended December 31, 2021, and there can be no assurances that continued market dynamics or other factors may not result in future impairment charges.

***We are subject to foreign currency risks, which may negatively impact our profitability and cash flows.***

The financial condition and results of operations of USSE are reported in euros and then translated into U.S. dollars at the applicable exchange rate for inclusion in our financial statements. The appreciation of the U.S. dollar against the euro negatively affects our Consolidated Results of Operations. International cash requirements have been and in the future may be funded by intercompany loans, which may create intercompany monetary assets and liabilities in currencies other than the functional currencies of the entities involved, which can have a non-cash impact on income when they are remeasured at the end of each period. Procurement of equipment of announced strategic projects may be denominated in foreign currencies, which could adversely affect the costs of these projects.

In addition, foreign producers, including foreign producers of subsidized or unfairly traded steel with foreign currency denominated costs may gain additional competitive advantages or target our home markets if the U.S. dollar or euro exchange rates strengthen relative to those producers' currencies. Volatility in the markets and exchange rates for foreign currencies and contracts in foreign currencies could have a significant impact on our reported financial results and condition.

***Financial regulatory frameworks introduced by U.S. and EU regulators may limit our financial flexibility or increase our costs.***

We use swaps, forward contracts and similar agreements to mitigate our exposure to volatility, which entails a variety of risks. The Commodity Future Trading Commission's Dodd Frank and the EU's European Market Infrastructure Regulation and other government agencies' regulatory frameworks can limit the Company's ability to hedge interest rate, foreign exchange (FX), or commodity pricing exposures, which could expose us to increased economic risk. These frameworks may introduce additional compliance costs or liquidity requirements. Some counterparties may cease hedging as a result of increased regulatory cost burdens, which in turn may reduce U. S. Steel's ability to hedge its interest rate, FX, or commodity exposures.

***We are a party to various legal proceedings, the resolution of which could negatively affect our profitability and cash flows in a particular period.***

We are involved at any given time in various litigation matters, including administrative and regulatory proceedings, governmental investigations, environmental matters, and commercial disputes. Our profitability and cash flows in a particular period could be negatively affected by an adverse ruling or settlement in any legal proceeding or investigation. While we believe that we have taken appropriate actions to mitigate and reduce these risks, due to the nature of our operations, these risks will continue to exist and additional legal proceedings or investigations may arise from time to time.

Additionally, we may be subject to product liability claims that may have an adverse effect on our financial position, results of operations and cash flows. Events such as well failures, line pipe leaks, blowouts, bursts, fires and product recalls could result in claims that our products or services were defective and caused death, personal injury, property damage or environmental pollution. The insurance we maintain may not be adequate, available to protect us in the event of a claim, or its coverage may be limited, canceled or otherwise terminated, or the amount of our insurance may be less than the related impact on our enterprise value after a loss. We establish reserves based on our assessment of contingencies, including contingencies for claims asserted against us in connection with litigation, arbitrations and environmental issues. Adverse developments in litigation, arbitrations,

environmental issues or other legal proceedings may affect our assessment and estimates of the loss contingency recorded as a reserve and require us to make payments in excess of our reserves, which could negatively affect our operations, financial results and cash flows. See "Item 3. Legal Proceedings" and Note 26 to the Consolidated Financial Statements for further details.

### **Regulatory Risk Factors**

***Compliance with existing and new environmental regulations, environmental permitting and approval requirements may result in delays or other adverse impacts on planned projects, our results of operations and cash flows.***

Steel producers in the U.S., along with their customers and suppliers, are subject to numerous federal, state and local laws and regulations relating to the protection of the environment. These laws and regulations concern the generation, storage, transportation, disposal, emission or discharge of pollutants, contaminants and hazardous substances into the environment, the reporting of such matters, and the general protection of public health and safety, natural resources, wildlife and the environment. Steel producers in the EU are subject to similar laws. These laws and regulations continue to evolve and are becoming increasingly stringent. The ultimate impact of complying with such laws and regulations is not always clearly known or determinable because regulations under some of these laws have not yet been promulgated or are undergoing revision. Additionally, compliance with certain of these laws and regulations, such as the CAA and similar state and local requirements, governing air emissions, could result in substantially increased capital requirements and operating costs and could change the equipment or facilities we operate. Compliance with current or future regulations could entail substantial costs for emission-based systems and could have a negative impact on our results of operations and cash flows. Failure to comply with the requirements may result in administrative, civil and criminal penalties, revocation of permits to conduct business or construct certain facilities, substantial fines or sanctions, enforcement actions (including orders limiting our operations or requiring corrective measures), natural resource damages claims, cleanup and closure costs, and third-party claims for property damage and personal injury as a result of violations of, or liabilities under, environmental laws, regulations, codes and common law. The amount and timing of environmental expenditures is difficult to predict, and, in some cases, liability may be imposed without regard to contribution or to whether we knew of, or caused, the release of hazardous substances.

In addition, the Company must obtain, maintain and comply with numerous permits, leases, approvals, consents and certificates from various governmental authorities in connection with the construction and operation of new production facilities or modifications to existing facilities. In connection with such activities, the Company may need to make significant capital and operating expenditures to detect, repair and/or control air emissions, to control water discharges or to perform certain corrective actions to meet the conditions of the permits issued pursuant to applicable environmental laws and regulations.

There can be no assurance that future approvals, licenses and permits will be granted or that we will be able to maintain and renew the approvals, licenses and permits we currently hold. Failure to do so could have a material adverse effect on our results of operations and cash flows. Furthermore, compliance with the environmental permitting and approval requirements may be costly and time consuming and could result in delays or other adverse impacts on planned projects, our results of operations and cash flows.

***We have significant environmental remediation costs that negatively affect our results of operations and cash flows.***

Some of U. S. Steel's current and former facilities were in operation before many federal and state environmental regulations were in place. Hazardous materials associated with those facilities have been and may continue to be encountered at current or former operating sites or delivered to sites operated by third parties.

U. S. Steel is involved in numerous remediation projects at currently operating facilities, facilities that have been closed or sold to unrelated parties and other sites where material generated by U. S. Steel was deposited. In addition, there are numerous other former operating or disposal sites that could become subject to remediation, which may negatively affect our results of operations and cash flows.

***Reducing greenhouse gas (GHG) emissions from steelmaking operations to comply with new regulations as well as stakeholder expectations and mitigate potential physical impacts of climate change could significantly increase costs to manufacture future materials or reduce the amount of materials being manufactured.***

Iron and steel producers around the world are facing mounting pressure to reduce greenhouse gas emissions from operations. The majority of greenhouse gas emissions from the production of iron and steel are caused by the combustion of fossil fuels, the use of electrical energy, and the use of coal, lime, and iron ore as feedstock. The two main production processes are the integrated route of blast furnace ironmaking in combination with basic oxygen furnace steelmaking (BOF) and the alternative route of electric arc furnace steelmaking. Both routes generate greenhouse gas emissions with the latter process, involving the electric arc melting of a majority of steel scrap, generating less than half that, or less, of the traditional integrated steelmaking process. Federal, state and local governmental agencies within the United States may introduce regulatory changes in response to the potential impacts of climate change, including the introduction of carbon emissions limitations or trading mechanisms. Any

such regulation regarding climate change and GHG emissions could impose significant costs on our operations and on the operations of our customers and suppliers, including increased energy, capital equipment, emissions controls, environmental monitoring and reporting and other costs in order to comply with current or future laws or regulations concerning climate change and GHG emissions. Any adopted future climate change and GHG regulations could negatively impact our ability, and that of our customers and suppliers, to compete with companies situated in areas not subject to or not complying with such limitations. Inconsistency of regulations may also change the attractiveness of the locations of some of the Company's assets and investments. In addition, changes in certain environmental regulations, including those that may impose output limitations or higher costs associated with climate change or greenhouse gas emissions, could substantially increase the cost of manufacturing and raw materials to us and other steel producers.

Additionally, the European Union has established aggressive CO<sub>2</sub> reduction targets of 40% by 2030, against a 1990 baseline, and full carbon neutrality by 2050. As part of the European Green Deal the Commission proposed in September 2020 to raise the 2030 reduction target to at least 55% compared to 1990. The new target has yet to be endorsed by the European Parliament. An emission trading system (ETS) was established to encourage compliance with set emissions reduction targets. These aggressive targets require drastic measures within the steel industry to comply. The transition to EAF technology, as well as incremental gains in energy reduction, use of renewable energy and continued asset and process improvements (including EAF steelmaking), are expected to reduce our GHG footprint. However, the development of breakthrough technologies is likely required to continue the path of low to no carbon footprint in the steel industry. Implementation of new technologies will most likely require significant amounts of capital and an abundant source of low-cost hydrogen and/or green power, most likely leading to an increase in the cost of future steelmaking. In addition, the cost of emission allowances is forecast to increase, along with the number of allowances decreasing in the next several years. The price of CO<sub>2</sub> emission allowances was 80 euro per metric ton as of December 31, 2021 and forecasts call for potential price increase to 100 euro per metric ton.

The physical impacts of climate change may also have a material adverse effect on our costs and operations. Climate change may be associated with increased occurrence of extreme weather conditions, which could include, among other things, increased risk of flooding, potential heat stress at facilities, and other natural disasters that may lead to supply chain and operational disruptions. Damage resulting from such extreme weather conditions may not be fully insured.

Reduced access to or increased cost of capital may occur as financial institutions and investors also increase expectations related to environmental, social and governance matters.

***New and changing data privacy laws and cross-border transfer requirements could have a negative impact on our business and operations.***

Our business depends on the processing and transfer of data between our affiliated entities, to and from our business partners, and with third-party service providers, which may be subject to data privacy laws and cross-border transfer restrictions. In North America and Europe, new legislation and changes to the requirements or applicability of existing laws, as well as evolving standards and judicial and regulatory interpretations of such laws, may impact U. S. Steel's ability to effectively process and transfer data both within the United States and across borders in support of our business operations and/or keep pace with specific requirements regarding safeguarding and handling personal information. While U. S. Steel takes steps to comply with these legal requirements, non-compliance could lead to possible administrative, civil, or criminal liability, as well as reputational harm to the Company and its employees. The costs of compliance with privacy laws such as the GDPR and the potential for fines and penalties in the event of a breach may have a negative impact on our business and operations.

**Item 1B. UNRESOLVED STAFF COMMENTS**

None.

**Item 2. PROPERTIES**

See Item 1. Business, Facilities and Locations for listings of U. S. Steel's main properties, their locations and their products and services.

U. S. Steel and its predecessors have owned their properties for many years with no material adverse title claims asserted. In the case of Great Lakes Works, Granite City Works, the Midwest Plant and Keetac iron ore operations, U. S. Steel or its subsidiaries are the beneficiaries of bankruptcy laws and orders providing that properties are held free and clear of past liens and liabilities. In addition, U. S. Steel or its predecessors obtained title insurance, local counsel opinions or similar protections when significant properties were initially acquired or since acquisition.

At the Midwest Plant in Indiana, U. S. Steel has a supply agreement for various utility services with a company that owns a cogeneration facility located on U. S. Steel property. The Midwest Plant agreement expires in 2028.

U. S. Steel leases its headquarters office space in Pittsburgh, Pennsylvania.

For property, plant and equipment additions, including finance leases, see “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations, Liquidity and Capital Resources” and Note 13 to the Consolidated Financial Statements.

## Mining Properties

### Summary Overview of Mining Operations

U. S. Steel operates two surface iron ore mining complexes in Minnesota consisting of the Minntac Mine and Pellet Plant and the Keetac Mine and Pellet Plant, which are wholly owned by the Company. As of December 31, 2021, U. S. Steel owns a minority interest in the iron ore mining assets of Hibbing Taconite Company.

The following table provides a summary of the net book value of the land and PP&E at the Minntac and Keetac mines as of December 31, 2021:

(in millions)	Gross Value	Accumulated Depreciation	Net Book Value
<b>Minntac Mine and Pellet Plant</b>			
Land	\$ 28	\$ —	\$ 28
Other property, plant and equipment	1,501	1,204	297
<b>Total</b>	<b>1,529</b>	<b>1,204</b>	<b>325</b>
<b>Keetac Mine and Pellet Plant</b>			
Land	8	—	8
Other property, plant and equipment	255	178	77
<b>Total</b>	<b>\$ 263</b>	<b>\$ 178</b>	<b>\$ 85</b>

The following table provides a summary of our mineral production by mining complex for each reportable period:

(Millions of short tons)	Production		
	2021	2020	2019
<b>Iron ore pellets:</b>			
Minnesota, USA			
Minntac Mine and Pellet Plant	16.1	14.1	14.4
Keetac Mine and Pellet Plant	6.0	2.0	5.8
Hibbing Taconite Company <sup>(1)</sup>	1.3	0.9	1.2
<b>Total</b>	<b>23.4</b>	<b>17.0</b>	<b>21.4</b>

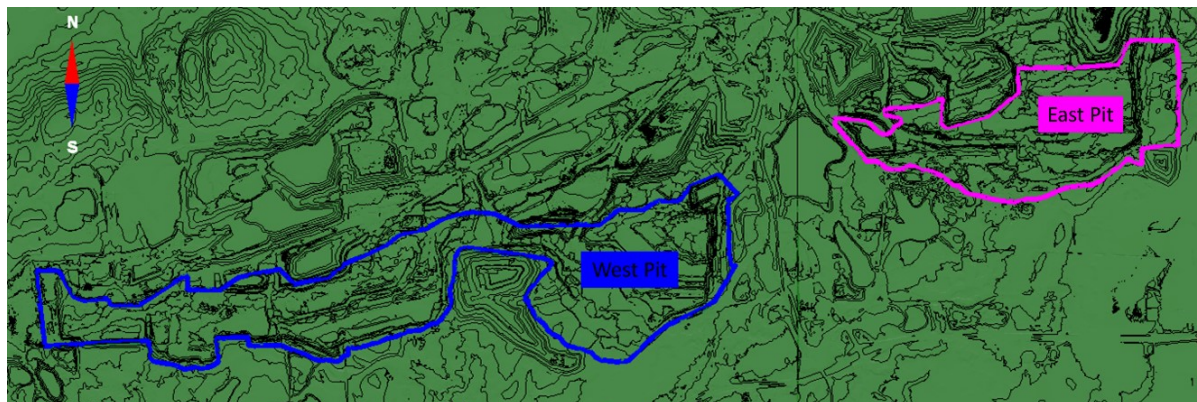
<sup>(1)</sup> Represents U. S. Steel's proportionate share of production as these investments are unconsolidated equity affiliates.

In accordance with Regulation S-K, Items 1300-1305, we engaged DRA Global and Barr Engineering Co. to provide feasibility studies and technical report summaries for our material mining operations at Minntac and Keetac. The majority shareholders of the Hibbing Taconite Company separately engaged qualified persons to perform the same procedures at the Hibbing Taconite Mine. Accordingly, the figures below for the Hibbing Taconite Mine were provided by the majority shareholders using the reports provided by the qualified persons. The tables showing resources and reserves by mining property were prepared using the results of the procedures performed by the qualified persons designated by each organization, which have no affiliation with or interest in our material mining properties.

### Minntac Mine and Pellet Plant

The Minntac Mine and Pellet Plant is located in Mountain Iron, Minnesota and is wholly owned and operated by U. S. Steel. On April 30, 2020, the Company granted Stelco Inc. (Stelco) a purchase option to acquire a 25 percent interest in the Minntac mining operations. The option can be exercised at any time before January 31, 2027. For more information regarding the purchase option, please see Note 20. The Minntac Mine has 25,420 acres of surface rights. The surface mine in the production stage whereby taconite iron ore is mined using the Truck-Shovel method. The mine is approximately 54 years old and has been operated by U. S. Steel since 1967. For discussions regarding encumbrances, violations, fines, etc. related to the Minntac Mine, see Item 3. Legal Proceedings.



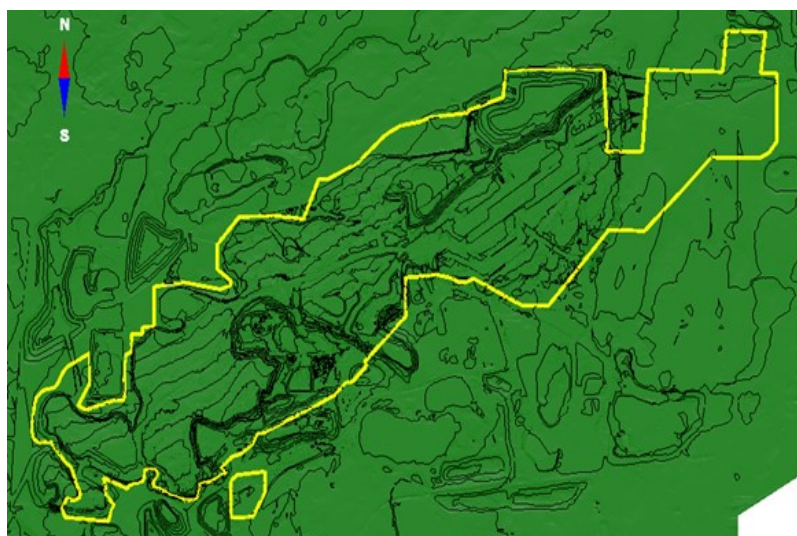


The following table provides details of our iron ore resources and reserves at Minntac for the year ended December 31, 2021. Resources below are stated exclusive of reserves.

Minntac Mine and Pellet Plant						
	Amount	Grades/Qualities		Cut-off Grades		Metallurgical Recovery
(Millions of short tons)	2021	MagFe%	Concentrate Silica %	Min MagFe %	Max Concentrate Silica %	Weight Recovery %
Measured mineral resources	—	—	—	—	—	—
Indicated mineral resources	251.0	18.20	5.51	14.00	10.00	23.65
<b>Measured + indicated mineral resources</b>	<b>251.0</b>	<b>18.20</b>	<b>5.51</b>	<b>14.00</b>	<b>10.00</b>	<b>23.65</b>
Inferred mineral resources	149.1	18.05	6.27	14.00	10.00	22.50
Proven mineral reserves	—	—	—	—	—	—
Probable mineral reserves	281.2	19.29	5.59	14.00	10.00	25.11
<b>Total mineral reserves</b>	<b>281.2</b>	<b>19.29</b>	<b>5.59</b>	<b>14.00</b>	<b>10.00</b>	<b>25.11</b>

#### Keetac Mine and Pellet Plant

The Keetac Mine and Pellet Plant is located in Keewatin, Minnesota and is wholly owned and operated by U. S. Steel. The Keetac Mine has 18,020 acres of surface rights. The surface mine is in the production stage whereby taconite iron ore is mined using the Truck-Shovel method. The mine is approximately 54 years old and has been operated by U. S. Steel since 2003, when it was acquired as part of the Company's purchase of National Steel Corporation. For discussions regarding encumbrances, violations, fines, etc. related to the Keetac Mine, see Item 3. Legal Proceedings.

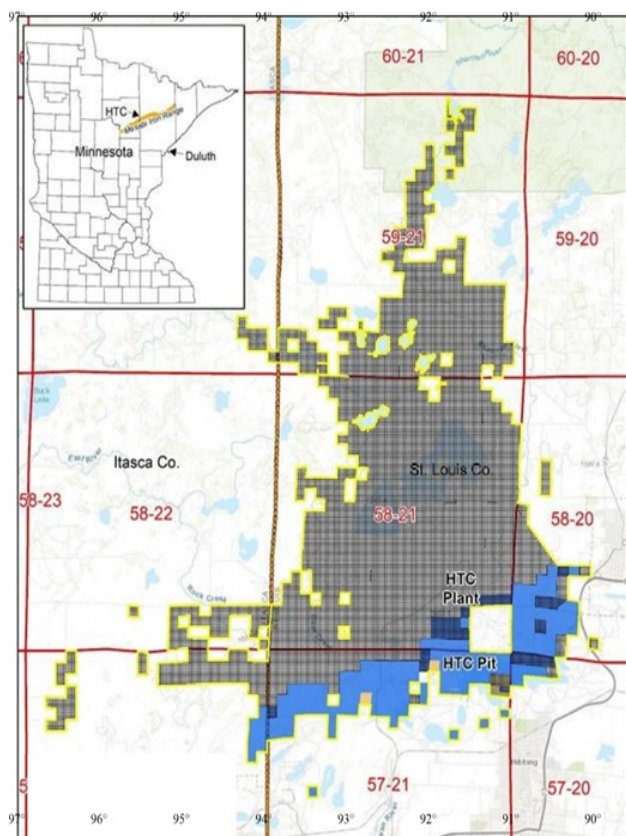


The following table provides details of our iron ore resources and reserves at Keetac for the year ended December 31, 2021. Resources below are stated exclusive of reserves.

	Keetac Mine and Pellet Plant					Metallurgical Recovery
	Amount	Grades/Qualities		Cut-off Grades		
	(Millions of short tons)	2021	MagFe%	Concentrate Silica %	Min MagFe %	Max Concentrate Silica %
Measured mineral resources	—	—	—	—	—	—
Indicated mineral resources	192.9	18.93	3.40	14.00	9.00	27.34
Measured + indicated mineral resources	192.9	18.93	3.40	14.00	9.00	27.34
Inferred mineral resources	160.5	18.83	3.81	14.00	9.00	27.30
Proven mineral reserves	—	—	—	—	—	—
Probable mineral reserves	185.2	19.29	3.57	14.00	9.00	20.97
Total mineral reserves	185.2	19.29	3.57	14.00	9.00	20.97

### Hibbing Taconite Mine

U. S. Steel maintains a minority interest in the Hibbing Taconite Mine, which is majority-owned by Cleveland-Cliffs, Inc. and located in Hibbing, Minnesota. The Hibbing Mine has 30,760 acres of surface rights, of which 1,150 acres are associated with mineral leases. The majority of the mineral rights are leased. 6,640 acres of mineral leases are expiring between 2022 and 2056. The taconite iron ore mine is currently in the production stage.



The following table provides details of our proportionate share of iron ore resources and reserves at Hibbing for the year ended December 31, 2021. Resources below are stated exclusive of reserves.

Hibbing Taconite Company <sup>(1)</sup>		
	Amount	Grades/Qualities
(Millions of short tons)	2021	MagFe%
Measured mineral resources	0.4	19.20
Indicated mineral resources	—	18.70
<b>Measured + indicated mineral resources</b>	<b>0.4</b>	<b>19.20</b>
Inferred mineral resources	—	—
Proven mineral reserves	4.2	18.70
Probable mineral reserves	0.4	18.70
<b>Total mineral reserves</b>	<b>4.6</b>	<b>18.70</b>

<sup>(1)</sup> Represents U. S. Steel's proportionate share of proven and probable reserves and production as these investments are unconsolidated equity affiliates

### Internal Controls

U. S. Steel estimates its iron ore resources and reserves using exploration drill holes, physical inspections, sampling, laboratory testing, 3-D computer models, economic pit analysis and fully-developed pit designs for its operating mines. Estimates for our share of unconsolidated equity affiliates are based upon information supplied by the joint ventures. Refer to sections 2 and 3 of the technical report summaries filed as Exhibit 96.1 for further details.

## Item 3. 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. U. S. Steel, along with the other Defendants, filed a Motion to Dismiss the case on August 17, 2021 which remains pending. The Company is vigorously defending 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. U. S. Steel subsequently filed a Motion to Dismiss the case on August 30, 2021 which remains pending. 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 August 31, 2021, the United States District Court for the Northern District of Indiana issued an Opinion and Order entering the



Consent Decree. The Company filed a Motion to Lift the Stay in the citizen suits as well as Motions to Dismiss the suits on December 15, 2021 which remains pending. The Company is vigorously defending the matter.

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. 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 has concluded and the Company and individual defendants continue vigorously defending the remaining claims.

### **Asbestos Litigation**

See Note 26 to our Consolidated Financial Statements, Contingencies and Commitments for a description of our asbestos litigation.

## **ENVIRONMENTAL PROCEEDINGS**

The following is a summary of the proceedings of U. S. Steel that were pending or contemplated as of December 31, 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 December 31, 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 initial costs associated with implementing the first two phases of the proposed remedial plan at the site.

Remediation contracts were issued by both USS and GLNPO for the first phase of the remedial work at the site during the fourth quarter of 2020. USS and GLNPO have also contracted for the second phase of work at the site which will extend through early 2022. The final phase of the remedial design has been defined and another amendment to the Project Agreement between U. S. Steel and GLNPO was executed in December 2021. USS' portion of additional, design, oversight costs, and implementation of all

three phases of the preferred remedial alternative on the upland property and Estuary are currently estimated as of December 31, 2021 at approximately \$59 million.

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

U. S. Steel may be liable for remediation costs under other environmental statutes, both federal and state, or where private parties are seeking to impose liability on U. S. Steel for remediation costs through discussions or litigation. There are 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 and startup 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 December 31, 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 majority of impacted materials 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 December 31, 2021, for our estimated share of the remaining costs of remediation at the site.

### **USS-UPI LLC (UPI)**

In February 2020, U. S. Steel purchased the remaining 50 percent interest in USS-POSCO Industries, a former joint venture that is located in Pittsburg, California between subsidiaries of U. S. Steel and POSCO, now known as USS-UPI, LLC. Prior to formation of the joint venture, UPI's facilities were previously owned and operated solely by U. S. Steel which assumed responsibility for the existing environmental conditions. U. S. Steel continues to monitor the impacts of the remedial plan implemented in 2016 to address groundwater impacts from trichloroethylene at SWMU 4. Evaluations continue for the SWMUs known as the Northern Boundary Group and it is likely that corrective measures will be required, but it is not possible at this time to define a scope or estimate costs for what may be required by the California Department of Toxic Substances Control. As such, there has been no material change in the status of the project during the twelve months ended December 31, 2021. As of December 31, 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 26 to the Consolidated Financial Statements, Contingencies and Commitments, Environmental Matters, Remediation Projects, Projects with Ongoing Study and Scope Development. See Note 5 to the Consolidated Financial Statements for further details regarding U. S. Steel's purchase of UPI.

### **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 \$3 million as of December 31, 2021, for our estimated share of the cost of remediation.

### **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 twelve months ended December 31, 2021. In total, the accrued liability for remaining work under the Corrective Action Program, was approximately \$229,000 at December 31, 2021. Significant additional costs associated with this site are possible and are referenced in Note 26 to the Consolidated Financial Statements "Contingencies and Commitments, Environmental Matters, Remediation Projects, Projects with Ongoing Study and Scope Development."

### **Air Related Matters**

#### **Great Lakes Works**

In June 2010, the U.S. EPA significantly lowered the primary (NAAQS) for SO<sub>2</sub> 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 SO<sub>2</sub> 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 NOVs, 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 SO<sub>2</sub> emissions exceeded the hourly NAAQS for SO<sub>2</sub> at the Allegheny County regional air quality monitors located in Liberty and North Braddock boroughs which are near U. S. Steel's Mon Valley Works facilities. On 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. Fact and Expert discovery has been completed, and pre-trial motion briefing has been submitted to the Court.

### **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. On May 11, 2021, IDEM and U. S. Steel entered into an Agreed Order where U. S. Steel agreed to taking corrective actions, a civil penalty, a Supplemental Environmental Project, and stipulated penalties for future violations.

### **Item 4. MINE SAFETY DISCLOSURE**

The information concerning mine safety violations and other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K is included in Exhibit 95 to this Form 10-K.

### **INFORMATION ABOUT OUR EXECUTIVE OFFICERS**

The executive officers of U. S. Steel and their ages as of February 1, 2022, are as follows:

Name	Age	Title	Executive Officer Since
Christine S. Breves	65	Senior Vice President & Chief Financial Officer	April 27, 2017
Daniel R. Brown	49	Senior Vice President - Advanced Technology Steelmaking & Chief Operating Officer - Big River Steel Works	February 1, 2022
James E. Bruno	56	Senior Vice President - European Solutions and President - USSK	December 1, 2014
Scott D. Buckiso	54	Senior Vice President and Chief Manufacturing Officer North American Flat-Rolled	May 31, 2015
David B. Burritt	66	President & Chief Executive Officer	September 1, 2013
Richard L. Fruehauf	54	Senior Vice President and Chief Strategy & Sustainability Officer	March 1, 2019
Manpreet S. Grewal	42	Vice President & Controller	March 30, 2020
Duane D. Holloway	49	Senior Vice President, General Counsel and Chief Ethics & Compliance Officer	April 16, 2018
Kenneth E. Jaycox	54	Senior Vice President and Chief Commercial Officer	September 28, 2020
A. Barry Melnkovic	64	Senior Vice President and Chief Human Resources Officer	March 1, 2018

Ms. Breves and Messrs. Brown, Bruno, Buckiso, Burritt and Fruehauf have held responsible management or professional positions with U. S. Steel or its subsidiaries for more than the past five years. Prior to joining U. S. Steel in 2020 Mr. Jaycox served as Vice President, Transformation at Sysco Corporation where during his seven-year tenure, he progressed through a series of executive responsibilities including transformation, sales development and support, and revenue management. Prior to joining U. S. Steel in 2020 Mr. Grewal served as vice president, business finance, controller, and chief accounting officer at Covanta since February 2017. Prior to Covanta, Mr. Grewal spent fourteen years at Johnson Controls Incorporated (formerly Tyco International) in increasingly responsible roles, including internal audit, accounting, controllership, and financial planning and analysis. Prior to joining U. S. Steel in 2018, Mr. Holloway served as executive vice president and general counsel at Ascena Retail Group Inc. During his time at Ascena, Mr. Holloway served as global chief legal, compliance, sustainability and diversity officer. Prior to his work at Ascena, Mr. Holloway served as vice president and deputy general counsel for CoreLogic Inc., the leading global residential property information, analytics and data-enabled solutions provider. Prior to joining U. S. Steel in 2017, Mr. Melnkovic served as executive vice president and chief human capital officer, labor relations, diversity and lean enterprise solutions for National Railroad Passenger Corporation / Amtrak.

## PART II

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

#### Common Stock Information

The principal market on which United States Steel Corporation (U. S. Steel) common stock is traded is the New York Stock Exchange, where the common stock trades under trading symbol "X". U. S. Steel common stock is also traded on the Chicago Stock Exchange under the symbol "X".

As of February 7, 2022, there were 11,092 registered holders of U. S. Steel common stock.

The Board of Directors currently intends to declare and pay dividends on shares of U. S. Steel common stock based on the financial condition and results of operations of U. S. Steel out of legally available funds and in accordance with the requirements set forth by applicable law. Quarterly dividends were declared by U. S. Steel in 2021 in the amount of \$0.01 per share in the first, second and third quarters and \$0.05 per share in the fourth quarter. Quarterly dividends were declared by U. S. Steel in 2020 in the amount of \$0.01 per share.



## Purchases of Equity Securities by the Issuer and the Affiliated Purchasers

On October 25, 2021, the Board of Directors authorized a \$300 million stock repurchase program. Approximately \$150 million of common stock was repurchased in 2021, as shown below. On January 24, 2022, the Board of Directors authorized an additional \$500 million under the stock repurchase program. Approximately \$53 million of common stock was repurchased in January 2022, and there is currently approximately \$597 million remaining under the current authorizations.

Share repurchase activity under the Company's stock repurchase program during the three months ended December 31, 2021 was as follows:

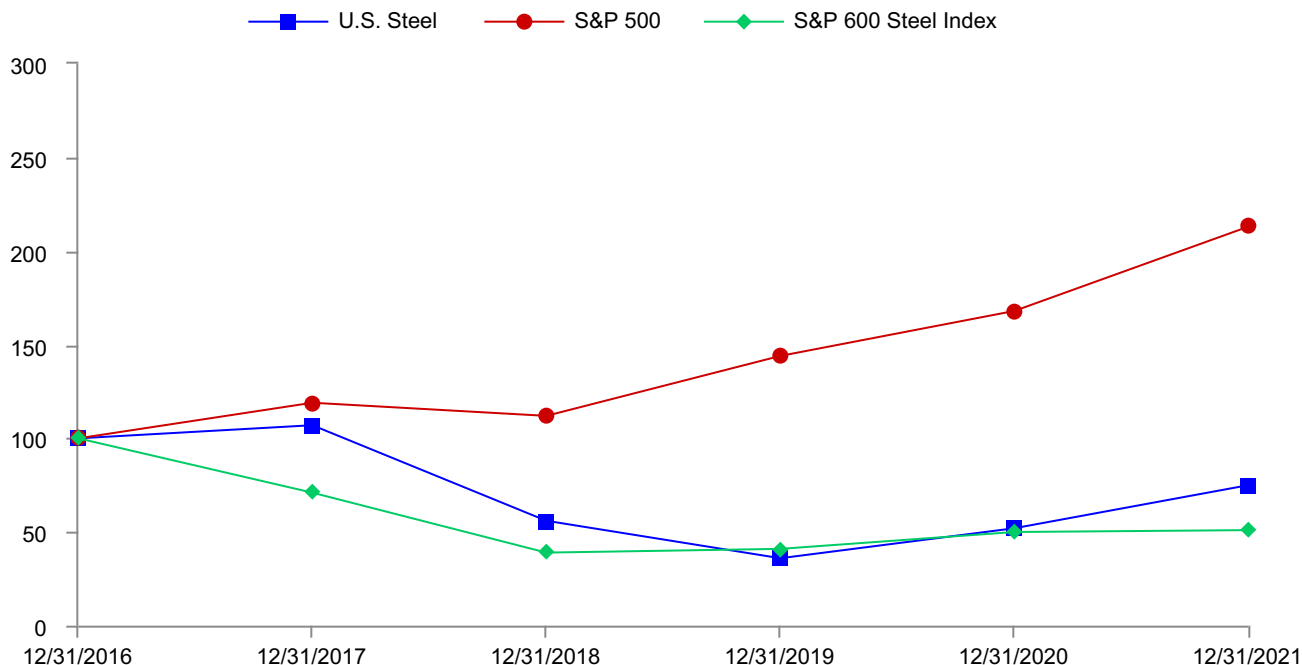
Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs in effect at December 31, 2021 <sup>(a)</sup>
October 1 - 31, 2021	—	\$ —	—	\$ —
November 1 - 30, 2021	—	\$ —	—	\$ —
December 1 - 31, 2021	6,556,855	\$ 22.867	6,556,855	\$ 150,000,000
<b>Quarter ended December 31, 2021</b>	<b>6,556,855</b>	<b>\$ 22.867</b>	<b>6,556,855</b>	<b>\$ 150,000,000</b>

<sup>(a)</sup> On October 25, 2021, the Board of Directors authorized a stock repurchase program to repurchase up to \$300 million of our outstanding common stock at the discretion of management. The Company's stock repurchase program does not obligate it to acquire any specific number of shares. Under this program, the shares will be purchased from time to time at prevailing market prices, through open market or privately negotiated transactions, depending upon market conditions.

## Stockholder Return Performance

The graph below compares the yearly change in cumulative total stockholder return of our common stock with the cumulative total return of the Standard & Poor's (S&P) 500 Stock Index and the S&P 600 Steel Index.

**Comparison of Cumulative Total Return  
on \$100 Invested in U. S. Steel Stock on December 31, 2016  
vs  
S&P 500 and S&P 600 Steel Index**



For information on securities authorized for issuance under our equity compensation plans, see "Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters."



## Unregistered Sales of Equity Securities

U. S. Steel had no sales of unregistered equity securities during the period covered by this report.

## Item 6. RESERVED

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

*The following discussion should be read in conjunction with the Consolidated Financial Statements and related notes that appear elsewhere in this document. Please refer to Item 7 of our 2020 Form 10-K for further discussion and analysis of our 2019 financial condition and results of operations.*

### Overview

Following a challenging 2020 where our business was significantly, adversely impacted by pandemic-related customer slowdown, in 2021, we rebounded sharply, and adeptly responded to significantly increased demand from customers, resuming and accelerating production. Steel prices rose significantly for much of 2021 and demand remained high. Increased earnings in 2021 allowed us to repay a meaningful amount of debt, and strengthen the balance sheet to enable strategic capital investment in furtherance of our Best for All<sup>SM</sup> strategy.

U. S. Steel's results in 2021 benefited from significantly improved business conditions compared to the previous year's COVID-19 pandemic induced market challenges in each of the Company's four reportable segments:

- **North American Flat-Rolled (Flat-Rolled):** Flat-Rolled results improved due to higher steel demand across most industries as consumer demand recovered during the first full year of COVID-19 recovery, pushing both spot and contract prices higher throughout much of the year.
- **Mini Mill:** Mini Mill results were added in the first quarter of 2021 with the acquisition of Big River Steel on January 15, 2021.
- **U. S. Steel Europe (USSE):** USSE results improved due to stronger performance of the manufacturing and construction sectors and higher selling prices though continued high levels of imports persist.
- **Tubular Products (Tubular):** Tubular results improved from the realized benefits of rounds being in-sourced from our electric arc furnace and the steady increase of drilling activity even though continued high levels of tubular imports persist.

### Critical Accounting Estimates

Management's discussion and analysis of U. S. Steel's financial condition and results of operations is based upon U. S. Steel's financial statements, which have been prepared in accordance with accounting standards generally accepted in the United States (U.S. GAAP). The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at year-end and the reported amount of revenues and expenses during the year. Management regularly evaluates these estimates, including those related to employee benefits liabilities and assets held in trust relating to such liabilities; the carrying value of property, plant and equipment; intangible assets; valuation allowances for receivables, inventories and deferred income tax assets; liabilities for deferred income taxes; potential tax deficiencies; environmental obligations; potential litigation claims and settlements and put and call option assets and liabilities. Management's estimates are based on historical experience, current business and market conditions, and various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from current expectations under different assumptions or conditions.

Management believes that the following are the more significant judgments and estimates used in the preparation of the financial statements.

**Goodwill and intangible assets** – Goodwill represents the excess of the cost over the fair value of acquired identifiable tangible and intangible assets and liabilities assumed from businesses acquired. Goodwill and intangible assets deemed to have indefinite lives are not amortized, but are subject to impairment testing annually, or more frequently if events or changes in circumstances indicate the asset might be impaired. Goodwill is tested for impairment at the reporting unit level annually in the fourth quarter.

The goodwill impairment test compares carrying values of the reporting units to their estimated fair values. If the carrying value exceeds the fair value then the carrying value is reduced to fair value. In developing our estimates for the fair value of our reporting units and unamortized intangible assets, significant judgment is required in the determination of the appropriateness of

using a qualitative assessment or quantitative assessment. For the quantitative assessments that are performed, fair value is primarily based on the income approach using a discounted cash flow method, which have significant assumptions including sales growth rates, projected earnings, terminal growth rates and discount rates. Such assumptions are subject to variability from year to year and are directly impacted by, among other things, global market conditions.

Our mini mill reporting unit holds the goodwill recognized as a result of the Company's acquisition of Big River Steel, and is our only reporting unit that has a significant amount of goodwill. This goodwill is primarily attributable to Big River Steel's operational abilities, workforce and the anticipated benefits from their recent expansion. Finite-lived intangible assets are amortized on a straight-line basis over their estimated useful lives and are tested for impairment when events occur that indicate that the net book value will not be recovered over future cash flows.

The evaluation of impairment involves using either a qualitative or quantitative approach as outlined in Accounting Standards Codification (ASC) Topic 350, *Intangibles - Goodwill and Other*. U. S. Steel completed its annual goodwill impairment evaluation using a qualitative analysis during the fourth quarter of 2021 and determined there was no indication of impairment.

If business conditions deteriorate or other factors have an adverse effect on our qualitative and quantitative estimates, inclusive of discounted future cash flows or assumed growth rates, or if we experience a sustained decline in our market capitalization, future assessments of goodwill for impairment may result in impairment charges.

Intangible assets with indefinite lives are also subject to at least annual impairment testing, which compares the fair value of the intangible assets with their carrying amounts. U. S. Steel has determined that certain of its acquired intangible assets have indefinite useful lives. These assets are also reviewed for impairment annually in the fourth quarter and whenever events or circumstances indicate the carrying value may not be recoverable. U. S. Steel completed its evaluation of its indefinite lived water rights and other indefinite lived intangible assets during 2021 and determined there was no indication of impairment.

Identifiable intangible assets with finite lives are amortized on a straight-line basis over their estimated useful lives and are reviewed for impairment whenever events or circumstances indicate that the carrying value may not be recoverable. During the fourth quarter of 2021, U. S. Steel completed a review of its identifiable intangible assets with finite lives and determined that the assets were not impaired.

**Business combinations** – We account for business combinations under the acquisition method of accounting in accordance with ASC Topic 805, *Business Combinations*, which requires an allocation of the consideration we paid to the identifiable assets, intangible assets and liabilities based on the estimated fair values as of the closing date of the acquisition. The excess of the fair value of the purchase price over the fair values of these identifiable assets, intangible assets and liabilities is recorded as goodwill.

Purchased intangibles are initially recognized at fair value and amortized over their useful lives unless those lives are determined to be indefinite. The valuation of acquired assets will impact future operating results. The fair value of identifiable intangible assets is determined using an income approach on an individual asset basis. Specifically, we use the multi-period excess earnings method to estimate the fair value of the customer relationships intangible asset. Determining the fair value of the customer relationships intangible asset involves significant judgements and assumptions, including expected realized price, base year metallic costs, contributory asset charges, and customer attrition rate.

**Inventories** – Inventories are carried at the lower of cost or market for last-in, first-out (LIFO), moving average and first-in, first-out (FIFO) method inventories. The predominant method of inventory costing for Flat-Rolled and Tubular is LIFO. The Mini Mill segment uses a moving average costing method to account for semi-finished and finished products and FIFO for raw materials. FIFO is the predominant inventory costing method used by the USSE segment. The LIFO method of inventory costing was used on 46 percent and 59 percent of consolidated inventories at December 31, 2021 and 2020, respectively. Since the LIFO inventory valuation methodology is an annual calculation, interim estimates of the annual LIFO valuation are required. We recognize the effects of the LIFO inventory valuation method on an interim basis by estimating the year-end inventory amounts. The projections of annual LIFO inventory amounts are updated quarterly. Changes in U.S. GAAP rules or tax law, such as the elimination of the LIFO method of accounting for inventories, could negatively affect our profitability and cash flow.

**Pensions and Other Benefits** – The recording of net periodic benefit costs for defined benefit pensions and Other Benefits is based on, among other things, assumptions of the expected annual return on plan assets, discount rate, mortality, escalation or other changes in retiree health care costs and plan participation levels. Changes in the assumptions or differences between actual and expected changes in the present value of liabilities or assets of U. S. Steel's plans could cause net periodic benefit costs to increase or decrease materially from year to year as discussed below.

U. S. Steel's investment strategy for its U.S. pension and Other Benefits plan assets provides for a diversified mix of high quality bonds, public equities and selected smaller investments in private equities, private credit, timber and mineral interests. For its U.S. pension, U. S. Steel has a target allocation for plan assets of 50 percent in corporate bonds, government bonds and mortgage, private credit, and asset-backed securities. The balance is invested in equity securities, timber, private equity and real estate partnerships. U. S. Steel believes that returns on equities over the long term will be higher than returns from fixed-income securities as actual historical returns from U. S. Steel's trusts have shown. Returns on bonds tend to offset some of the short-term volatility of stocks. Both equity and fixed-income investments are made across a broad range of industries and companies

(both domestic and foreign) to provide protection against the impact of volatility in any single industry as well as company specific developments. U. S. Steel will use a 6.90 percent assumed rate of return on assets for the development of net periodic cost for the main defined benefit pension plan in 2022. Actual returns since the inception of the plan have exceeded this 6.90 percent rate and while recent annual returns have been volatile, it is U. S. Steel's expectation that rates will achieve this level in future periods.

On November 8, 2021, U. S. Steel entered into a commitment agreement with Banner Life Insurance Company and William Penn Life Insurance Company of New York (the "Insurers") and State Street Global Advisors Trust Company, as independent fiduciary to the United States Steel Corporation Plan for Employee Pension Benefits (Revision of 2003), where U. S. Steel will purchase group annuity contracts that will transfer approximately \$284 million of its pension plan obligations to the Insurers. The purchase of the group annuity contracts will be funded directly by the assets of the pension plan. The purchase results in the transfer of administrative and benefit-paying responsibilities for approximately 17,800 U.S. retirees and beneficiaries to the Insurers. The Insurers will begin paying benefits for certain retirees and beneficiaries in the Plan on January 1, 2022. There will be no change to the pension benefits for any retirees and beneficiaries as a result of the transaction. As a result of the transaction, the Corporation recognized a non-cash pension settlement charge of approximately \$93 million.

For its Other Benefits plan, U. S. Steel is employing a liability driven investment strategy. The plan assets are allocated to match the plan cash flows with maturing investments. To achieve this strategy, U. S. Steel has a target allocation for plan assets of 72 percent in fixed income and private credit. The balance is primarily invested in equity securities, timber, private equity and real estate partnerships. U. S. Steel will use a 4.50 percent assumed rate of return on assets for the development of net periodic cost for its Other Benefit plans for 2022. The 2022 assumed rate of return was updated after a review of capital market forecasted returns based on target allocations. As a result, the expected asset return for 2022 was increased to 4.50 percent from the rate of return used for 2021 domestic net periodic benefit cost of 4.25 percent.

The expected long-term rate of return on plan assets is applied to the market value of assets as of the beginning of the period less expected benefit payments and considering any planned contributions.

To determine the discount rate used to measure our pension and Other Benefit obligations for U.S. plans we utilize a bond matching approach to select specific bonds that would satisfy our projected benefit payments. At December 31, 2021, the weighted average discount rate used for our pension and Other Benefit obligations was determined to be 3.01 percent and 3.11 percent, respectively, compared to the weighted average discount rate used of 2.72 percent and 2.80 percent, respectively, at December 31, 2020. The discount rate reflects the current rate at which we estimate the pension and Other Benefits liabilities could be effectively settled at the measurement date.

U. S. Steel reviews its actual historical rate experience and expectations of future health care cost trends to determine the escalation of per capita health care costs under U. S. Steel's benefit plans. Approximately three quarters of our costs for the domestic United Steelworkers (USW) participants' retiree health benefits in the Company's main domestic benefit plan are limited to a per capita dollar maximum calculation based on 2006 base year actual costs incurred under the main U. S. Steel benefit plan for USW participants (cost cap). The full effect of the cost cap is expected to be realized around 2028. After 2028, the Company's costs for a majority of USW retirees and their dependents are expected to remain fixed and as a result, the cost impact of health care escalation for the Company is projected to be limited for this group (See Note 18 to the Consolidated Financial Statements). For measurement of its domestic retiree medical plans where health care cost escalation is applicable, U. S. Steel has assumed an initial escalation rate of 5.75 percent for 2022. This rate is assumed to decrease gradually to an ultimate rate of 4.50 percent in 2029 and remain at that level thereafter.

Net periodic pension benefit cost (credit), including multiemployer plans, is expected to total approximately \$(7) million in 2022 compared to \$199 million in 2021. Excluding settlement and special termination losses totaling \$135 million in 2021, the decrease in net periodic pension benefit cost to credit in 2022 is primarily due to 2021 decreases in amortized losses and service costs. Net periodic other benefit (credit) in 2022 is expected to be approximately \$(114) million, compared to \$(53) million in 2021. The expected improvement in the 2022 net periodic other benefit (credit) is primarily due to increases in amortized gains and expected return on assets.

The table below projects the incremental effect of a hypothetical one percentage point change in significant assumptions used in determining the funded status and net periodic benefit cost for pension and other benefits:

(In millions)	Hypothetical Rate Change Increase (Decrease)	
	1%	(1)%
<b>Expected return on plan assets</b>		
Incremental (decrease) increase in:		
Net periodic pension and other benefits costs for 2022	\$ (72)	\$ 72
<b>Discount rate</b>		
Incremental (decrease) increase in:		
Net periodic pension and other benefits costs for 2022	\$ (29)	\$ 13
Pension & other benefits obligations at December 31, 2021	\$ (622)	\$ 744

Changes in the assumptions for expected annual return on plan assets and the discount rate used for accounting purposes do not impact the funding calculations used to derive minimum funding requirements for the pension plan. However, the discount rate required for minimum funding purposes is also based on corporate bond related indices and as such, the same general sensitivity concepts as above can be applied to increases or decreases to the funding obligations of the plans assuming the same hypothetical rate changes. (See Note 18 to the Consolidated Financial Statements for a discussion regarding legislation enacted in March of 2021 that impacts the discount rate used for funding purposes.) For further cash flow discussion see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, Liquidity and Capital Resources."

**Long-lived assets** – U. S. Steel evaluates long-lived assets, primarily property, plant and equipment for impairment whenever changes in circumstances indicate that the carrying amounts of those productive assets exceed their recoverable amount as determined by the asset group's projected undiscounted cash flows. We evaluate the impairment of long-lived assets at the asset group level. Our primary asset groups are Flat-Rolled, Mini Mill, U. S. Steel Europe (USSE), welded tubular, and seamless tubular.

In December of 2021, U. S. Steel decided to permanently idle the steelmaking assets at Great Lakes Works, which had been indefinitely idled since 2020, resulting in an impairment of \$128 million for property, plant and equipment. The ironmaking process and the related assets at Great Lakes Works remain indefinitely idled.

For the period ended March 31, 2020, the steep decline in oil prices that resulted from market oversupply and declining demand was considered a triggering event for the welded tubular and seamless tubular asset groups. A quantitative analysis was completed for both asset groups and a \$263 million impairment, consisting of an impairment of \$196 million for property, plant and equipment and \$67 million for intangible assets was recorded for the welded tubular asset group while no impairment was indicated for the seamless tubular asset group. There were no other triggering events that required an impairment evaluation of our long-lived asset groups during the year-ended December 31, 2020.

**Taxes** - U. S. Steel records a valuation allowance to reduce deferred tax assets to the amount that is more likely than not to be realized. A valuation allowance is recorded if, based on the weight of all available positive and negative evidence, it is more likely than not that some portion, or all, of a deferred tax asset will not be realized. Each quarter U. S. Steel analyzes the likelihood that our deferred tax assets will be realized.

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. During the year ended December 31, 2021, we realized a non-cash net benefit of \$715 million related to the valuation allowance release, which was partially offset by the addition of a valuation allowance of \$82 million, the majority of which relates to an unused capital loss generated in the fourth quarter of 2021. In the future, if we determine that it is more likely than not that we will be able to realize all or a portion of our deferred tax assets, the valuation allowance will be reduced, and we will record a non-cash net benefit to earnings.

At December 31, 2020, after weighing all the positive and negative evidence available to the Company, U. S. Steel determined that it was still more likely than not that the net domestic deferred tax asset (excluding a portion of a deferred tax liability with an indefinite life) may not be realized. As a result, U. S. Steel recorded a \$229 million non-cash charge to tax expense.

At the end of both 2021 and 2020, U. S. Steel did not have any undistributed foreign earnings and profits for which U.S. deferred taxes have not been provided.

For further information on income taxes see Note 11 to the Consolidated Financial Statements.

**Environmental remediation** – U. S. Steel has been identified as a potentially responsible party (PRP) at four sites under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as of December 31, 2021. Of these, there are three sites where information requests have been received or there are other indications that U. S. Steel may

be a PRP under CERCLA, but where sufficient information is not presently available to confirm the existence of liability or to make a reasonable estimate with respect to any potential liabilities. There are also nine additional sites where U. S. Steel may be liable for remediation costs in excess of \$1 million 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. At many of these sites, U. S. Steel is one of a number of parties involved and the total cost of remediation, as well as U. S. Steel's share, is frequently dependent upon the outcome of ongoing investigations and remedial studies. U. S. Steel accrues for environmental remediation activities when the responsibility to remediate is probable and the amount of associated costs is reasonably determinable. As environmental remediation matters proceed toward ultimate resolution or as remediation obligations arise, charges in excess of those previously accrued may be required.

U. S. Steel's accrual for environmental liabilities for U.S. and international facilities as of December 31, 2021 and 2020 was \$158 million and \$146 million, respectively. These amounts exclude liabilities related to asset retirement obligations, disclosed in Note 19 to the Consolidated Financial Statements.

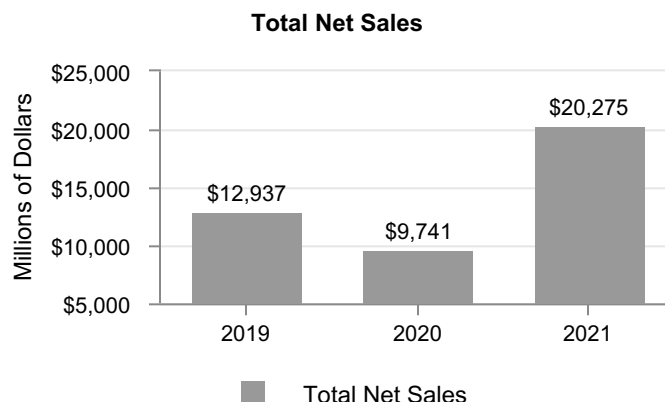
U. S. Steel is the subject of, or a party to, a number of pending or threatened legal actions, contingencies and commitments involving a variety of matters, including laws and regulations relating to the environment. The ultimate resolution of these contingencies could, individually or in the aggregate, be material to the Consolidated Financial Statements.

For discussion of relevant environmental items, see "Part I. Item 3. Legal Proceedings—Environmental Proceedings."

## Segments

U. S. Steel has four reportable segments: North American Flat-Rolled (Flat-Rolled), Mini Mill, U. S. Steel Europe (USSE) and Tubular Products (Tubular). For further description of segment operations and information see Item 1 Segments and Note 4 to the Consolidated Financial Statements, respectively.

## Net Sales



## Net Sales by Segment

Net sales by segment for the years ended December 31, 2021 and 2020 are set forth in the following table:

(Dollars in millions, excluding intersegment sales)	Years Ended December 31,		% Change
	2021	2020	
Flat-Rolled Products (Flat-Rolled)	\$ 12,180	\$ 7,071	72 %
Mini Mill <sup>(a)</sup>	3,008	—	n/a
U. S. Steel Europe (USSE)	4,262	1,967	117 %
Tubular Products (Tubular)	789	639	23 %
Total sales from reportable segments	\$ 20,239	\$ 9,677	109 %
Other	36	64	(44)%
Net sales	\$ 20,275	\$ 9,741	108 %

<sup>(a)</sup> 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 is set forth in the following table:

Year Ended December 31, 2021 versus Year Ended December 31, 2020						
Steel Products <sup>(a)</sup>						
	Volume	Price	Mix	FX <sup>(b)</sup>	Other <sup>(c)</sup>	Net Change
Flat-Rolled	3 %	58 %	1 %	— %	10 %	72 %
Mini Mill	n/a	n/a	n/a	n/a	n/a	n/a
USSE	40 %	75 %	(4)%	6 %	— %	117 %
Tubular	(4)%	24 %	4 %	— %	(1)%	23 %

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

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

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

Net sales for the twelve months ended December 31, 2021 compared to the same period in 2020 were \$20,275 million and \$9,741 million, respectively.

- For the Flat-Rolled segment the increase in sales primarily resulted from higher average realized prices (\$454 per ton) across all products and increased shipments (307 thousand tons) primarily for cold-rolled products.
- For the USSE segment the increase in sales primarily resulted from higher average realized prices (\$340 per net ton) and increased shipments (1,261 thousand tons) across most products.
- For the Tubular segment the increase in sales primarily resulted from higher average realized prices (\$425 per net ton) for seamless products.

## Operating Expenses

### Union profit-sharing costs

(Dollars in millions)	Year Ended December 31,	
	2021	2020
Allocated to segment results	\$ 430	\$ —

Profit-based amounts are calculated and paid on a quarterly basis as a percentage of consolidated earnings (loss) before interest and income taxes based on 7.5 percent of profit between \$10 and \$50 per ton and 15 percent of profit above \$50 per ton.

The amounts above represent profit-sharing amounts paid to active USW-represented employees and are included in cost of sales on the Consolidated Statement of Operations.

### Net periodic pension and other benefits costs

Pension and other benefit costs (other than service cost) are reflected within net interest and other financial costs and the service cost component is reflected within cost of sales in the Consolidated Statements of Operations.

Defined benefit and multiemployer pension plan costs included in cost of sales totaled \$128 million in 2021 and \$127 million in 2020.

Other benefit service cost included in cost of sales totaled \$11 million in 2021 and \$12 million in 2020.

Costs related to defined contribution plans totaled \$45 million in 2021 and \$22 million in 2020. The increase in 2021 from the prior year primarily resulted from the suspension of the Company's contributions for salaried defined contribution plans for a portion of 2020.

### Selling, general and administrative expenses

Selling, general and administrative expenses were \$426 million in 2021 and \$277 million in 2020. The increase in 2021 from the prior year primarily resulted from the addition of Big River Steel with the purchase of its remaining equity interest and increased profit based payments.

### Operating configuration adjustments

The Company also adjusted its operating configuration in response to 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 providing Best for All profitable steel solutions for all stakeholders.

#### Idled Operations

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. In December 2021, the Company permanently idled the steelmaking operations at Great Lakes Works, resulting in a non-cash impairment of \$128 million. The carrying value of the remaining Great Lakes Works indefinitely idled facilities was approximately \$160 million as of December 31, 2021.

In 2020, we took actions to adjust our footprint by idling certain operations 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 December 31, 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 December 31, 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.

#### ***Depreciation, depletion and amortization***

Depreciation, depletion and amortization expenses were \$791 million in 2021 and \$643 million in 2020. The increase in 2021 from the prior year is primarily due to the acquisition of Big River Steel.

#### ***Earnings from investees***

Earnings from investees was \$170 million in 2021 versus loss from investees of \$117 million in 2020. The increase in 2021 from the prior year is primarily due to current year earnings from our PRO-TEC joint venture and prior year losses from our investment in Big River Steel.

#### ***Restructuring and Other Charges***

During 2021, the Company recorded restructuring and other charges of \$128 million, which consists of charges of \$29 million for Great Lakes Works, charges of approximately \$89 million related to the planned sale of a component within the Flat-Rolled segment and \$10 million for environmental related charges at other facilities.

Charges for restructuring and ongoing cost reduction initiatives are recorded in the period U. S. Steel commits to a restructuring or cost reduction plan, or executes specific actions contemplated by the plan and all criteria for liability recognition have been met. Charges related to restructuring and cost reductions are reported in restructuring and other charges in the Consolidated Statements of Operations.

<b>Earnings (loss) before interest and income taxes by segment <sup>(a)</sup></b> (Dollars in Millions)	<b>Year Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Flat-Rolled	\$ 2,630	\$ (596)
Mini Mill <sup>(a)</sup>	1,206	—
USSE	975	9
Tubular	1	(179)
Total earnings (loss) from reportable segments	4,812	(766)
Other	\$ (11)	(39)
Segment earnings (loss) before interest and income taxes	4,801	(805)
Other items not allocated to segments:		
Restructuring and other charges <sup>(b)</sup>	(128)	(138)
Asset impairment charges <sup>(c)</sup>	(273)	(287)
Big River Steel - acquisition-related items	(35)	(3)
Losses (gains) on assets sold & previously held investments	118	170
Gain on sale of Transtar <sup>(d)</sup>	506	—
Environmental remediation charge	(43)	—
Other items	—	(12)
Total earnings (loss) before interest and income taxes	\$ 4,946	\$ (1,075)

<sup>(a)</sup> See Note 4 to the Consolidated Financial Statements for reconciliations and other disclosures required by ASC Topic 280, *Segment Reporting*.

<sup>(b)</sup> Included in restructuring and other charges on the Consolidated Statements of Operations. See Note 25 to the Consolidated Financial Statements for further details.

<sup>(c)</sup> See Note 1 to the Consolidated Financial Statements for further details.

<sup>(d)</sup> See Note 5 to the Consolidated Financial Statements for further details.

<b>Gross Margin by Segment</b>	<b>Year Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Flat-Rolled	27 %	1 %
Mini Mill	47 %	— %
USSE	26 %	7 %
Tubular	7 %	(20)%

### Segment results for Flat-Rolled

	<b>Year ended December 31,</b>		<b>% Change</b>
	<b>2021</b>	<b>2020</b>	
Earnings (loss) before interest and taxes (\$ millions)	\$ 2,630	\$ (596)	nm
Gross margin	27 %	1 %	26 %
Raw steel production (mnt)	9,881	9,313	6 %
Capability utilization	58 %	55 %	3 %
Steel shipments (mnt)	9,018	8,711	4 %
Average realized steel price per ton	\$ 1,172	\$ 718	63 %

The Flat-Rolled segment had earnings of \$2,630 million for the year ended December 31, 2021 compared to a loss of \$596 million for the year ended December 31, 2020. Despite low priced imports Flat-Rolled results for 2021 compared to 2020 increased primarily due to:

- increased average realized prices (approximately \$4,025 million)
- increased shipments (approximately \$20 million)
- increased mining sales (approximately \$265 million)
- increased coke sales (approximately \$75 million),

this change was partially offset by:

- higher raw material costs (approximately \$240 million)
- increased operating costs (approximately \$55 million)
- higher energy costs (approximately \$85 million)
- increased substrate purchases (approximately \$80 million)
- higher other costs, primarily variable compensation (approximately \$700 million).

Gross margin for 2021 as compared to 2020 increased primarily as a result of higher average realized prices.

### Segment results for Mini Mill <sup>(a)</sup>

	Year ended December 31,		% Change
	2021	2020	
Earnings (loss) before interest and taxes (\$ millions)	\$ 1,206	\$ —	n/a
Gross margin	47 %	— %	n/a
Raw steel production (mnt)	2,688	—	n/a
Capability utilization	81 %	— %	n/a
Steel shipments (mnt)	2,230	—	n/a
Average realized steel price per ton	\$ 1,314	\$ —	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

	Year ended December 31,		% Change
	2021	2020	
Earnings before interest and taxes (\$ millions)	\$ 975	\$ 9	nm
Gross margin	26 %	7 %	19 %
Raw steel production (mnt)	4,931	3,366	46 %
Capability utilization	99 %	67 %	32 %
Steel shipments (mnt)	4,302	3,041	41 %
Average realized steel price per ton	\$ 966	\$ 626	54 %

The USSE segment had earnings of \$975 million for the year ended December 31, 2021 compared to earnings of \$9 million for the year ended December 31, 2020. The increase in USSE results in 2021 compared to 2020 was primarily due to:

- increased average realized prices (approximately \$1,440 million)
- increased shipments, including volume efficiencies (approximately \$160 million)
- strengthening of the Euro versus the U.S. dollar (approximately \$50 million),

these changes were partially offset by:

- higher raw material costs (approximately \$575 million)
- increased operating costs (approximately \$40 million)
- higher energy costs (approximately \$45 million)
- higher other costs, primarily variable compensation accruals (approximately \$25 million).

Gross margin for 2021 as compared to 2020 increased primarily as a result of higher average realized prices and sales volume.

### Segment results for Tubular

	Year ended December 31,		% Change
	2021	2020	
Earnings (loss) before interest and taxes (\$ millions)	\$ 1	\$ (179)	nm
Gross margin	7 %	(20)%	27 %
Raw steel production (mnt)	464	16	2,800 %
Capability utilization	52 %	7 %	45 %
Steel shipments (mnt)	444	464	(4)%
Average realized steel price per ton	\$ 1,696	\$ 1,271	33 %

The Tubular segment had earnings of \$1 million for the year ended December 31, 2021 compared to a loss of \$179 million for the year ended December 31, 2020. Despite low price imports Tubular results in 2021 as compared to 2020 increased primarily due to:

- increased average realized prices (approximately \$180 million)
- lower operating costs, including operating efficiencies (approximately \$35 million)
- lower other costs, primarily idled plant carrying costs, (approximately \$30 million),

these changes were partially offset by:

- higher raw material costs (approximately \$30 million)
- higher energy costs (approximately \$25 million)
- increased operating costs (approximately \$10 million)

Gross margin for 2021 as compared to 2020 increased primarily as a result of significantly higher average realized prices and positive cost improvements from the new EAF and plant idlings.

### **Results for Other**

The Other category had a loss of \$11 million for the year ended December 31, 2021 compared to loss of \$39 million for the year ended December 31, 2020.

### **Net Interest and Other Financial Costs**

(Dollars in millions)	Year Ended December 31,	
	2021	2020
Interest expense	313	280
Interest income	(4)	(7)
Loss on debt extinguishment	292	—
Other financial costs (benefits)	46	(16)
Net periodic benefit income	(45)	(25)
Net interest and other financial costs	\$ 602	\$ 232

Net interest and other financial costs increased in 2021 compared to 2020 primarily from the loss on debt extinguishment from our significant reduction of debt and from the increase in other financial costs as a result of the elimination in the current year of the favorable impacts from Big River Steel (BRS) put and call option mark-to-market impacts that appeared in the prior year. The exercise of the U. S. Steel Call Option on December 8, 2020 legally extinguished the Big River Steel put and call options. For additional information on U. S. Steel indebtedness see Note 17 to the Consolidated Financial Statements

For additional information on U. S. Steel's foreign currency exchange activity see Note 16 to the Consolidated Financial Statements and Item 7A. "Quantitative and Qualitative Disclosures about Market Risk – Foreign Currency Exchange Rate Risk."

### **Income Tax**

The income tax expense for the year ended December 31, 2021 was \$170 million compared to an income tax benefit of \$142 million in 2020.

At June 30, 2021, U. S. Steel determined, based upon weighing all positive and negative evidence available to the Company, 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. 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.

As of December 31, 2021, the valuation allowance release resulted in a \$715 million non-cash net benefit, which was partially offset by the addition of a valuation allowance of \$82 million, the majority of which relates to an unused capital loss generated in the fourth quarter of 2021.

The tax benefit for 2020 includes a \$138 million benefit related to recording a loss from continuing operations and income from other comprehensive income categories.

For further information on income taxes see Note 11 to the Consolidated Financial Statements.

### **Net earnings/(loss) attributable to U. S. Steel**

Net earnings attributable to U. S. Steel in 2021 was \$4,174 million compared to net loss of \$1,165 million in 2020. The changes primarily reflected the factors discussed above.

### **Liquidity and Capital Resources**

#### **Cash Flows and Capital Requirements**

#### **Net Cash Provided by Operating Activities**

Net cash provided by operating activities was \$4,090 million in 2021 compared to \$138 million in 2020. The increase in 2021 compared to 2020 was primarily due to stronger financial results, partially offset by changes in working capital. Changes in working capital can vary significantly depending on factors such as the timing of inventory production and purchases, which is affected by the length of our business cycles as well as our captive raw materials position, customer payments of accounts receivable and payments to vendors in the regular course of business.

Our cash conversion cycle improved by 1 day in the fourth quarter of 2021 from the fourth quarter of 2020 as shown below:

Cash Conversion Cycle	2021		2020	
	\$ millions	Days	\$ millions	Days
Accounts receivable, net <sup>(a)</sup>	\$ 2,089	37	\$ 994	38
+ Inventories <sup>(b)</sup>	\$ 2,210	51	\$ 1,402	54
- Accounts Payable and Other Accrued Liabilities <sup>(c)</sup>	\$ 2,684	65	\$ 1,861	68
= Cash Conversion Cycle <sup>(d)</sup>		23		24

<sup>(a)</sup> Calculated as Average Accounts Receivable, net divided by total Net Sales multiplied by the number of days in the period.

<sup>(b)</sup> Calculated as Average Inventory divided by total Cost of Sales multiplied by the number of days in the period.

<sup>(c)</sup> 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.

<sup>(d)</sup> Calculated as Accounts Receivable Days plus Inventory Days less Accounts Payable Days.

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

The last-in, first-out (LIFO) inventory method is the predominant method of inventory costing for our Flat-Rolled and Tubular segments. The first-in, first-out (FIFO) and moving average methods are the predominant inventory costing methods for our Mini Mill segment and the FIFO method is the predominant inventory costing method for our USSE segment. In the U.S., management monitors the inventory realizability by comparing the LIFO cost of inventory with the replacement cost of inventory. To the extent the replacement cost (i.e., market value) of inventory is lower than the LIFO cost of inventory, management will write the inventory down. As of December 31, 2021 and 2020, the replacement cost of the inventory was higher by approximately \$896 million and \$848 million, respectively.

Net cash provided by operating activities for 2021 and 2020 reflects employee benefits payments as shown in the following table.

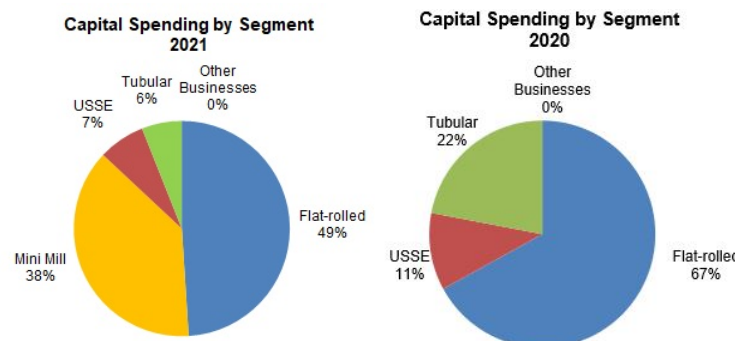
Benefits Payments for Employees (Dollars in millions)	Year Ended December 31,	
	2021	2020
Other employee benefits payments not funded by trusts	\$ 46	\$ 46
Payments to a multiemployer pension plan	75	76
Pension related payments not funded by trusts	11	7
Reductions in cash flows from operating activities	\$ 132	\$ 129

### Net Cash Used in Investing Activities

Net cash used in investing activities was \$840 million in 2021 compared to \$563 million in 2020. The increase in 2021 compared to 2020 was primarily due to increased capital expenditures and the acquisition of Big River Steel partially offset by proceeds from the sale of Transtar.

Capital expenditures in 2021 were \$863 million compared to \$725 million in 2020.





Total capital expenditures for 2021 were \$863 million. Flat-Rolled capital expenditures were \$422 million and included spending for Endless Casting and Rolling, Gary Hot Strip Mill upgrades, mining equipment, and various other infrastructure, environmental and strategic projects. Mini Mill capital expenditures were \$331 million and primarily included spending for Phase II expansion. Mini Mill segment capital expenditures include \$144 million of capital expenditures for a new mill under construction in Osceola, Arkansas. USSE capital expenditures of \$57 million consisted of spending for BF Stove, Degasser improvements, Dynamo line and various other infrastructure and environmental projects. Tubular capital expenditures were \$51 million and included spending for the Fairfield Electric Arc Furnace (EAF) project, and various other infrastructure and environmental projects.

### Net Cash used in Financing Activities

Net cash used in financing activities was \$2,747 million for the twelve months ended December 31, 2021 compared to net cash provided by financing activities of \$1,581 million for the same period in 2020. The net cash used in financing activities for the twelve months ended December 31, 2021 was primarily due to the repayment of debt and common stock repurchases, partially offset by the issuance of common stock.

### Debt Financing

In 2021, U. S. Steel made payments of debt and redemption premiums of approximately \$3.4 billion. The following is a summary of debt repayments for our Senior Secured Notes, Senior Notes and other debt obligations made during the twelve months ended December 31, 2021:

Debt Instrument (in Millions)	Date	Twelve Months Ended December 31, 2021	
		Debt Extinguished	
Arkansas Teacher Retirement System Notes Payable	Fourth quarter 2021	\$	106
Environmental Revenue Bonds (U. S. Steel)	Fourth quarter 2021		70
Finance leases and all other obligations <sup>(e)</sup>	Fourth quarter 2021		46
6.250% Senior Notes due 2026 <sup>(d)</sup>	Fourth quarter 2021		230
6.250% Senior Notes due 2026 <sup>(a)</sup>	Third quarter 2021		370
6.875% Senior Notes due 2025 <sup>(a)</sup>	Third quarter 2021		718
6.625% 2029 Senior Secured Notes <sup>(a)</sup>	Third quarter 2021		180
6.250% Senior Notes due 2026	Second quarter 2021		18
6.875% Senior Notes due 2025	Second quarter 2021		14
12.000% 2025 Senior Secured Notes <sup>(b)</sup>	First quarter 2021		1,056
6.875% Senior Notes due 2025	First quarter 2021		18
6.250% Senior Notes due 2026	First quarter 2021		32
Environmental Revenue Bonds (U. S. Steel)	First quarter 2021		89
Export-Import Credit Agreement <sup>(c)</sup>	First quarter 2021		180
<b>Total</b>		<b>\$</b>	<b>3,127</b>

<sup>(a)</sup> During the three months ended September 30, 2021, there were redemption premiums paid of \$28 million and a net gain of \$5 million for the write-off of unamortized acquisition-related fair value adjustment, discounts, and debt issuance costs as a result of these debt repayments.

<sup>(b)</sup> There were redemption premiums and unamortized discount and debt issuance write-offs of approximately \$181 million and \$71 million, respectively related to the repayment.

<sup>(c)</sup> Export-Import Credit Agreement was terminated in the first quarter of 2021. There were approximately \$3 million in non-cash debt extinguishment costs associated with the repayment.

<sup>(d)</sup> There were redemption premiums and unamortized discount and debt issuance write-offs of approximately \$7 million and \$2 million, respectively, related to the repayment.

<sup>(e)</sup> Includes BRS Mortgage, Fairfield Caster Lease, and BRS Stonebriar Financing; extinguishment costs associated with this debt was immaterial.

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 assumed additional indebtedness in connection with the acquisition of Big River Steel on January 15, 2021. Most of Big River Steel's prior financing arrangements were secured transactions, with many of the assets of BRS Intermediate Holdings LLC, Big River Steel LLC and BRS Finance Corp. used as collateral. Until we repay the debt owed under these debt arrangements, including the 2029 Senior Secured Notes with \$720 million outstanding as of December 31, 2021, we will remain subject to the restrictive terms of these borrowings. See Note 17 to the Consolidated Financial Statements for further details.

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 \$216 million of liquidity sources for financial assurance purposes as of December 31, 2021. Increases in certain of these commitments which use collateral are reflected within cash, cash equivalents and restricted cash on the Consolidated Statement of Cash Flows.

The maximum guarantees of the indebtedness of unconsolidated entities of U. S. Steel totaled \$7 million at December 31, 2021. If any default related to the guaranteed indebtedness occurs, U. S. Steel has access to its interest in the assets of the investees to reduce its potential losses under the guarantees.

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 17 to the Consolidated Financial Statements for further details regarding U. S. Steel's debt.

#### Share Repurchases

On October 25, 2021, the Board of Directors authorized stock repurchase programs under which up to \$300 million of the Company's outstanding common stock may be acquired at the discretion of management. In January 2022, the Board of Directors expanded the repurchase authorization by \$500 million. During 2021, U. S. Steel repurchased \$150 million of common stock under the stock repurchase program. Approximately \$53 million of common stock was repurchased in January 2022. See Note 27 to the Consolidated Financial Statements, "Common Stock Issued and Repurchased" for further details.

#### Issuances of Stock

In February 2021, U. S. Steel issued 48.3 million shares of common stock for net proceeds of approximately \$790 million.

#### *Capital Requirements*

Our major cash requirements in 2022 are expected to be for capital expenditures, including strategic priorities, employee benefits and operating costs, which includes purchases of raw materials. We ended 2021 with \$2,522 million of cash and cash equivalents and \$4,971 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.

Capital expenditures for 2022 are expected to total approximately \$2.3 billion which are focused largely on strategic projects, as well as continued reinvestment in our equipment to improve our operating reliability and efficiency, and product quality and cost by focusing on investments in our Flat-Rolled and Mini Mill segments.

U. S. Steel's contractual commitments to acquire property, plant and equipment at December 31, 2021, totaled \$1,483 million.

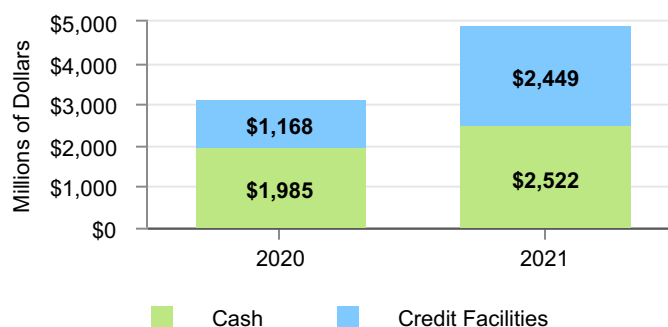
#### ***Liquidity***

The following table summarizes U. S. Steel's liquidity as of December 31, 2021:

(Dollars in millions)

Cash and cash equivalents	\$	2,522
Amount available under Credit Facility Agreement		1,746
Amount available under Big River Steel - Revolving Line of Credit		350
Amounts available under USSK Credit Agreement and USSK Credit Facility		353
<b>Total estimated liquidity</b>	<b>\$</b>	<b>4,971</b>

**Total Estimated Liquidity at December 31, 2021**



As of December 31, 2021, \$330 million of the total cash and cash equivalents was held by our 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.

We expect that our estimated liquidity requirements will consist primarily of our 2022 planned strategic and sustaining capital expenditures, working capital requirements, interest expense, and operating costs and employee benefits for our operations after taking into account the footprint actions and cost reductions at our plants and headquarters. Our available liquidity at December 31, 2021 consists principally of our cash and cash equivalents and available borrowings under the Credit Facility Agreement, Big River Steel ABL Facility, USSK Credit Agreement and the USSK Credit Facility. Management continues to evaluate market conditions in our industry and our global liquidity position, and may consider additional actions to further strengthen our balance sheet and optimize liquidity, including but not limited to the repayment or refinancing of outstanding debt and the incurrence of additional debt to opportunistically finance strategic projects. The company may also return excess liquidity to shareholders through share repurchases and dividends from time to time if deemed appropriate by management.

U. S. Steel management believes that U. S. Steel's liquidity will be adequate to satisfy our obligations for the foreseeable future, including obligations to complete currently authorized capital spending programs. Future requirements for U. S. Steel's business needs, including the funding of acquisitions and capital expenditures, scheduled debt maturities, repurchase of debt, share buybacks, dividends, contributions to employee benefit plans, and any amounts that may ultimately be paid in connection with contingencies, are expected to be funded by a combination of internally generated funds (including asset sales), proceeds from the sale of stock, borrowings, refinancings and other external financing sources. The following table summarizes the Company's contractual obligations at December 31, 2021, and the effect such obligations are expected to have on our liquidity and cash flows in future periods.

(Dollars in millions)

Contractual Obligations	Total	2022	Payments Due by Period		
			2023 through 2024	2025 through 2026	Beyond 2026
Debt (including interest) and finance leases <sup>(a)</sup>	\$ 6,832	\$ 264	\$ 592	\$ 849	\$ 5,127
Operating leases <sup>(b)</sup>	223	68	86	47	22
Contractual purchase commitments <sup>(c)</sup>	8,073	5,887	903	579	704
Capital commitments <sup>(d)</sup>	1,483	1,118	365	—	—
Environmental commitments <sup>(d)</sup>	158	65	—	—	93
Steelworkers Pension Trust <sup>(e)</sup>	380	74	151	155	—
Employee related benefits <sup>(f)</sup>	211	44	85	82	—
<b>Total contractual obligations</b>	<b>\$ 17,360</b>	<b>\$ 7,520</b>	<b>\$ 2,182</b>	<b>\$ 1,712</b>	<b>\$ 5,946</b>

- (a) See Note 17 to the Consolidated Financial Statements.  
 (b) See Note 24 to the Consolidated Financial Statements.  
 (c) Reflects estimated contractual purchase commitments under purchase orders and “take or pay” arrangements. “Take or pay” arrangements are primarily for purchases of gases and certain energy and utility services.  
 (d) See Note 26 to the Consolidated Financial Statements.  
 (e) While it is difficult to make a prediction of cash requirements beyond the term of the 2018 Labor Agreements with the USW, which expire on September 1, 2022, projected amounts shown through 2025 assume the contribution rate per hour included in the 2018 Labor Agreements.  
 (f) The amounts reflect corporate cash outlays for expected benefit payments to be paid by the Company. (See Note 18 to the Consolidated Financial Statements.) The accuracy of this forecast of future cash flows depends on future medical health care escalation rates and restrictions related to our trusts for retiree healthcare and life insurance (VEBA) that impact the timing of the use of trust assets. Projected amounts have been reduced to reflect withdrawals from the USW VEBA trust available under its agreements with the USW. Due to these factors, it is not possible to reliably estimate cash requirements beyond five years and actual amounts experienced may differ significantly from those shown.

## Other Commercial Commitments

The following table summarizes U. S. Steel's commercial commitments at December 31, 2021, and the effect such commitments could have on our liquidity and cash flows in future periods.

(Dollars in millions)

Commercial Commitments	Total	Scheduled Reductions by Period			
		2022	2023 through 2024	2025 through 2026	Beyond 2026
Standby letters of credit <sup>(a)</sup>	\$ 58	\$ 40	\$ 5	\$ —	\$ 13 <sup>(b)</sup>
Surety bonds <sup>(a)</sup>	103	—	—	—	103 <sup>(b)</sup>
Funded Trusts <sup>(a)</sup>	55	—	—	—	55 <sup>(b)</sup>
<b>Total commercial commitments</b>	<b>\$ 216</b>	<b>\$ 40</b>	<b>\$ 5</b>	<b>\$ —</b>	<b>\$ 171</b>

(a) Reflects a commitment or guarantee for which future cash outflow is not considered likely.

(b) Timing of potential cash outflows is not determinable.

## Off-Balance Sheet Arrangements

U. S. Steel has invested in several joint ventures that are reported as equity investments. Several of these investments involved a transfer of assets in exchange for an equity interest. U. S. Steel has supply arrangements with several of these joint ventures.

U. S. Steel's other off-balance sheet arrangements include guarantees, indemnifications, unconditional purchase obligations, surety bonds, trusts and letters of credit disclosed in Note 26 to the Consolidated Financial Statements.

## Derivative Instruments

See “Item 7A. Quantitative and Qualitative Disclosures About Market Risk” for discussion of derivative instruments and associated market risk for U. S. Steel.

## Environmental Matters

U. S. Steel's environmental expenditures were as follows:

(Dollars in millions)

	2021	2020	2019
North America:			
Capital	\$ 27	\$ 36	\$ 96
Compliance			
Operating & maintenance	201	188	213
Remediation <sup>(a)</sup>	57	37	22
Total North America	\$ 285	\$ 261	\$ 331
USSE:			
Capital	\$ —	\$ 6	\$ 27
Compliance			
Operating & maintenance	10	6	10
Remediation <sup>(a)</sup>	7	5	8
Total USSE	\$ 17	\$ 17	\$ 45
Total U. S. Steel	\$ 302	\$ 278	\$ 376

<sup>(a)</sup> These amounts include spending charged against remediation reserves, net of recoveries where permissible, but do not include non-cash provisions recorded for environmental remediation.

U. S. Steel's environmental capital expenditures accounted for 3 percent of total capital expenditures in 2021 and 6 percent in 2020 and 10 percent in 2019.

Environmental compliance expenditures represented 2 percent of U. S. Steel's total costs and expenses in 2021, 2020 and 2019. Remediation spending during 2019 through 2021 was mainly related to remediation activities at former and present operating locations.

For discussion of other relevant environmental items see "Part I, Item 3. Legal Proceedings – Environmental Proceedings."

The following table shows activity with respect to environmental remediation liabilities for the years ended December 31, 2021 and December 31, 2020. These amounts exclude liabilities related to asset retirement obligations accounted for in accordance with ASC Topic 410. See Note 19 to the Consolidated Financial Statements.

(Dollars in millions)	2021	2020
Beginning Balance	\$ 146	\$ 186
Plus: Additions	43	7
Less: Obligations settled	(31)	(47)
Ending Balance	\$ 158	\$ 146

New or expanded environmental requirements, which could increase U. S. Steel's environmental costs, may arise in the future. U. S. Steel intends to comply with all legal requirements regarding the environment, but since many of them are not fixed or presently determinable (even under existing legislation) and may be affected by future legislation, it is not possible to predict accurately the ultimate cost of compliance, including remediation costs which may be incurred and penalties which may be imposed. U. S. Steel's environmental capital expenditures are expected to be approximately \$65 million in 2022, \$4 million of which is related to projects at USSE. U. S. Steel's environmental expenditures for 2022 for operating and maintenance and for remediation projects are expected to be approximately \$202 million and \$74 million, respectively, of which approximately \$12 million and \$9 million for operating and maintenance and remediation, respectively, is related to USSE. Although, the outcome of pending environmental matters are not estimable at this time, it is reasonably possible that U. S. Steel's environmental capital and operating and maintenance expenditures could materially increase as a result of the future resolution of these matters. Predictions of future environmental expenditures beyond 2022 can only be broad-based estimates, which have varied, and will continue to vary, due to the ongoing evolution of specific regulatory requirements, the possible imposition of more stringent requirements and the availability of new technologies to remediate sites, among other factors.

## Accounting Standards

See Notes 2 and 3 to the Consolidated Financial Statements in Part II Item 8 of this Form 10-K.

## Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

U. S. Steel is exposed to certain risks related to its ongoing business operations, including financial, market, political, and economic risks. The following discussion provides information regarding U. S. Steel's exposure to the risks of changing foreign currency exchange rates, commodity prices and interest rates.



U. S. Steel may enter into derivative financial instrument transactions in order to manage or reduce these market risks. The use of derivative instruments is subject to our corporate governance policies. These instruments are used solely to mitigate market exposure and are not used for trading or speculative purposes.

U. S. Steel may elect to use hedge accounting for certain commodity or currency transactions. For those transactions, the impact of the hedging instrument will be recognized in other comprehensive income until the transaction is settled. Once the transaction is settled, the effect of the hedged item will be recognized in income. For further information regarding derivative instruments see Notes 1 and 16 to the Consolidated Financial Statements.

### **Foreign Currency Exchange Rate Risk**

U. S. Steel is subject to the risk of price fluctuations due to the effects of exchange rates on revenues and operating costs, firm commitments for capital expenditures and existing assets or liabilities denominated in currencies other than the U.S. dollar, particularly the euro. U. S. Steel historically has made limited use of forward currency contracts to manage exposure to certain currency price fluctuations. U. S. Steel elected cash flow hedge accounting for euro foreign exchange forwards prospectively effective July 1, 2019. Foreign currency derivative instruments entered into prior to July 1, 2019, were marked-to-market and the resulting gains or losses recognized in the current period in net interest and other financial costs until those contracts matured in July 2020. U. S. Steel had no material open euro forward sales contracts for U.S. dollars that were subject to mark-to-market accounting as of December 31, 2021.

The fair value of our derivatives is determined using Level 2 inputs, which are defined as “significant other observable” inputs. The inputs used include quotes from counterparties that are corroborated with market sources.

Volatility in the foreign currency markets could have significant implications for U. S. Steel as a result of foreign currency transaction effects. Future foreign currency impacts will depend upon changes in currencies and the extent to which we engage in derivatives transactions. For additional information on U. S. Steel's foreign currency exchange activity, see Note 16 to the Consolidated Financial Statements.

### **Commodity Price Risk and Related Risks**

In the normal course of our business, U. S. Steel is exposed to market risk or price fluctuations related to the purchase, production or sale of steel products. U. S. Steel is also exposed to price risk related to the purchase, production or sale of coal, coke, natural gas, steel scrap, iron ore and pellets, and zinc, tin and other nonferrous metals used as raw materials. U. S. Steel is also subject to market price risk for the purchase of a portion of its electricity at certain facilities. See Note 16 to the Consolidated Financial Statements for further details on U. S. Steel's derivatives.

U. S. Steel's market risk strategy has generally been to obtain competitive prices for our products and services and allow operating results to reflect market price movements dictated by supply and demand; however, from time to time U. S. Steel has made forward physical purchases to manage exposure to price risk related to the purchases of natural gas and certain non-ferrous metals used in the production process. As of December 31, 2021, U. S. Steel, through U. S. Steel Europe, had \$7 million forward buy contracts for zinc. There were no forward buy contracts for natural gas or any of the other significant raw materials used in the domestic production process.

## Interest Rate Risk

U. S. Steel is subject to the effects of interest rate fluctuations on the fair value of certain of our non-derivative financial instruments. A sensitivity analysis of the projected incremental effect of a hypothetical 10 percent increase/decrease in year-end 2021 and 2020 interest rates on the fair value of U. S. Steel's non-derivative financial instruments is provided in the following table:

(Dollars in millions)		2021		2020	
Non-Derivative Financial Instruments <sup>(a)</sup>	Fair Value <sup>(b)</sup>	Change in Fair Value <sup>(c)</sup>	Fair Value <sup>(b)</sup>	Change in Fair Value <sup>(c)</sup>	
Financial liabilities:					
Debt <sup>(d)(e)</sup>	\$ 4,379	\$ 143	\$ 5,323	\$ 141	

- (a) Fair values of cash and cash equivalents, current accounts and notes receivable, accounts payable, bank checks outstanding and accrued interest approximate carrying value and are relatively insensitive to changes in interest rates due to the short-term maturity of the instruments. Accordingly, these instruments are excluded from the table.
- (b) See Note 20 to the Consolidated Financial Statements for carrying value of instruments.
- (c) Reflects, by class of financial instrument, the estimated incremental effect of a hypothetical 10 percent change in interest rates at December 31, 2021, and 2020, on the fair value of U. S. Steel's non-derivative financial instruments. For financial liabilities, this assumes a 10 percent decrease in the weighted average yield to maturity of U. S. Steel's long-term debt at December 31, 2021, and December 31, 2020.
- (d) Excludes finance lease obligations.
- (e) Fair value was determined using Level 2 inputs which were derived from quoted market prices and is based on the yield on public debt where available or current borrowing rates available for financings with similar terms and maturities.

U. S. Steel's sensitivity to interest rate declines and corresponding increases in the fair value of our debt portfolio would unfavorably affect our results and cash flows only to the extent that we elected to repurchase or otherwise retire all or a portion of our fixed-rate debt portfolio at prices above carrying value.

**Item 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information required by this item is set forth in our Consolidated Financial Statement contained in this Annual Report on Form 10-K. Specific financial statements can be found at the page listed below:

	<b><u>PAGE</u></b>
<a href="#">MANAGEMENT'S REPORT TO STOCKHOLDERS</a>	<a href="#">62</a>
<a href="#">REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM (PCAOB ID 238)</a>	<a href="#">64</a>
<a href="#">CONSOLIDATED STATEMENTS OF OPERATIONS FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019</a>	<a href="#">66</a>
<a href="#">CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS) FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019</a>	<a href="#">67</a>
<a href="#">CONSOLIDATED BALANCE SHEETS AS OF DECEMBER 31, 2021 AND 2020</a>	<a href="#">68</a>
<a href="#">CONSOLIDATED STATEMENTS OF CASH FLOWS FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019</a>	<a href="#">69</a>
<a href="#">CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019</a>	<a href="#">70</a>
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## MANAGEMENT'S REPORT TO STOCKHOLDERS

February 11, 2022

To the Stockholders of United States Steel Corporation:

### Financial Statements and Practices

The accompanying consolidated financial statements of United States Steel Corporation are the responsibility of and have been prepared by United States Steel Corporation in conformity with accounting principles generally accepted in the United States of America. They necessarily include some amounts that are based on our best judgments and estimates. United States Steel Corporation's financial information displayed in other sections of this report is consistent with these financial statements.

United States Steel Corporation seeks to assure the objectivity and integrity of its financial records by careful selection of its managers, by organizational arrangements that provide an appropriate division of responsibility and by communication programs aimed at assuring that its policies, procedures and methods are understood throughout the organization.

United States Steel Corporation has a comprehensive, formalized system of internal controls designed to provide reasonable assurance that assets are safeguarded, that financial records are reliable and that information required to be disclosed in reports filed with or submitted to the Securities and Exchange Commission is recorded, processed, summarized and reported within the required time limits. Appropriate management monitors the system for compliance and evaluates it for effectiveness, and the independent registered public accounting firm measures its effectiveness and recommends possible improvements thereto.

The Board of Directors exercises its oversight role in the area of financial reporting and internal control over financial reporting through its Audit Committee. This committee, composed solely of independent directors, regularly meets (jointly and separately) with the independent registered public accounting firm, management, internal audit and other executives to monitor the proper discharge by each of their responsibilities relative to internal control over financial reporting and United States Steel Corporation's financial statements.

### Internal Control Over Financial Reporting

United States Steel Corporation's management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of United States Steel Corporation's management, including the Chief Executive Officer and Chief Financial Officer, United States Steel Corporation conducted an evaluation of the effectiveness of its internal control over financial reporting based on the framework in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. On January 15, 2021, the Company acquired the remaining ownership interest in Big River Steel Holdings LLC. As the acquisition occurred in January 2021, the scope of the Company's assessment of the design and operating effectiveness of U. S. Steel's internal control over financial reporting for the year ended December 31, 2021 excluded this acquired business. The total assets and total revenues excluded from our assessment represented approximately 19% and 15%, respectively, of U. S. Steel's consolidated total assets and total revenue as of and for the year ended December 31, 2021. This exclusion is in accordance with the SEC's staff guidance that an assessment of a recently acquired business may be omitted from the scope of the Company's evaluation of the effectiveness of its internal controls in the year of acquisition. This acquired business will be included in management's assessment of the effectiveness of our internal controls over financial reporting as of December 31, 2022.

Based on this evaluation, United States Steel Corporation's management concluded that United States Steel Corporation's internal control over financial reporting was effective as of December 31, 2021.

The effectiveness of United States Steel Corporation's internal control over financial reporting as of December 31, 2021 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which is included herein.

/S/ DAVID B. BURRITT

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David B. Burritt  
President and  
Chief Executive Officer

/S/ CHRISTINE S. BREVES

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Christine S. Breves  
Senior Vice President and  
Chief Financial Officer

/S/ MANPREET S. GREWAL

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

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of United States Steel Corporation

### ***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of United States Steel Corporation and its subsidiaries (the “Company”) as of December 31, 2021 and 2020, and the related consolidated statements of operations, of comprehensive income (loss), of stockholders’ equity and of cash flows for each of the three years in the period ended December 31, 2021, including the related notes and financial statement schedule listed in the index appearing under Item 15(a)(2) (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO.

### ***Basis for Opinions***

The Company’s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report to Stockholders on Internal Control Over Financial Reporting. Our responsibility is to express opinions on the Company’s consolidated financial statements and on the Company’s internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As described in Management’s Report to Stockholders on Internal Control Over Financial Reporting, management has excluded Big River Steel Holdings LLC (“Big River Steel”) from its assessment of internal control over financial reporting as of December 31, 2021, because it was acquired by the Company in a purchase business combination during 2021. We have also excluded Big River Steel from our audit of internal control over financial reporting. Big River Steel is a wholly-owned subsidiary whose total assets and total revenues excluded from management’s assessment and our audit of internal control over financial reporting represent approximately 19% and 15%, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2021.

### ***Definition and Limitations of Internal Control over Financial Reporting***

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



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

### **Critical Audit Matters**

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### *Acquisition of Big River Steel - Valuation of Customer Relationship Intangible Asset*

As described in Note 5 to the consolidated financial statements, on January 15, 2021, the Company purchased the remaining equity interest in Big River Steel for approximately \$625 million. Using step acquisition accounting, the Company increased the value of its previously held equity investment to its fair value of \$770 million. As a result of the acquisition, an intangible asset for customer relationships of approximately \$413 million was recorded. As disclosed by management, management used the multi-period excess earnings method to estimate the fair value of the customer relationship intangible asset. Determining the fair value of the customer relationship intangible asset involves significant judgments and assumptions, including expected realized price, base year metallic costs, contributory asset charges, and customer attrition rate.

The principal considerations for our determination that performing procedures relating to the valuation of the customer relationship intangible asset recognized in connection with the acquisition of Big River Steel is a critical audit matter are (i) the significant judgment by management when determining the fair value of the customer relationship intangible asset; (ii) a high degree of auditor judgment, subjectivity, and effort in performing procedures and evaluating management's significant assumptions related to the expected realized price, base year metallic costs, contributory asset charges, and customer attrition rate; and (iii) the audit effort involved the use of professionals with specialized skill and knowledge.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to acquisition accounting, including controls over management's valuation of the acquired customer relationship intangible asset and controls over the development of significant assumptions related to the expected realized price, base year metallic costs, contributory asset charges, and customer attrition rate. These procedures also included, among others, (i) reading the purchase agreement; (ii) testing management's process for estimating the fair value of the customer relationship intangible asset; (iii) evaluating the appropriateness of the multi-period excess earnings method; (iv) evaluating the reasonableness of the significant assumptions used by management related to the expected realized price, base year metallic costs, contributory asset charges, and customer attrition rate. Evaluating management's assumptions related to the expected realized price, base year metallic costs, contributory asset charges, and customer attrition rate involved evaluating whether the assumptions were reasonable considering (i) the current and past performance of Big River Steel; (ii) consistency with external market and industry data; and (iii) testing the completeness and accuracy of underlying data used in the method. Professionals with specialized skill and knowledge were used to assist in evaluating the appropriateness of the Company's valuation method and evaluating the appropriateness of the customer attrition rate assumption.

/s/ PricewaterhouseCoopers LLP  
Pittsburgh, Pennsylvania  
February 11, 2022

We have served as the Company's auditor since 1903.

**UNITED STATES STEEL CORPORATION**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

(Dollars in millions, except per share amounts)	Year Ended December 31,		
	2021	2020	2019
<b>Net sales:</b>			
Net sales	\$ 18,964	\$ 8,765	\$ 11,506
Net sales to related parties (Note 23)	1,311	976	1,431
Total (Note 6)	20,275	9,741	12,937
<b>Operating expenses (income):</b>			
Cost of sales (excludes items shown below)	14,533	9,555	12,082
Selling, general and administrative expenses	426	277	289
Depreciation, depletion and amortization (Notes 13 and 14)	791	643	616
(Earnings) loss from investees (Note 12)	(170)	117	(79)
Gain on sale of Transtar (Note 5)	(506)	—	—
Asset impairment charges (Note 1)	273	263	—
Restructuring and other charges (Note 25)	128	138	275
Gain on equity investee transactions (Note 12)	(111)	(31)	—
Net gains on sale of assets	(7)	(149)	(1)
Other (gains) losses, net	(28)	3	(15)
Total	15,329	10,816	13,167
<b>Earnings (loss) before interest and income taxes</b>	<b>4,946</b>	<b>(1,075)</b>	<b>(230)</b>
Interest expense	313	280	142
Interest income	(4)	(7)	(17)
Loss on debt extinguishment (Note 7)	292	—	—
Other financial costs (benefits)	46	(16)	6
Net periodic benefit (income) cost	(45)	(25)	91
Net interest and other financial costs (Note 7)	602	232	222
<b>Earnings (loss) before income taxes</b>	<b>4,344</b>	<b>(1,307)</b>	<b>(452)</b>
Income tax expense (benefit) (Note 11)	170	(142)	178
Net earnings (loss)	4,174	(1,165)	(630)
Less: Net earnings attributable to noncontrolling interests	—	—	—
<b>Net earnings (loss) attributable to United States Steel Corporation</b>	<b>\$ 4,174</b>	<b>\$ (1,165)</b>	<b>\$ (630)</b>
<b>Earnings (loss) per common share (Note 8)</b>			
Earnings (loss) per share attributable to United States Steel Corporation stockholders:			
— Basic	\$ 15.77	\$ (5.92)	\$ (3.67)
— Diluted	\$ 14.88	\$ (5.92)	\$ (3.67)

The accompanying notes are an integral part of these Consolidated Financial Statements.

**UNITED STATES STEEL CORPORATION**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**

(Dollars in millions)	Year Ended December 31,		
	2021	2020	2019
Net earnings (loss)	\$ 4,174	\$ (1,165)	\$ (630)
Other comprehensive income (loss), net of tax:			
Changes in foreign currency translation adjustments <sup>(a)</sup>	(78)	68	(22)
Changes in pension and other employee benefit accounts <sup>(a)</sup>	433	385	573
Changes in derivative financial instruments <sup>(a)</sup>	23	(22)	(3)
Total other comprehensive income (loss), net of tax	378	431	548
Comprehensive income (loss) including noncontrolling interest	4,552	(734)	(82)
Comprehensive income (loss) attributable to noncontrolling interest	—	—	—
Comprehensive income (loss) attributable to United States Steel Corporation	\$ 4,552	\$ (734)	\$ (82)
<sup>(a)</sup> Related income tax (provision) benefit			
Foreign currency translation adjustments	\$ 32	\$ (16)	\$ 6
Pension and other benefits adjustments	(147)	(123)	(191)
Derivative adjustments	(6)	4	1

The accompanying notes are an integral part of these Consolidated Financial Statements.

**UNITED STATES STEEL CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**

(Dollars in millions)	December 31,	
	2021	2020
<b>Assets</b>		
Current assets:		
Cash and cash equivalents (Note 9)	\$ 2,522	\$ 1,985
Receivables, less allowance of \$44 and \$34	1,968	914
Receivables from related parties (Note 23)	121	80
Inventories (Note 10)	2,210	1,402
Other current assets	331	51
Total current assets	7,152	4,432
Long-term restricted cash (Note 9)	76	130
Investments and long-term receivables, less allowance of \$4 and \$5 (Note 12)	694	1,177
Operating lease assets (Note 24)	185	214
Property, plant and equipment, net (Note 13)	7,254	5,444
Intangibles, net (Note 14)	519	129
Deferred income tax benefits (Note 11)	32	22
Goodwill (Note 14)	920	4
Other noncurrent assets	984	507
Total assets	\$ 17,816	\$ 12,059
<b>Liabilities</b>		
Current liabilities:		
Accounts payable and other accrued liabilities	\$ 2,809	\$ 1,779
Accounts payable to related parties (Note 23)	99	105
Payroll and benefits payable	425	308
Accrued taxes	365	154
Accrued interest	68	59
Current operating lease liabilities (Note 24)	58	59
Short-term debt and current maturities of long-term debt (Note 17)	28	192
Total current liabilities	3,852	2,656
Noncurrent operating lease liabilities (Note 24)	136	163
Long-term debt, less unamortized discount and debt issuance costs (Note 17)	3,863	4,695
Employee benefits (Note 18)	235	322
Deferred income tax liabilities (Note 11)	122	11
Deferred credits and other noncurrent liabilities	505	333
Total liabilities	8,713	8,180
Contingencies and commitments (Note 26)		
<b>Stockholders' Equity</b>		
Common stock issued — 279,522,227 and 229,105,589 shares issued (par value \$1 per share, authorized 400,000,000 shares) (Note 8)	280	229
Treasury stock, at cost (15,708,839 shares and 8,673,131 shares)	(334)	(175)
Additional paid-in capital	5,199	4,402
Retained earnings (accumulated deficit)	3,534	(623)
Accumulated other comprehensive income (loss) (Note 21)	331	(47)
Total United States Steel Corporation stockholders' equity	9,010	3,786
Noncontrolling interests	93	93
Total liabilities and stockholders' equity	\$ 17,816	\$ 12,059

The accompanying notes are an integral part of these Consolidated Financial Statements.

**UNITED STATES STEEL CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(Dollars in millions)	Year Ended December 31,		
	2021	2020	2019
<b>Increase (decrease) in cash and cash equivalents</b>			
<b>Operating activities:</b>			
Net earnings (loss)	\$ 4,174	\$ (1,165)	\$ (630)
Adjustments to reconcile net cash provided by operating activities:			
Depreciation, depletion and amortization (Notes 13 and 14)	791	643	616
Gain on sale of Transtar (Note 5)	(506)	—	—
Asset impairment charges (Note 1)	273	263	—
Gain on equity investee transactions (Note 12)	(111)	(31)	—
Restructuring and other charges (Note 25)	128	138	275
Loss on debt extinguishment (Note 7)	292	—	—
Pensions and other post-employment benefits	15	(21)	101
Deferred income taxes (Note 11)	(52)	(130)	202
Net gain on sale of assets	(7)	(149)	(1)
Equity investees (earnings) loss, net of distributions received	(168)	117	(74)
Changes in:			
Current receivables	(955)	98	453
Inventories	(677)	506	296
Current accounts payable and accrued expenses	783	(29)	(473)
Income taxes receivable/payable	161	20	13
All other, net	(51)	(122)	(96)
Net cash provided by operating activities	4,090	138	682
<b>Investing activities:</b>			
Capital expenditures	(863)	(725)	(1,252)
Acquisition of Big River Steel, net of cash acquired (Note 5)	(625)	—	—
Investment in Big River Steel	—	(9)	(710)
Proceeds from sale of Transtar (Note 5)	627	—	—
Proceeds from sale of assets	26	167	4
Proceeds from sale of ownership interests in equity investees	—	8	—
Other investing activities	(5)	(4)	—
Net cash used in investing activities	(840)	(563)	(1,958)
<b>Financing activities:</b>			
Issuance of short-term debt, net of financing costs (Note 17)	—	240	—
Repayment of short-term debt (Note 17)	(180)	(70)	—
Revolving credit facilities - borrowings, net of financing costs	50	1,402	860
Revolving credit facilities - repayments	(911)	(1,621)	(100)
Issuance of long-term debt, net of financing costs (Note 17)	864	1,148	702
Repayment of long-term debt (Note 17)	(3,183)	(13)	(155)
Net proceeds from public offering of common stock (Note 27)	790	410	—
Proceeds from Stelco Option Agreement, net of financing costs	—	94	—
Common stock repurchased (Note 27)	(150)	—	(88)
Other financing activities	(27)	(9)	(42)
Net cash (used in) provided by financing activities	(2,747)	1,581	1,177
<b>Effect of exchange rate changes on cash</b>	(21)	23	(2)
<b>Net increase (decrease) in cash, cash equivalents and restricted cash</b>	482	1,179	(101)
<b>Cash, cash equivalents and restricted cash at beginning of year (Note 9)</b>	2,118	939	1,040
<b>Cash, cash equivalents and restricted cash at end of year (Note 9)</b>	\$ 2,600	\$ 2,118	\$ 939

See Note 22 for supplemental cash flow information.

The accompanying notes are an integral part of these Consolidated Financial Statements.

**UNITED STATES STEEL CORPORATION**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

	Dollars in Millions			Shares in Thousands		
	2021	2020	2019	2021	2020	2019
<b>Common stock:</b>						
Balance at beginning of year	\$ 229	\$ 179	\$ 177	229,106	178,555	177,386
Common stock issued	51	50	2	50,416	50,551	1,169
Balance at end of year	\$ 280	\$ 229	\$ 179	279,522	229,106	178,555
<b>Treasury stock:</b>						
Balance at beginning of year	\$ (175)	\$ (173)	\$ (78)	(8,673)	(8,509)	(2,858)
Common stock repurchased	(150)	—	(88)	(6,557)	—	(5,289)
Common stock (repurchased) reissued for employee/non-employee director stock plans	(9)	(2)	(7)	(479)	(164)	(362)
Balance at end of year	\$ (334)	\$ (175)	\$ (173)	(15,709)	(8,673)	(8,509)
<b>Additional paid-in capital:</b>						
Balance at beginning of year	\$ 4,402	\$ 4,020	\$ 3,917			
Dividends on common stock	(5)	(6)	—			
Common stock issued	742	360	—			
Issuance of conversion option in 2026 Senior Convertible Notes, net of tax	—	—	77			
Employee stock plans	60	28	26			
Balance at end of year	\$ 5,199	\$ 4,402	\$ 4,020			

The accompanying notes are an integral part of these Consolidated Financial Statements.



**UNITED STATES STEEL CORPORATION**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

(Continued)

(Dollars in millions)	2021	2020	2019	Comprehensive (Loss) Income		
				2021	2020	2019
<b>Retained earnings:</b>						
Balance at beginning of year	\$ (623)	\$ 544	\$ 1,212			
Net earnings (loss) attributable to United States Steel Corporation	4,174	(1,165)	(630)	\$ 4,174	\$ (1,165)	\$ (630)
Dividends on common stock	(18)	(2)	(35)			
Other	1	—	(3)			
<b>Balance at end of year</b>	<b>\$ 3,534</b>	<b>\$ (623)</b>	<b>\$ 544</b>			
<b>Accumulated other comprehensive income (loss):</b>						
Pension and other benefit adjustments (Note 18):						
Balance at beginning of year	\$ (458)	\$ (843)	\$ (1,416)			
Changes during year, net of taxes <sup>(a)</sup>	433	360	580	433	360	580
Changes during year, equity investee net of taxes <sup>(a)</sup>	—	25	(7)	—	25	(7)
Balance at end of year	\$ (25)	\$ (458)	\$ (843)			
Foreign currency translation adjustments:						
Balance at beginning of year	\$ 449	\$ 381	\$ 403			
Changes during year, net of taxes <sup>(a)</sup>	(78)	68	(22)	(78)	68	(22)
Balance at end of year	\$ 371	\$ 449	\$ 381			
Derivative financial instruments:						
Balance at beginning of year	\$ (38)	\$ (16)	\$ (13)			
Changes during year, net of taxes <sup>(a)</sup>	23	(22)	(3)	23	(22)	(3)
Balance at end of year	\$ (15)	\$ (38)	\$ (16)			
Total balances at end of year	\$ 331	\$ (47)	\$ (478)			
<b>Total stockholders' equity</b>	<b>\$ 9,010</b>	<b>\$ 3,786</b>	<b>\$ 4,092</b>			
<b>Noncontrolling interests:</b>						
Balance at beginning of year	\$ 93	\$ 1	\$ 1			
Stelco Option Agreement	—	93	—			
Other	—	(1)	—			
Net loss	—	—	—	—	—	—
Balance at end of year	\$ 93	\$ 93	\$ 1			
<b>Total comprehensive income (loss)</b>				<b>\$ 4,552</b>	<b>\$ (734)</b>	<b>\$ (82)</b>

<sup>(a)</sup> Related income tax benefit (provision):

Foreign currency translation adjustments	\$ 32	\$ (16)	\$ 6
Pension and other benefits adjustments	(147)	(123)	(191)
Derivative adjustments	(6)	4	1

The accompanying notes are an integral part of these Consolidated Financial Statements.

## 1. Nature of Business and Significant Accounting Policies

### **Nature of Business**

U. S. Steel produces and sells steel products, including flat-rolled and tubular products, in North America and Europe. Operations in the United States also include iron ore and coke production facilities and real estate operations. Operations in Europe also include coke production facilities.

### **Significant Accounting Policies**

#### ***Principles applied in consolidation***

These financial statements include the accounts of U. S. Steel and its majority-owned subsidiaries. Additionally, variable interest entities for which U. S. Steel is the primary beneficiary are included in the Consolidated Financial Statements, and their impacts are either partially or completely offset by noncontrolling interests. Intercompany accounts, transactions and profits have been eliminated in consolidation.

Investments in entities over which U. S. Steel has significant influence are accounted for using the equity method of accounting and are carried at U. S. Steel's share of net assets plus loans, advances and our share of earnings less distributions.

Earnings or loss from investees includes U. S. Steel's share of earnings or loss from equity method investments (and any amortization of basis differences), which are generally recorded a month in arrears.

#### ***Use of estimates***

Generally accepted accounting principles require management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at year-end and the reported amounts of revenues and expenses during the year. Significant items subject to such estimates and assumptions include the carrying value of property, plant and equipment; intangible assets; the fair value of assets or liabilities acquired in a business combination; valuation allowances for receivables, inventories and deferred income tax assets and liabilities; environmental liabilities; liabilities for potential tax deficiencies; potential litigation claims and settlements; assets and obligations related to employee benefits; put and call option and contingent forward purchase commitment assets and liabilities and restructuring and other charges. Actual results could differ materially from the estimates and assumptions used.

The preparation of the financial statements includes an 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 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.

#### ***Sales recognition***

Sales are recognized when U. S. Steel's performance obligations are satisfied. Generally, U. S. Steel's performance obligations are satisfied, control of our products is transferred, and revenue is recognized at a single point in time, when title transfers to our customer for product shipped or when 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. See Note 6 for further details on U. S. Steel's revenue.

#### ***Inventories***

Inventories are carried at the lower of cost or net realizable value. Fixed costs related to abnormal production capacity are expensed in the period incurred rather than capitalized into inventory.

LIFO (last-in, first-out) is the predominant method of inventory costing for inventories held by the Flat-Rolled and Tubular segments. The Mini Mill segment uses a moving average costing method to account for semi-finished and finished products and FIFO (first-in, first-out) to account for raw materials. FIFO is the predominant method used by the USSE segment. The LIFO method of inventory costing was used on 46 percent and 59 percent of consolidated inventories at December 31, 2021, and 2020, respectively.

#### ***Derivative instruments***

From time to time, U. S. Steel may use fixed price forward physical purchase contracts to partially manage our exposure to price risk. Generally, forward physical purchase contracts qualify for the normal purchase normal sales exclusion in Accounting Standards Codification (ASC) 815, *Derivatives and Hedging*, and are not subject to mark-to-market accounting. U. S. Steel also uses derivatives such as commodity-based financial swaps and foreign currency exchange forward contracts to manage its exposure to purchase and sale price fluctuations and foreign currency exchange rate risk. The USSE and Flat-Rolled segments elect hedge accounting for some of their derivatives. Under hedge accounting, fluctuations in the value of the derivative are recognized in Accumulated Other Comprehensive Income (AOCI) until the

associated underlying is recognized in earnings. When the associated underlying is recognized in earnings, the value of the derivative is reclassified to earnings from AOCI. The Mini Mill segment has not elected hedge accounting. Therefore, the changes in fair value of the Mini Mill segment's foreign exchange forwards, as well as fair value changes for other derivatives where hedge accounting has not been elected, are recognized immediately in earnings. See Note 16 for further details on U. S. Steel's derivatives.

**Financial Instruments**

U. S. Steel's purchase of a 49.9% equity ownership interest in Big River Steel on October 31, 2019, included certain call and put options. U. S. Steel marked those options to fair value each reporting 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. On December 8, 2020, U. S. Steel exercised its call option to purchase the remaining interest in Big River Steel. When the U. S. Steel call option was exercised, the options were legally extinguished and a contingent forward purchase commitment was recorded for the value of the unsettled commitment to purchase the remaining interest in Big River Steel. The contingent forward purchase commitment was removed with the close of the Big River Steel purchase which occurred on January 15, 2021. See Note 5 for further details.

**Property, plant and equipment**

Property, plant and equipment is carried at cost less accumulated depreciation and is depreciated on a straight-line basis over the estimated useful lives of the assets.

Depletion of mineral properties is based on rates which are expected to amortize cost over the estimated tonnage of minerals to be removed.

When property, plant and equipment is sold or otherwise disposed of, any gains or losses are reflected in income. If a loss on disposal is expected, such losses are recognized when the assets are reclassified as assets held for sale or when impaired as part of an asset group's impairment.

**Asset Impairment**

U. S. Steel evaluates impairment of its property, plant and equipment whenever circumstances indicate that the carrying value may not be recoverable. We evaluate the impairment of long-lived assets at the asset group level. Our asset groups are Flat-Rolled, mini mill, welded tubular, seamless tubular and U. S. Steel Europe (USSE). Asset impairments are recognized when the carrying value of an asset group exceeds its recoverable amount as determined by the asset group's aggregate projected undiscounted cash flows.

In December 2021, the Company permanently idled the steel making process at Great Lakes Works, which had been idled on an indefinite basis during 2020. As a result of this decision, the Company recognized charges of approximately \$128 million for the write-off of the BOP, steel casting and hot strip mill related fixed assets. In addition, in October 2021, equipment at Gary Works related to steel production intended for petroleum conveying pipe were written-off resulting in a charge of approximately \$88 million.

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, re-evaluated the use of the already purchased equipment, and subsequently transferred suitable equipment to the Mini Mill segment to be used on the planned, three-million-ton mini mill flat-rolled facility to be constructed. Total impairments of \$56 million were recognized for this project in 2021.

For the period ended March 31, 2020, the steep decline in oil prices that resulted from market oversupply and declining demand was considered a triggering event for the welded tubular and seamless tubular asset groups. A quantitative analysis was completed for both asset groups and a \$263 million impairment, consisting of an impairment of \$196 million for property, plant and equipment and \$67 million for intangible assets was recorded for the welded tubular asset group while no impairment was indicated for the seamless tubular asset group. There were no other triggering events that required an impairment evaluation of our long-lived asset groups during the years-ended December 31, 2020, and December 31, 2021.

During 2019, the challenging steel market environment in the U.S. that led to the idling of certain Flat-Rolled facilities, the challenging steel market in Europe that led to the temporary idling of a blast furnace and significant headcount reductions at USSE, and recent losses in the welded tubular asset group were considered triggering events for those asset groups, respectively. U. S. Steel completed a quantitative analysis of its long-lived assets for these asset groups and determined that the assets were not impaired. There were no triggering events for seamless tubular in 2019.

**Goodwill and identifiable intangible assets**

Goodwill represents the excess of the cost over the fair value of acquired identifiable tangible and intangible assets and liabilities assumed from businesses acquired. Goodwill and intangible assets deemed to have indefinite lives are not amortized, but are subject to impairment testing annually, or more frequently if events or changes in circumstances indicate the asset might be impaired. Goodwill is tested for impairment at the reporting unit level annually in the fourth quarter. The goodwill impairment test compares carrying values of the reporting units to their estimated fair values. If the carrying value exceeds the fair value then the carrying value is reduced to fair value. In developing our estimates for the fair value of our reporting units and unamortized intangible assets, significant judgment is required in the determination of the appropriateness of using a qualitative assessment or quantitative assessment. The qualitative assessment is an evaluation of factors, including reporting unit specific operating results as well as industry, market and general economic conditions, to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. For the quantitative assessments that are performed, fair value is primarily based on the income approach using a discounted cash flow method, which have significant assumptions including sales growth rates, projected earnings, terminal growth rates and discount rates. Such assumptions are subject to variability from year to year and are directly impacted by, among other things, global market conditions. Our Mini Mill reporting unit holds the goodwill recognized as a result of the Company's acquisition of Big River Steel, and is our only reporting unit that has a significant amount of goodwill. This goodwill is primarily attributable to Big River Steel's operational abilities, workforce and the anticipated benefits from their recent expansion. The Company performed its annual impairment test in the fourth quarter of 2021 by completing a qualitative assessment.

Finite-lived intangible assets are amortized on a straight-line basis over their estimated useful lives and are tested for impairment when events occur that indicate that the net book value will not be recovered over future cash flows. Intangible assets with indefinite lives are also subject to at least annual impairment testing, which compares the fair value of the intangible assets with their carrying amounts. U. S. Steel has determined that certain of its acquired intangible assets have indefinite useful lives. These assets are also reviewed for impairment annually in the fourth quarter and whenever events or circumstances indicate the carrying value may not be recoverable. U. S. Steel completed its evaluation of its indefinite lived water rights and other indefinite lived intangible assets during 2021 and determined there was no indication of impairment.

**Environmental remediation**

Environmental expenditures are capitalized if the costs mitigate or prevent future contamination or if the costs improve existing assets' environmental safety or efficiency. U. S. Steel provides for remediation costs and penalties when the responsibility to remediate is probable and the amount of associated costs is reasonably estimable. The timing of remediation accruals typically coincides with completion of studies defining the scope of work to be undertaken or when it is probable that a formal plan of action will be approved by the oversight agency. Remediation liabilities are accrued based on estimates of believed environmental exposure and are discounted if the amount and timing of the cash disbursements are readily determinable.

**Asset retirement obligations**

Asset retirement obligations (AROs) are initially recorded at fair value and are capitalized as part of the cost of the related long-lived asset and depreciated in accordance with U. S. Steel's depreciation policies for property, plant and equipment. The fair value of the obligation is determined as the discounted value of expected future cash flows. Accretion expense is recorded each month to increase this discounted obligation over time. Certain AROs related to disposal costs of the majority of assets at our integrated steel facilities are not recorded because they have an indeterminate settlement date. These AROs will be initially recognized in the period in which sufficient information exists to estimate their fair value. See Note 19 for further details on U. S. Steel's AROs.

**Pensions and other post-employment benefits**

U. S. Steel has defined contribution or multi-employer arrangements for pension benefits for more than three-quarters of its employees in the United States and defined benefit pension plans covering the remaining employees. For hires before January 1, 2016, U. S. Steel has defined benefit retiree health care and life insurance plans (Other Benefits) that cover its represented employees in North America upon their retirement. Government-sponsored programs into which U. S. Steel makes required contributions cover the majority of U. S. Steel's European employees. For more details regarding pension and other post-employment benefits see Note 18 of the Consolidated Financial Statements.

The pension and Other Benefits obligations and the related net periodic benefit costs are based on, among other things, assumptions regarding the discount rate, estimated return on plan assets, salary increases, the projected mortality of participants and the current level and future escalation of health care costs. Additionally, U. S. Steel recognizes an obligation to provide post-employment benefits for disability-related claims covering indemnity and medical payments for certain employees in North America. The obligation for these claims and the related periodic costs are measured using actuarial techniques and assumptions. Actuarial gains and losses occur when actual experience differs from any of the many assumptions used to value the benefit plans, or when assumptions change. For pension and Other Benefits, the Company recognizes into income on an annual basis a portion of unrecognized actuarial net gains or losses that exceed 10 percent of the larger of projected benefit obligations or plan assets (the corridor). These unrecognized amounts in excess of the corridor are amortized over the plan participants' average life expectancy or average future service,

depending on the demographics of the plan. Unrecognized actuarial net gains and losses for disability-related claims are immediately recognized into income.

### **Deferred taxes**

Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. The realization of deferred tax assets is assessed quarterly based on several interrelated factors. These factors include U. S. Steel's expectation to generate sufficient future taxable income and the projected time period over which these deferred tax assets will be realized. U. S. Steel records a valuation allowance when necessary to reduce deferred tax assets to the amount that will more likely than not be realized. See Note 11 for further details of deferred taxes.

## **2. New Accounting Standards**

In August 2020, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 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.

ASU 2020-06 requires entities to use the If-Converted Method for calculating diluted earnings per share, retiring the previous alternative calculation of the Treasury Stock Method for calculating diluted earnings per share for convertible instruments. U. S. Steel has historically reported diluted earnings per share using the Treasury Stock Method. For the full years ended December 31, 2019, and 2020, there will be no impact from the adoption of this ASU due to the cumulative net loss position for each year. For the full year ended December 31, 2021, earnings per share under the Treasury Stock method was calculated to be \$14.88 per share. Under the If-Converted method, earnings per share for the full year ended December 31, 2021, will be \$14.17 per share. This decrease of \$0.71 per share reflects a five percent change as a result of implementing the ASU.

In October 2021, the FASB issued Accounting Standards Update 2021-08, *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* (ASU 2021-08). ASU 2021-08 requires that an entity recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606, *Revenue from Contracts with Customers*. ASU 2021-08 is effective to public companies for fiscal years beginning after December 15, 2022, and interim periods within those fiscal years, with early adoption of all amendments in the same period permitted. The Company is currently assessing the impact of the ASU but does not believe it will have a material impact on its Consolidated Financial Statements.

In November 2021, the FASB issued Accounting Standards Update 2021-10, *Disclosures by Business Entities about Government Assistance* (ASU 2021-10). ASU 2021-10 provides expanded disclosure requirements for business entities that account for a transaction with a government by applying a grant or contribution accounting model by analogy. ASU 2021-10 is effective to public companies for fiscal years beginning after December 15, 2021, with early application permitted. The Company is currently assessing the impact of the ASU, and at this time does not believe it will have a material impact on its Consolidated Financial Statements.

## **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 Consolidated Financial Statements.

In March 2020, the FASB issued Accounting Standards Update 2020-04, *Facilitation of the Effects of Reference Rate Reform on Financial Reporting* (ASU 2020-04). ASU 2020-04 provides optional exceptions for applying generally accepted accounting principles to modifications of contracts, hedging relationships, and other transactions that reference LIBOR or another rate that will be discontinued by reference rate reform if certain criteria are met. The guidance is effective beginning on March 12, 2020 and the amendments will be applied prospectively through December 31, 2022. U. S. Steel adopted this guidance during 2020. The adoption of this guidance did not have a material impact on the Company's Consolidated Financial Statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (ASU 2016-13), which adds an impairment model that is based on expected losses



rather than incurred losses. U. S. Steel's significant financial instruments which are valued at cost are trade receivables (receivables). U. S. Steel's receivables carry standard industry terms and are categorized in two receivable pools, U.S. and U. S. Steel Europe (USSE). Both pools use customer specific risk ratings based on customer financial metrics, past payment experience and other factors and qualitatively consider economic conditions to assess the level of allowance for doubtful accounts. USSE mitigates credit risk for approximately 79 percent of its receivables balance using credit insurance, letters of credit, bank guarantees, prepayments or other collateral. ASU 2016-13 was effective for public companies for fiscal years beginning after December 15, 2019, including interim reporting periods. U. S. Steel adopted this standard effective January 1, 2020. The impact of adoption was not material to the Consolidated Financial Statements.

U. S. Steel's adoption of the following ASU's did not have a material impact on U. S. Steel's financial position, results of operations or cash flows:

Effective Date	ASU	Description
January 1, 2019	2018-07	Compensation - Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting
January 1, 2019	2018-15	Intangibles - Goodwill and Other - Internal Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs in a Cloud Computing Arrangement That is a Service Contract

#### 4. Segment Information

U. S. Steel has four reportable segments: North American Flat-Rolled (Flat-Rolled), Mini Mill, USSE and Tubular Products (Tubular). The results of our real estate business, the previously held equity method investment in Big River Steel, and of our former railroad businesses are combined and disclosed in the Other category. The majority of U. S. Steel's customers are located in North America and Europe. No single customer accounted for more than 10 percent of gross annual revenues.

The Flat-Rolled segment includes the operating results of U. S. Steel's integrated steel plants and equity investees in the United States involved in the production of slabs, strip mill plates, sheets and tin mill products, as well as all iron ore and coke production facilities in the United States. These operations primarily serve North American customers in the service center, conversion, transportation (including automotive), construction, container, and appliance and electrical markets.

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) and a new mill under construction in Osceola, Arkansas. As of December 31, 2021, the Mini Mill segment includes the operating results of U. S. Steel's two electric arc furnace steel plant in Osceola, Arkansas involved in the production of sheets and electrical products and a new mill under construction in Osceola, Arkansas. These operations primarily serve North American customers in the service center, conversion, transportation (including automotive), construction, container, and appliance and electrical markets.

The USSE segment includes the operating results of U. S. Steel Košice (USSK), U. S. Steel's integrated steel plant and coke production facilities in Slovakia, and its subsidiaries. USSE conducts its business mainly in Central and Western Europe and primarily serves customers in the European transportation (including automotive), construction, container, appliance, electrical, service center, conversion and oil, gas and petrochemical markets. USSE produces and sells slabs, strip mill plate, sheet, tin mill products and spiral welded pipe.

The Tubular segment includes the operating results of U. S. Steel's tubular production facilities and an equity investee in the United States. These operations produce and sell seamless and electric resistance welded (welded) steel casing and tubing (commonly known as oil country tubular goods or OCTG), standard and line pipe and mechanical tubing and primarily serve customers in the oil, gas and petrochemical markets. The Tubular segment includes the electric arc furnace at our Fairfield Tubular Operations in Fairfield, Alabama.

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

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



The results of segment operations are as follows:

(In millions)	Customer Sales	Intersegment Sales	Net Sales	Earnings (loss) from investees	Earnings (loss) before Interest and Income Taxes	Depreciation, depletion & amortization	Capital expenditures
<b>2021</b>							
Flat-Rolled	\$ 12,180	\$ 178	\$ 12,358	\$ 150	\$ 2,630	\$ 491	\$ 422
Mini Mill <sup>(a)</sup>	3,008	508	3,516	—	1,206	151	331
USSE	4,262	4	4,266	—	975	98	57
Tubular	789	20	809	14	1	46	51
Total reportable segments	20,239	710	20,949	164	4,812	786	861
Other	36	65	101	6	(11)	5	2
Reconciling Items and Eliminations	—	(775)	(775)	—	145	—	—
Total	\$ 20,275	\$ —	\$ 20,275	\$ 170	\$ 4,946	\$ 791	\$ 863
<b>2020</b>							
Flat-Rolled	\$ 7,071	\$ 208	\$ 7,279	\$ (9)	\$ (596)	\$ 496	\$ 484
USSE	1,967	3	1,970	—	9	97	79
Tubular	639	7	646	4	(179)	39	159
Total reportable segments	9,677	218	9,895	(5)	(766)	632	722
Other	64	98	162	(94)	(39)	11	3
Reconciling Items and Eliminations	—	(316)	(316)	(18)	(270)	—	—
Total	\$ 9,741	\$ —	\$ 9,741	\$ (117)	\$ (1,075)	\$ 643	\$ 725
<b>2019</b>							
Flat-Rolled	\$ 9,279	\$ 281	\$ 9,560	\$ 84	\$ 196	\$ 456	\$ 943
USSE	2,417	3	2,420	—	(57)	92	153
Tubular	1,188	3	1,191	5	(67)	46	145
Total reportable segments	12,884	287	13,171	89	72	594	1,241
Other	53	115	168	(10)	23	22	11
Reconciling Items and Eliminations	—	(402)	(402)	—	(325)	—	—
Total	\$ 12,937	\$ —	\$ 12,937	\$ 79	\$ (230)	\$ 616	\$ 1,252

<sup>(a)</sup> Includes capital expenditures related to a new mill under construction in Osceola, Arkansas of \$144 million in 2021.

A summary of total assets by segment is as follows:

(In millions)	December 31,	
	2021	2020
Flat-Rolled	\$ 7,337	\$ 7,099
Mini Mill <sup>(a)</sup>	4,715	—
USSE	6,111	5,502
Tubular	1,054	887
Total reportable segments	\$ 19,217	\$ 13,488
Other	\$ 88	\$ 911
Corporate, reconciling items, and eliminations <sup>(b)</sup>	(1,489)	(2,340)
Total assets	\$ 17,816	\$ 12,059

<sup>(a)</sup> Includes assets of \$347 million related to a new mill under construction in Osceola, Arkansas.

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

The detail of reconciling items to consolidated earnings (loss) before interest and income taxes is as follows:

(In millions)	2021	2020	2019
Items not allocated to segments:			
Restructuring and other charges (Note 25)	(128)	(138)	(275)
Asset impairment charges	(273)	(287)	—
Big River Steel - acquisition-related items	(35)	(3)	—
Losses (gains) on assets sold & previously held investments	118	170	—
Gain on sale of Transtar (Note 5)	506	—	—
Environmental remediation charges	(43)	—	—
Other items	—	(12)	(50)
Total reconciling items	\$ 145	\$ (270)	\$ (325)

### Geographic Area:

The information below summarizes external sales, property, plant and equipment and equity method investments based on the location of the operating segment to which they relate.

(In millions)	Year	External Sales	Assets
North America	2021	\$ 16,013	\$ 7,034 <sup>(a)</sup>
	2020	7,774	5,590 <sup>(a)</sup>
	2019	10,520	5,772 <sup>(a)</sup>
Europe	2021	4,262	880
	2020	1,967	993
	2019	2,417	947
Total	2021	20,275	7,914
	2020	9,741	6,583
	2019	12,937	6,719

<sup>(a)</sup> Assets with a book value of \$7,034 million, \$5,590 million and \$5,772 million were located in the United States at December 31, 2021, 2020 and 2019, respectively.

## 5. Acquisitions and Disposition

### 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 twelve months ended December 31, 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 joint venture 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 fair value of the previously held equity investment was determined using Level 3 valuation techniques, including the significant factors and assumptions used to value Big River Steel disclosed below. The gain was recorded in gain on equity investee transactions in the 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 \$916 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 is expected to be 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 14 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 allocation of the aggregate purchase price based on estimated fair values:

	(in millions)
<b>Assets Acquired:</b>	
Receivables	\$ 166
Receivables with U. S. Steel <sup>(1)</sup>	99
Inventories	184
Other current assets	16
Property, plant and equipment	2,188
Intangibles	413
Goodwill	916
Other noncurrent assets	19
Total Assets Acquired	\$ 4,001
<b>Liabilities Assumed:</b>	
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	26
Deferred credits and other long-term liabilities	211
Total Liabilities Assumed	\$ 2,556
Fair value of previously held investment in Big River Steel	\$ 770
Purchase price, including assumed liabilities and net of cash acquired	675
Difference in assets acquired and liabilities assumed	\$ 1,445

<sup>(1)</sup> 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.

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.

	Years Ended December 31,	
(in millions)	2021	2020
Net sales	\$ 20,347	\$ 10,694
Net earnings (loss)	\$ 4,103	\$ (1,260)

#### ***Transtar Disposition***

On July 28, 2021, U. S. Steel completed the sale of 100 percent of its equity interests in its wholly-owned short-line railroad, Transtar, LLC (Transtar) to an affiliate of Fortress Transportation and Infrastructure Investors, LLC. The Company

received net cash proceeds of \$627 million, subject to certain customary adjustments as set forth in the Membership Interest Purchase Agreement, and recognized a pretax gain of approximately \$506 million in 2021. 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 through the date of disposition are reported in the Other category. See Note 4 for further details.

#### **Other Transactions**

In December 2021, the Company entered into an agreement to sell certain assets related to a component of its flat-roll business. As a result of this commitment, the Company recognized restructuring related charges of \$89 million during the fourth quarter 2021. These charges are expected to be paid out on a long-term basis. This transaction is expected to result in a gain upon closure, which is subject to customary closing conditions.

#### **USS-UPI, LLC (UPI) (formerly known as USS-POSCO Industries)**

On February 29, 2020, U. S. Steel purchased the remaining 50% ownership interest in USS-POSCO Industries, (now USS-UPI, LLC, (UPI) 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 was reflected as a reduction in receivables from related parties on the Company's Consolidated Balance Sheet as of December 31, 2020.

Using step acquisition accounting U. S. Steel increased the value of the Company's 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 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 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 railroad services. 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 table disaggregates our revenue by product for each of our reportable business segments for the years ended December 31, 2021, 2020 and 2019, respectively:

#### **Net Sales by Product (in millions):**

<b>Year Ended December 31, 2021</b>	<b>Flat-Rolled</b>	<b>Mini Mill <sup>(a)</sup></b>	<b>USSE</b>	<b>Tubular</b>	<b>Other</b>	<b>Total</b>
Semi-finished	12	—	126	—	—	138
Hot-rolled sheets	2,592	1,744	2,149	—	—	6,485
Cold-rolled sheets	3,785	526	448	—	—	4,759
Coated sheets	4,408	732	1,376	—	—	6,516
Tubular products	—	—	58	781	—	839
All Other <sup>(b)</sup>	1,383	6	105	8	36	1,538
<b>Total</b>	<b>\$ 12,180</b>	<b>\$ 3,008</b>	<b>\$ 4,262</b>	<b>\$ 789</b>	<b>\$ 36</b>	<b>\$ 20,275</b>

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

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

Year Ended December 31, 2020	Flat-Rolled	USSE	Tubular	Other	Total
Semi-finished	94	2	—	—	96
Hot-rolled sheets	1,273	793	—	—	2,066
Cold-rolled sheets	2,102	164	—	—	2,266
Coated sheets	2,990	904	—	—	3,894
Tubular products	—	40	621	—	661
All Other <sup>(a)</sup>	612	64	18	64	758
<b>Total</b>	<b>\$ 7,071</b>	<b>\$ 1,967</b>	<b>\$ 639</b>	<b>\$ 64</b>	<b>\$ 9,741</b>

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

Year Ended December 31, 2019	Flat-Rolled	USSE	Tubular	Other	Total
Semi-finished	\$ 305	\$ 11	\$ —	\$ —	\$ 316
Hot-rolled sheets	2,504	997	—	—	3,501
Cold-rolled sheets	2,512	283	—	—	2,795
Coated sheets	2,993	1,006	—	—	3,999
Tubular products	—	40	1,166	—	1,206
All Other <sup>(a)</sup>	965	80	22	53	1,120
<b>Total</b>	<b>\$ 9,279</b>	<b>\$ 2,417</b>	<b>\$ 1,188</b>	<b>\$ 53</b>	<b>\$ 12,937</b>

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

## 7. Net Interest and Other Financial Costs

(In millions)	2021	2020	2019
<b>Interest income:</b>			
Interest income	\$ (4)	\$ (7)	\$ (17)
<b>Interest expense and other financial costs:</b>			
Interest incurred	342	306	162
Less interest capitalized	29	26	20
Total interest expense	313	280	142
Loss on debt extinguishment <sup>(a)</sup>	292	—	—
Net periodic benefit (income) costs (other than service cost)	(45)	(25)	91
Foreign currency net gain <sup>(b)</sup>	17	(15)	(17)
Financial costs on:			
Amended Credit Agreement	6	3	5
USSK credit facilities	4	2	1
Other <sup>(c)</sup>	5	(21)	10
Amortization of discounts and deferred financing costs	14	15	7
Total other financial costs	46	(16)	6
<b>Net interest and other financial costs</b>	<b>\$ 602</b>	<b>\$ 232</b>	<b>\$ 222</b>

<sup>(a)</sup> Represents a net pretax charge of \$292 million during 2021 related to the repayments of the Export-Import Credit Agreement, 2025 Senior Secured Notes, 2025 Senior Notes, 2026 Senior Notes, 2029 Senior Secured Notes, Credit Facility Agreement and Environmental Revenue Bonds.

<sup>(b)</sup> The functional currency for USSE is the euro. Foreign currency net gain is a result of transactions denominated in currencies other than the euro.

<sup>(c)</sup> 2020 and 2019 include a \$(39) million and \$7 million change in fair value of certain call and put options, respectively, related to U. S. Steel's purchase of its 49.9% ownership interest in Big River Steel during 2019. See Note 5 and Note 20 for further details.

## 8. Earnings (Loss) and Dividends Per Common Share

### Earnings (Loss) per Share Attributable to United States Steel Corporation Stockholders

Basic earnings (loss) per common share is based on the weighted average number of common shares outstanding during the period.

Diluted earnings (loss) per common share assumes the exercise of stock options, the vesting of restricted stock units and performance awards, provided in each case the effect is dilutive. The "treasury stock" method is used to calculate the dilutive effect of the Senior Convertible Notes due in 2026 (due to our current intent and policy, among other factors, to settle the principal amount of the 2026 Senior Convertible Notes in cash upon conversion).

The computations for basic and diluted earnings (loss) per common share from continuing operations are as follows:

(Dollars in millions, except per share amounts)	2021	2020	2019
Net earnings (loss) attributable to United States Steel Corporation stockholders	\$ 4,174	\$ (1,165)	\$ (630)
Weighted-average shares outstanding (in thousands):			
Basic	264,667	196,721	171,418
Effect of convertible notes	11,126	—	—
Effect of stock options, restricted stock units and performance awards	4,651	—	—
Adjusted weighted-average shares outstanding, diluted	280,444	196,721	171,418
Basic earnings (loss) per common share	\$ 15.77	\$ (5.92)	\$ (3.67)
Diluted earnings (loss) per common share	\$ 14.88	\$ (5.92)	\$ (3.67)

The following table summarizes the securities that were antidilutive, and therefore, were not included in the computation of diluted earnings (loss) per common share:

(In thousands)	2021	2020	2019
Securities granted under the 2016 Omnibus Incentive Compensation Plan, as amended and restated	1,185	6,780	4,459
Securities convertible under the Senior Convertible Notes	—	—	650
Total	1,185	6,780	5,109

### Dividends Paid per Share

Quarterly dividends on common stock were one cent per share in the first, second and third quarters and five cents per share in the fourth quarter in 2021. Quarterly dividends on common stock were one cent per share for each quarter in 2020 and five cents per share each quarter in 2019.

## 9. 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 Consolidated Balance Sheets that sum to the total of the same amounts shown in the Consolidated Statement of Cash Flows:

(In millions)	December 31,		
	2021	2020	2019
Cash and cash equivalents	\$ 2,522	\$ 1,985	\$ 749
Restricted cash in other current assets	2	3	2
Long-term restricted cash	76	130	188
Total cash, cash equivalents and restricted cash	\$ 2,600	\$ 2,118	\$ 939

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.

## 10. Inventories

(In millions)	December 31, 2021	December 31, 2020
Raw materials	\$ 713	\$ 416
Semi-finished products	1,056	633
Finished products	388	300
Supplies and sundry items	53	53
Total	\$ 2,210	\$ 1,402

Current acquisition costs were estimated to exceed the above inventory values at December 31 by \$896 million in 2021 and \$848 million in 2020. As a result of the liquidation of LIFO inventories, cost of sales decreased and earnings before interest and income taxes increased by \$11 million, \$5 million and \$28 million in 2021, 2020 and 2019, respectively.



## 11. Income Taxes

### Components of earnings (loss) before income taxes:

(In millions)	2021	2020	2019
United States	\$ 3,400	\$ (1,303)	\$ (381)
Foreign	944	(4)	(71)
Earnings (loss) before income taxes	\$ 4,344	\$ (1,307)	\$ (452)

At the end of both 2021 and 2020, U. S. Steel does not have any undistributed foreign earnings and profits for which U.S. deferred taxes have not been provided.

### Income tax provision (benefit):

(In millions)	2021			2020			2019		
	Current	Deferred	Total	Current	Deferred	Total	Current	Deferred	Total
Federal	\$ (7)	\$ 8	\$ 1	\$ (10)	\$ (95)	\$ (105)	\$ (18)	\$ 196	\$ 178
State and local	50	(71)	(21)	(3)	(24)	(27)	—	23	23
Foreign	179	11	190	1	(11)	(10)	(6)	(17)	(23)
Total	\$ 222	\$ (52)	\$ 170	\$ (12)	\$ (130)	\$ (142)	\$ (24)	\$ 202	\$ 178

A reconciliation of the federal statutory tax rate of 21 percent to total provision (benefit) follows:

(In millions)	2021	2020	2019
Statutory rate applied to earnings (loss) before income taxes	\$ 912	\$ (275)	\$ (95)
Valuation allowance	(633)	367	334
Tax accounting benefit related to increase in OCI	—	(138)	—
Excess percentage depletion	(66)	(31)	(46)
Capital loss generated	(139)	—	—
State and local income taxes after federal income tax effects	83	(47)	(36)
Effects of foreign operations	191	(10)	(23)
U.S. impact of foreign operations	4	1	25
Impact of tax credits	(173)	(18)	5
Adjustment of prior years' federal income taxes	(5)	12	7
Other	(4)	(3)	7
Total provision (benefit)	\$ 170	\$ (142)	\$ 178

Included in the 2021 provision is a benefit of \$715 million related to the reversal of a portion of the valuation allowance recorded against the Company's net domestic deferred tax asset, partially offset by the addition of a valuation allowance of \$82 million, the majority of which relates to an unused capital loss carryforward.

The 2020 tax benefit includes a \$138 million benefit related to recording a loss from continuing operations and income from other comprehensive income categories and expense of \$13 million for an updated estimate to tax reserves related to an unrecognized tax benefit. Due to the full valuation allowance on our domestic deferred tax assets, the tax benefit in 2020 does not reflect any additional tax benefit for domestic pretax losses.

In 2019, the tax benefit differs from the domestic statutory rate of 21 percent primarily due to the fact that it does not reflect any tax benefit in the U.S. as a valuation allowance was recorded against the Company's net domestic deferred tax asset (excluding a portion of a deferred tax liability related to an asset with an indefinite life, as well as a deferred tax asset related to refundable Alternative Minimum Tax (AMT) credits).

### Deferred taxes

Deferred tax assets and liabilities resulted from the following:

(In millions)	December 31,	
	2021	2020
Deferred tax assets:		
Federal tax loss carryforwards (no expiration)	\$ 20	\$ 269
Federal tax loss carryforwards (expiring in 2035 through 2037)	—	174
Federal capital loss carryforwards (expiring 2026)	66	—
State tax credit carryforwards (expiring in 2022 through 2030)	11	16
State tax loss carryforwards (expiring in 2022 through 2040)	150	182
State capital loss carryforwards (expiring in 2026 through 2036)	16	—
General business credit carryforwards (expiring in 2027 through 2041)	94	103
Foreign tax loss and credit carryforwards (expiring in 2022 through 2031)	244	171
Employee benefits	—	71
Contingencies and accrued liabilities	78	52
Operating lease liabilities	47	51
Section 59(e) amortization	15	27
Receivables, payables and debt	33	—
Inventory	—	21
Other temporary differences	34	46
Valuation allowance	(162)	(796)
Total deferred tax assets	646	387
Deferred tax liabilities:		
Property, plant and equipment	379	244
Operating right-of-use assets	45	49
Investments in subsidiaries and equity investees	121	23
Inventory	112	—
Employee benefits	70	—
Receivables, payables and debt	6	22
Indefinite-lived intangible assets	—	19
Other temporary differences	3	19
Total deferred tax liabilities	736	376
Net deferred tax (liability) asset	\$ (90)	\$ 11

U. S. Steel recognizes deferred tax assets and liabilities for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. The realization of deferred tax assets is assessed quarterly based on several interrelated factors. These factors include U. S. Steel's expectation to generate sufficient future taxable income and the projected time period over which these deferred tax assets will be realized.

Each quarter U. S. Steel analyzes the likelihood that our deferred tax assets will be realized. A valuation allowance is recorded if, based on the weight of all available positive and negative evidence, it is more likely than not that some portion, or all, of a deferred tax asset will not be realized.

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.

During the year ended December 31, 2021, we realized a non-cash net benefit of \$715 million related to the valuation allowance release, which was partially offset by the addition of a valuation allowance of \$82 million, the majority of which relates to an unused capital loss generated in the fourth quarter of 2021.

At December 31, 2021, the net domestic deferred tax liability was \$88 million, net of an established valuation allowance of \$159 million. At December 31, 2020, the net domestic deferred tax liability was \$7 million, net of an established valuation allowance of \$793 million.

At December 31, 2021, the net foreign deferred tax liability was \$2 million, net of an established valuation allowance of \$3 million. At December 31, 2020, the net foreign deferred tax asset was \$18 million, net of an established valuation allowance

of \$3 million. The net foreign deferred tax asset will fluctuate as the value of the U.S. dollar changes with respect to the euro.

U. S. Steel will continue to monitor the realizability of its deferred tax assets on a quarterly basis. In the future, if we determine that realization is more likely than not for a deferred tax asset with a valuation allowance, the related valuation allowance will be reduced, and we will record a non-cash benefit to earnings.

#### **Unrecognized tax benefits**

Unrecognized tax benefits are the differences between a tax position taken, or expected to be taken, in a tax return and the benefit recognized for accounting purposes pursuant to the guidance in ASC Topic 740 on income taxes. The total amount of unrecognized tax benefits was \$3 million, \$16 million and \$3 million as of December 31, 2021, 2020 and 2019, respectively.

The total amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate was \$2 million and \$15 million as of December 31, 2021, and 2020, respectively.

U. S. Steel records interest related to uncertain tax positions as a part of net interest and other financial costs in the Consolidated Statements of Operations. Any penalties are recognized as part of selling, general and administrative expenses. U. S. Steel had accrued liabilities of \$2 million for interest and penalties related to uncertain tax positions as of both December 31, 2021, and 2020.

A tabular reconciliation of unrecognized tax benefits follows:

<b>(In millions)</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>
Unrecognized tax benefits, beginning of year	\$ 16	\$ 3	\$ 35
Increases – tax positions taken in prior years	—	13	—
Decreases – tax positions taken in prior years	(13)	—	—
Settlements	—	—	(32)
Lapse of statute of limitations	—	—	—
Unrecognized tax benefits, end of year	\$ 3	\$ 16	\$ 3

#### **Tax years subject to examination**

Below is a summary of the tax years open to examination by major tax jurisdiction:

U.S. Federal – 2017 and forward  
U.S. States – 2015 and forward  
Slovakia – 2011 and forward

#### **Status of Internal Revenue Service (IRS) examinations**

The IRS audit of U. S. Steel's 2017-2018 federal consolidated tax returns began in 2020 and is ongoing. The IRS completed its audit of the Company's 2014-2016 tax returns in 2020.

## **12. Investments, Long-Term Receivables and Equity Investee Transactions**

<b>(In millions)</b>	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
Equity method investments	\$ 660	\$ 1,140
Receivables due after one year, less allowance of \$4 and \$5	31	34
Other	3	3
Total	\$ 694	\$ 1,177

Summarized financial information of all investees accounted for by the equity method of accounting is as follows (amounts represent 100% of investee financial information):

(In millions)	2021	2020	2019
<b>Income data – year ended December 31:</b>			
Net Sales	\$ 2,229	\$ 2,485	\$ 2,528
Operating income	376	12	253
Net earnings	346	(124)	235
<b>Balance sheet date – December 31:</b>			
Current Assets	\$ 744	\$ 960	\$ 1,144
Noncurrent Assets	1,084	3,101	2,976
Current liabilities	293	419	573
Noncurrent Liabilities	529	3,063	2,542

U. S. Steel's portion of the income (loss) from investees reflected on the Consolidated Statements of Operations was \$170 million, \$(117) million and \$79 million for the years ended December 31, 2021, 2020 and 2019, respectively.

All of our significant investees are located in the U.S. Investees accounted for using the equity method include:

Investee	December 31, 2021 Interest
Chrome Deposit Corporation	50 %
Daniel Ross Bridge, LLC	50 %
Double G Coatings Company, Inc.	50 %
Hibbing Development Company	24.1 %
Hibbing Taconite Company(a)	14.7 %
Patriot Premium Threading Services, LLC	50 %
PRO-TEC Coating Company, LLC	50 %
Strategic Investment Fund Partners II <sup>(b)</sup>	5.2 %
Worthington Specialty Processing	49 %

(a) Hibbing Taconite Company (Hibbing) is an unincorporated joint venture that is owned, in part, by Hibbing Development Company (HDC), which is accounted for using the equity method. Through HDC we are able to influence the activities of HTC, and as such, its activities are accounted for using the equity method.

(b) Strategic Investment Fund Partners II is a limited partnership and in accordance with ASC Topic 323, the financial activities are accounted for using the equity method.

In 2020, we recognized pre-tax gains on equity investee transactions of approximately \$6 million on the sale of our 49 percent ownership interest in Feralloy Processing Company and \$25 million for the step-up to fair value of our previously held investment in UPI.

Dividends or partnership distributions received from equity investees were \$2 million in 2021. There were none received in 2020 and \$5 million received in 2019, respectively.

U. S. Steel evaluates impairment of its equity method investments whenever circumstances indicate that a decline in value below carrying value is other than temporary. Under these circumstances, we would adjust the investment down to its estimated fair value, which then becomes its new carrying value.

We supply substrate to certain of our equity method investees and from time to time will extend the payment terms for their trade receivables. For discussion of transactions and related receivable and payable balances between U. S. Steel and its investees, see Note 23.

### 13. Property, Plant and Equipment

(In millions)	Useful Lives	December 31,	
		2021	2020
Land and depletable property	—	\$ 213	\$ 237
Buildings	35-40 years	1,558	1,154
Machinery and equipment			
Steel producing	2-30 years	15,968	14,417
Transportation	3-40 years	—	282
Other	5-30 years	94	92
Information technology	5-6 years	798	796
Assets under finance lease	5-15 years	160	113
Construction in process	—	885	613
Total		19,676	17,704
Less accumulated depreciation and depletion		12,422	12,260
Net		\$ 7,254	\$ 5,444

Amounts in accumulated depreciation and depletion for assets acquired under finance leases were \$59 million and \$40 million at December 31, 2021 and 2020, respectively.

### 14. Goodwill and Intangible Assets

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

(In millions)	Useful Lives	As of December 31, 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	\$ 18	\$ 395	\$ 132	\$ 55	\$ 77	\$ —
Patents	5-15 Years	17	11	6	22	7	10	5
Energy Contract	2 Years	54	11	43	54	—	5	49
Other	4-15 Years	—	—	—	14	5	9	—
Total amortizable intangible assets		\$ 484	\$ 40	\$ 444	\$ 222	\$ 67	\$ 101	\$ 54

Amortization expense was \$26 million and \$8 million for years ended December 31, 2021 and December 31, 2020, respectively. We expect approximately \$142 million in annual amortization expense through 2026 and approximately \$301 million in remaining amortization expense thereafter.

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

Below is a summary of goodwill by segment for the twelve months ended December 31, 2021:

(In millions)	Flat-Rolled	Mini Mill	USSE	Tubular	Total
Balance at December 31, 2020	\$ —	\$ —	\$ 4	\$ —	\$ 4
Additions	—	916	—	—	916
Balance at December 31, 2021	\$ —	\$ 916	\$ 4	\$ —	\$ 920

### 15. 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 (the Committee), or its designee, under the 2005 Stock Incentive Plan (the 2005 Plan) and the 2016 Omnibus Incentive Compensation Plan, as amended and restated (the Omnibus Plan) (collectively the Plans). On April 26, 2016, the Company's stockholders approved the Omnibus Plan and authorized the Company to issue up to 7,200,000 shares of U. S. Steel common stock under the Omnibus Plan. The Company's stockholders authorized the issuance of an additional 6,300,000 shares under the Omnibus Plan on April 25, 2017, an additional 4,700,000 shares under the Omnibus Plan on April 28, 2020 and an additional 14,500,000 shares under the Omnibus Plan on April 27, 2021. While awards that were previously granted under the 2005 Plan remain outstanding, all future awards will be granted under the Omnibus Plan. As of December 31, 2021, there were 13,295,999 shares available for future grants under the Omnibus

Plan. Generally, a share issued under the Omnibus Plan pursuant to an award other than a stock option will reduce the number of shares available under the Stock Plan by 1.78 shares. Shares related to awards under either plan (i) that are forfeited, (ii) that terminate without shares having been issued or (iii) for which payment is made in cash or property other than shares, are again available for awards under the Omnibus Plan. Shares delivered to U. S. Steel or withheld for purposes of satisfying the exercise price or tax withholding obligations are not available for future awards. The purpose of the Plans is to attract, retain and motivate employees and non-employee directors of outstanding ability, and to align their interests with those of the stockholders of U. S. Steel. The Committee administers the Plans, and under the Omnibus Plan may make grants of stock options, restricted stock units (RSUs), performance awards, and other stock-based awards.

The following table summarizes the total stock-based compensation awards granted during the years 2021, 2020 and 2019:

	Stock Options	Restricted Stock Units	TSR Performance Awards	ROCE Performance Awards (a)	Performance-Based Restricted Stock Units
2021	171,000	1,891,481	306,930	485,900	676,954
2020	—	2,640,690	671,390	—	—
2019	—	1,005,500	210,520	527,470	—

(a) The ROCE awards granted in 2020 are not shown in the table because they were granted in cash.

### Stock-based compensation expense

The following table summarizes the total compensation expense recognized for stock-based compensation awards:

(In millions, except per share amounts)	Year Ended December 31, 2021	Year Ended December 31, 2020	Year Ended December 31, 2019
Stock-based compensation expense recognized:			
Cost of sales	\$ 14	\$ 8	\$ 9
Selling, general and administrative expenses	41	18	17
Decrease in net income	55	26	26
Decrease in basic earnings per share	0.21	0.13	0.15
Decrease in diluted earnings per share	0.20	0.13	0.15

As of December 31, 2021, total future compensation cost related to nonvested stock-based compensation arrangements was \$53 million and the average period over which this cost is expected to be recognized is approximately 14 months.

### Stock options

Compensation expense for stock options is recorded over the vesting period based on the fair value on the date of grant, as calculated by U. S. Steel using the Black-Scholes model and the assumptions listed below. Awards generally vest ratably over a three-year service period and have a term of ten years. Stock options are generally issued at the average market price of the underlying stock on the date of the grant. Upon exercise of stock options, shares of U. S. Steel stock are issued from treasury stock or from authorized, but unissued common stock. There were 171,000 performance-based stock options granted in 2021. There were no stock options granted in 2020 and 2019.

The expected annual dividends per share are based on the latest annualized dividend rate at the date of grant; the expected life in years is determined primarily from historical stock option exercise data; the expected volatility is based on the historical volatility of U. S. Steel stock; and the risk-free interest rate is based on the U.S. Treasury strip rate for the expected life of the option.

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

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



The following table shows a summary of the status and activity of stock options for the year ended December 31, 2021:

	Shares	Weighted-Average Exercise Price (per share)	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in millions)
Outstanding at January 1, 2021	2,046,236	\$ 25.98		
Granted	171,000	\$ 23.47		
Exercised	(378,522)	\$ 17.56		
Forfeited or expired	(178,950)	\$ 47.53		
Outstanding at December 31, 2021	1,659,764	\$ 25.31	3.51	\$ 4
Exercisable at December 31, 2021	1,488,764	\$ 25.53	3.11	\$ 3
Exercisable and expected to vest at December 31, 2021	1,659,764	\$ 25.31	3.11	\$ 4

The aggregate intrinsic value in the table above represents the total pretax intrinsic value (difference between our closing stock price on the last trading day of 2021 and the exercise price, multiplied by the number of in-the-money options). Intrinsic value changes are a function of the fair market value of our stock.

The total intrinsic value of stock options exercised (i.e., the difference between the market price at exercise and the price paid by the employee to exercise the option) was \$3 million during the year ended December 31, 2021 and immaterial during the years ended December 31, 2020 and December 31, 2019. The total amount of cash received by U. S. Steel from the exercise of options was \$7 million during the year ended December 31, 2021 and immaterial during the year ended December 31, 2020. The related net tax benefit realized from the exercise of these options was immaterial in 2021 and 2020.

### Stock awards

Compensation expense for nonvested stock awards is recorded over the vesting period based on the fair value at the date of grant.

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

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

Performance awards based on the return on capital employed (ROCE) metric were granted in equity in 2021 and 2019, and in cash in 2020. ROCE awards granted will be measured on a weighted average basis of the Company's consolidated worldwide earnings (loss) before interest and income taxes, as adjusted, divided by consolidated worldwide capital employed, as adjusted, over a three year period.

For outstanding ROCE-based equity awards, weighted average ROCE is calculated based on the ROCE achieved in the first, second and third years of the performance period, weighted at 20 percent, 30 percent and 50 percent, respectively. The ROCE awards will payout 50 percent at the threshold level, 100 percent at the target level and 200 percent at the maximum level. Payouts for performance in between the threshold percentages will be interpolated.

Compensation expense associated with the ROCE awards will be contingent based upon the achievement of the specified ROCE performance goals and will be adjusted on a quarterly basis to reflect the probability of achieving the ROCE metric.

ROCE performance awards may vest at the end of a three-year performance period contingent upon meeting ROCE performance goals approved by the Committee. The fair value of the ROCE performance awards is the average market price of the underlying common stock on the date of grant.

In 2021, special performance-based restricted stock unit awards (PSUs) were granted to members of the Company's executive leadership team. Shares are earned based on the achievement of certain pre-set quantitative performance criteria during the four-year performance period, January 1, 2022 through December 31, 2025. Shares may vest following the expiration of the Performance Period if the Company satisfies the performance criteria.

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

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

The following table shows a summary of the performance awards outstanding as of December 31, 2021, and their fair market value on the respective grant date:

Performance Period	Fair Value (in millions)	Minimum Shares	Target Shares	Maximum Shares
2021 - 2023	\$ 30	—	1,458,144	2,916,288
2020 - 2022	\$ 5	—	641,005	1,282,010
2019 - 2021	\$ 16	—	615,477	1,230,954

The following table shows a summary of the status and activity of nonvested stock awards for the year ended December 31, 2021:

	Restricted Stock Units	TSR Performance Awards <sup>(a)</sup>	ROCE Performance Awards <sup>(a)</sup>	Performance- Based Restricted Stock Units <sup>(a)</sup>	Total	Weighted- Average Grant-Date Fair Value
Nonvested at January 1, 2021	3,515,725	918,564	666,736	—	5,101,025	\$ 16.85
Granted	1,891,481	306,930	485,900	676,954	3,361,265	20.24
Vested	(1,517,986)	—	—	—	(1,517,986)	19.01
Performance adjustment factor <sup>(b)</sup>	—	(69,483)	(211,230)	—	(280,713)	47.83
Forfeited or expired	(189,531)	(34,308)	(25,437)	—	(249,276)	14.43
Nonvested at December 31, 2021	3,699,689	1,121,703	915,969	676,954	6,414,315	\$ 16.85

(a) The number of shares shown for the performance awards is based on the target number of share awards.

(b) Consists of adjustments to vested performance awards to reflect actual performance. The adjustments were required since the original grants of the awards were at 100 percent of the targeted amounts and the awards vested at less than target.

The following table presents information on RSUs and performance awards granted:

	2021	2020	2019
Number of awards granted	3,361,265	3,312,080	1,743,490
Weighted-average grant-date fair value per share	\$ 20.24	\$ 8.69	\$ 24.46

During the years ended December 31, 2021, 2020, and 2019, the total fair value of shares vested was \$29 million, \$16 million, and \$21 million, respectively.

## 16. Derivative Instruments

U. S. Steel is exposed to foreign currency exchange rate risks in our European operations. USSE's revenues are primarily in euros and costs are primarily in euros and U.S. dollars (USD). U. S. Steel uses foreign exchange forward sales contracts (foreign exchange forwards) with maturities no longer than 12 months to exchange euros for USD to manage our currency requirements and exposure to foreign currency exchange rate fluctuations. Derivative instruments are required to be recognized at fair value in the Consolidated Balance Sheet. U. S. Steel did not designate euro foreign exchange forwards entered into prior to July 1, 2019, as hedges; therefore, changes in their fair value were recognized immediately in the Consolidated Statements of Operations (mark-to-market accounting). For those contracts, U. S. Steel recognized changes in fair value immediately through earnings until all of the contracts matured in July 2020. 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 Consolidated Statements of Operations (mark-to-market accounting).

U. S. Steel may use fixed-price forward physical purchase contracts to partially manage our exposure to price risk related to the purchases of natural gas, zinc and tin used in the production process. Generally, forward physical purchase contracts qualify for the normal purchase and normal sales exceptions described in ASC Topic 815 and are not subject to mark-to-market accounting. U. S. Steel also uses financial swaps to protect from the commodity price risk associated with purchases of natural gas, zinc, tin, electricity, and iron ore pellets (commodity purchase swaps). We elected cash flow hedge accounting for domestic commodity purchase swaps for natural gas, zinc, tin, iron ore pellets and use mark-to-market accounting for electricity swaps and for commodity purchase swaps used in our European operations.

In accordance with the guidance in ASC Topic 820 on fair value measurements and disclosures, the fair value of our foreign exchange forwards, commodity purchase swaps and sales swaps was determined using Level 2 inputs, which are defined as "significant other observable" inputs. The inputs used are from market sources that aggregate data based upon market transactions.

The table below shows the outstanding swap quantities used to hedge forecasted purchases and sales as of December 31, 2021, and December 31, 2020:

Hedge Contracts	Classification	December 31, 2021	December 31, 2020
Natural gas (in mmbtus)	Commodity purchase swaps	40,498,000	38,801,400
Tin (in metric tons)	Commodity purchase swaps	1,648	812
Zinc (in metric tons)	Commodity purchase swaps	7,167	25,361
Electricity (in megawatt hours)	Commodity purchase swaps	810,720	760,320
Iron ore pellets (in metric tons)	Commodity purchase swaps	30,000	—
Iron ore pellets (in metric tons)	Zero-cost collars	1,296,000	—
Hot-rolled coils (in tons)	Sales swaps	157,120	120,000
Foreign currency (in millions of euros)	Foreign exchange forwards	€308	€242
Foreign currency (in millions of dollars)	Foreign exchange forwards	\$2	—

The following summarizes the fair value amounts included in our Consolidated Balance Sheets as of December 31, 2021, and December 31, 2020:

(In millions) Designated as Hedging Instruments	Balance Sheet Location	December 31, 2021	December 31, 2020
Sales swaps	Accounts receivable	\$ 10	\$ —
Sales swaps	Accounts payable	30	26
Sales swaps	Investments and long-term receivables	1	—
Commodity purchase swaps	Accounts receivable	17	5
Commodity purchase swaps	Accounts payable	29	10
Commodity purchase swaps	Investments and long-term receivables	1	—
Commodity purchase swaps	Other long-term liabilities	4	—
Foreign exchange forwards	Accounts receivable	15	—
Foreign exchange forwards	Accounts payable	—	18
<b>Not Designated as Hedging Instruments</b>			
Commodity purchase swaps	Accounts receivable	5	—
Commodity purchase swaps	Investments and long-term receivables	5	1

The table below summarizes the effect of hedge accounting on AOCI and amounts reclassified from AOCI into earnings for 2021, 2020, and 2019:

(In millions)	(Loss) Gain on Derivatives in AOCI			Location of Reclassification from AOCI <sup>(a)</sup>	Amount of (Loss) Gain Recognized in Income		
	2021	2020	2019		2021	2020	2019
Sales swaps	\$ 7	\$ (26)	\$ 1	Net sales	\$ (170)	\$ —	\$ (1)
Commodity purchase swaps	(11)	17	(6)	Cost of sales <sup>(b)</sup>	57	(24)	(19)
Foreign exchange forwards	33	(17)	1	Cost of sales	(3)	(7)	(1)

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

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

The table below summarizes the impact of derivative activity where hedge accounting has not been elected on our Consolidated Statements of Operations for 2021, 2020 and 2019:

(In millions)	Consolidated Statement of Operations Location	Amount of (Loss) Gain Recognized in Income		
		2021	2020	2019
Commodity purchase swaps	Cost of sales	19	(1)	—
Foreign exchange forwards	Other financial costs	2	—	17

At current contract values, \$3 million in AOCI as of December 31, 2021 will be recognized as an decrease in cost of sales over the next year and \$20 million in AOCI as of December 31, 2021, will be recognized as a decrease in net sales over the next year. The maximum derivative contract duration for commodity purchase swaps is 13 months, the maximum duration for sales swaps is 13 months and the maximum derivative contract duration for commodity purchase swaps where hedge accounting was not elected is 25 months.

## 17. Debt

(In millions)	Issuer/Borrower	Interest Rates %	Maturity	December 31,	
				2021	2020
2037 Senior Notes	U. S. Steel	6.650	2037	\$ 350	\$ 350
2029 Senior Secured Notes	Big River Steel	6.625	2029	720	—
2029 Senior Notes	U. S. Steel	6.875	2029	750	—
2026 Senior Notes	U. S. Steel	6.250	2026	—	650
2026 Senior Convertible Notes	U. S. Steel	5.000	2026	350	350
2025 Senior Notes	U. S. Steel	6.875	2025	—	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	—	—
Export-Import Credit Agreement	U. S. Steel	Variable	2021	—	180
Environmental Revenue Bonds	U. S. Steel	4.125 - 6.750	2024 - 2050	647	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	67	81
Finance leases and all other obligations	Big River Steel	Various	2021-2031	122	—
ECA Credit Agreement	U. S. Steel	Variable	2031	136	113
Credit Facility Agreement	U. S. Steel	Variable	2024	—	500
Big River Steel ABL Facility	Big River Steel	Variable	2026	—	—
USSK Credit Agreement	U. S. Steel Kosice	Variable	2026	—	368
USSK credit facilities	U. S. Steel Kosice	Variable	2024	—	—
Total debt				3,894	5,115
Less unamortized discount, premium and debt issuance costs				3	228
Less short-term debt, long-term debt due within one year, and short-term issuance costs				28	192
Long-term debt				\$ 3,863	\$ 4,695

The following is a summary of debt repayments made during the twelve months ended December 31, 2021:

Debt Instrument (in Millions)	Date	Twelve Months Ended December 31, 2021
		Debt Extinguished
Arkansas Teacher Retirement System Notes Payable	Fourth quarter 2021	106
Environmental Revenue Bonds (U. S. Steel)	Fourth quarter 2021	70
Finance leases and all other obligations <sup>(e)</sup>	Fourth quarter 2021	46
6.250% Senior Notes due 2026 <sup>(d)</sup>	Fourth quarter 2021	230
6.250% Senior Notes due 2026 <sup>(a)</sup>	Third quarter 2021	370
6.875% Senior Notes due 2025 <sup>(a)</sup>	Third quarter 2021	718
6.625% 2029 Senior Secured Notes <sup>(a)</sup>	Third quarter 2021	180
6.250% Senior Notes due 2026	Second quarter 2021	18
6.875% Senior Notes due 2025	Second quarter 2021	14
12.000% 2025 Senior Secured Notes <sup>(b)</sup>	First quarter 2021	1,056
6.875% Senior Notes due 2025	First quarter 2021	18
6.250% Senior Notes due 2026	First quarter 2021	32
Environmental Revenue Bonds (U. S. Steel)	First quarter 2021	89
Export-Import Credit Agreement <sup>(c)</sup>	First quarter 2021	180
<b>Total</b>		<b>\$ 3,127</b>

<sup>(a)</sup> During the three months ended September 30, 2021, there were redemption premiums paid of \$28 million and a net gain of \$5 million for the write-off of unamortized acquisition-related fair value adjustment, discounts, and debt issuance costs as a result of these debt repayments.

<sup>(b)</sup> There were redemption premiums and unamortized discount and debt issuance write-offs of approximately \$181 million and \$71 million, respectively related to the repayment.

<sup>(c)</sup> Export-Import Credit Agreement was terminated in the first quarter of 2021. There were approximately \$3 million in non-cash debt extinguishment costs associated with the repayment.

<sup>(d)</sup> There were redemption premiums and unamortized discount and debt issuance write-offs of approximately \$7 million and \$2 million, respectively, related to the repayment.

<sup>(e)</sup> Includes BRS Mortgage, Fairfield Caster Lease, and BRS Stonebriar Financing; extinguishment costs associated with this debt were immaterial.

### 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. 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, 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 100 percent of the principal amount of the 2029 Senior Notes to be redeemed plus a "make-whole" premium set forth in the indenture 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, the Issuers may redeem the 2029 Senior Secured Notes at their 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 %

At any time prior to September 15, 2023, the Issuers may at their option on one or more occasions redeem up to \$90 million of the Notes during each twelve-month period commencing with September 18, 2020 at a redemption price of 103.00% of the principal amount thereof, plus accrued and unpaid interest.

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	103.000 %
September 1, 2027 to August 31, 2028	102.000 %
September 1, 2028 to August 31, 2029	101.000 %
On and after September 1, 2029	100.000 %

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

The 2019 ADFA Bonds are fully and unconditionally guaranteed on a senior secured basis, jointly and severally, by BRS Intermediate, BRS Finance Corp. and all future direct and indirect wholly owned domestic subsidiaries of Big River Steel LLC, and secured 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.



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.

<b>Year</b>	<b>Redemption Price</b>
September 1, 2027 to August 31, 2028	103.000 %
September 1, 2028 to August 31, 2029	102.000 %
September 1, 2029 to August 31, 2030	101.000 %
On and after September 1, 2030	100.000 %

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 100 percent of the principal amount of the 2020 ADFA Bonds to be redeemed plus a "make-whole" premium set forth in the indenture 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. 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. Big River Steel may prepay amounts owed under these agreements at any time without penalty. During the fourth quarter of 2021, Big River Steel repaid all of the financing agreements with the Arkansas Teacher Retirement System. The principal amount was approximately \$106 million in aggregate. As of December 31, 2021, there are no outstanding balances for these financing agreements.

### **Big River Steel — Sustainability Linked ABL Facility**

On July 23, 2021, Big River Steel entered into an amendment to its senior secured asset-based revolving credit facility (Big River Steel ABL Facility), which extended the maturity by five years and added sustainability targets related to carbon reduction, safety performance and facility certification by ResponsibleSteel™.

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 July 23, 2026. There were no outstanding borrowings at December 31, 2021. Availability under the Big River Steel ABL Facility, pursuant to the available borrowing base was \$350 million at December 31, 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 December 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.

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

The Fifth Amended and Restated Credit Facility Agreement (Credit Facility Agreement) was amended on July 23, 2021 to include targets related to carbon reduction, safety performance and facility certification by ResponsibleSteel™. In addition to the new sustainability link, the Credit Facility Agreement was amended to reduce the facility size to \$1.75 billion from \$2 billion, which supports the Company's current footprint and helps optimize its global liquidity position.

As of December 31, 2021, there were approximately \$4 million of letters of credit issued, and no loans drawn under the Credit Facility Agreement. The availability under the Credit Facility Agreement was \$1.746 billion as of December 31, 2021. 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 \$175 million. Based on the most recent four quarters as of December 31, 2021, the Company would have met the fixed charge coverage ratio test.

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

On September 29, 2021, USSK entered into a €300 million (approximately \$340 million) unsecured sustainability linked credit agreement (USSK Credit Agreement), replacing the previous €460 million credit facility agreement. The USSK Credit Agreement matures in 5 years and contains sustainability targets related to carbon reduction, safety performance and facility certification by ResponsibleSteel™. At December 31, 2021, USSK had no borrowings under the USSK Credit Agreement.

At December 31, 2021, USSK had no borrowings under its €20 million credit facility (approximately \$23 million) (USSK Credit Facility) and the availability was approximately \$13 million due to approximately \$9 million of customs and other guarantees outstanding.

**Debt Maturities** – Aggregate maturities of debt are as follows (in millions):

2022	2023	2024	2025	2026	Later Years	Total
\$ 28	\$ 48	\$ 88	\$ 14	\$ 500	\$ 3,217	\$ 3,895

## **18. Pensions and Other Benefits**

U. S. Steel has defined contribution or multi-employer retirement benefits for more than three-quarters of its employees in the United States and non-contributory defined benefit pension plans covering the remaining employees. Benefits under the defined benefit pension plans are based upon years of service and final average pensionable earnings, with a minimum benefit based upon years of service. In addition, pension benefits for most non-represented employees under these plans are based upon a percent of total career pensionable earnings. Effective December 31, 2015, non-represented participants in the defined benefit plan no longer accrue additional benefits under the plan. For those non-represented employees without defined benefit coverage (defined benefit pension plan was closed to new participants in 2003) and those for which the defined benefit plan was frozen, the Company also provides in the defined contribution plans (401(k) plans) a retirement account benefit based on salary and attained age. Most non-represented employees also participate in the 401(k) plans whereby the Company matches a certain percentage of salary based on the amount contributed by the participant. At December 31, 2021, more than two-thirds of U. S. Steel's represented employees in the United States are covered by the Steelworkers Pension Trust (SPT), a multi-employer pension plan, to which U. S. Steel contributes on the basis of a fixed dollar amount for each hour worked.

On November 8, 2021, U. S. Steel entered into a commitment agreement with Banner Life Insurance Company and William Penn Life Insurance Company of New York (the "Insurers") and State Street Global Advisors Trust Company, as independent fiduciary to the United States Steel Corporation Plan for Employee Pension Benefits (Revision of 2003), where U. S. Steel will purchase group annuity contracts that will transfer approximately \$284 million of its pension plan obligations to the Insurers. The purchase of the group annuity contracts will be funded directly by the assets of the pension plan. The purchase results in the transfer of administrative and benefit-paying responsibilities for approximately 17,800 U.S. retirees and beneficiaries to the Insurers. The Insurers will begin paying benefits for certain retirees and beneficiaries in the Plan on January 1, 2022. There will be no change to the pension benefits for any retirees and beneficiaries as a result of the transaction. As a result of the transaction, the Corporation recognized a non-cash pension settlement charge of

approximately \$93 million. This amount was reclassified to earnings through net Interest and other financial costs from accumulated other comprehensive loss.

In addition during 2021, the Company recorded termination charges of approximately \$34 million in pensions and \$17 million in other benefits related to the planned sale of a component within the flat-roll segment. These amounts were recorded to earnings through restructuring and other costs.

In February of 2020, U. S. Steel acquired the remaining 50% ownership of its joint venture with USS/POSCO Industries (UPI) and its associated benefit plans. Upon acquisition, UPI's defined benefit pension and other benefit liability was estimated on a net basis at \$8 million and \$55 million, respectively.

On November 13, 2018, the USW ratified successor four year Collective Bargaining Agreements with U. S. Steel and its U. S. Steel Tubular Products, Inc. subsidiary (the 2018 Labor Agreements). The 2018 Labor Agreements were effective as of September 1, 2018 and expire on September 1, 2022. As a result of the 2018 Labor Agreements, the defined benefit pension liability increased \$26 million after considering higher wages on final average pay formulas and higher flat rate minimum multipliers.

U. S. Steel's defined benefit retiree health care and life insurance plans (Other Benefits) cover the majority of its represented employees in the United States upon their retirement. Health care benefits are provided for Medicare and pre-Medicare retirees, with Medicare retirees largely enrolled in Medicare Advantage Plans. Both are subject to various cost sharing features, and in most cases domestically, an employer cap on total costs. The Other Benefits plan was closed to represented employees hired or rehired under certain conditions on or after January 1, 2016.

Per an amendment effective June 30, 2014 to the retiree medical and retiree life insurance plan, benefits for non-represented employees who retired after December 31, 2017 were eliminated.

The majority of U. S. Steel's European employees are covered by government-sponsored programs into which U. S. Steel makes required contributions. Also, U. S. Steel sponsors defined benefit plans for most European employees covering benefit payments due to employees upon their retirement, some of which are government mandated. These same employees receive service awards throughout their careers based on stipulated service and, in some cases, age and service.

U. S. Steel uses a December 31 measurement date for its plans and may have an interim measurement date if significant events occur. Details relating to pension benefits and Other Benefits are below.

(In millions)	Pension Benefits		Other Benefits	
	2021	2020	2021	2020
<b>Change in benefit obligations</b>				
Benefit obligations at January 1	\$ 6,186	\$ 5,822	\$ 1,841	\$ 1,876
Service cost	53	51	11	12
Interest cost	163	193	50	63
UPI acquisition	—	246	—	56
Actuarial losses (gains)	(202)	400	(171)	(23)
Exchange rate loss	(3)	3	—	—
Settlements, curtailments and termination benefits	(358)	4	19	4
Benefits paid	(417)	(533)	(130)	(147)
Benefit obligations at December 31	\$ 5,422	\$ 6,186	\$ 1,620	\$ 1,841
<b>Change in plan assets</b>				
Fair value of plan at January 1	\$ 6,035	\$ 5,406	\$ 2,111	\$ 2,025
Actual return on plan assets	394	922	70	219
UPI acquisition	—	238	—	1
Asset reversion	—	—	(4)	(38)
Employer contributions	—	—	2	1
Settlements	(380)	—	—	—
Benefits paid from plan assets	(417)	(531)	(85)	(97)
Fair value of plan assets at December 31	\$ 5,632	\$ 6,035	\$ 2,094	\$ 2,111
<b>Funded status of plans at December 31</b>	<b>210</b>	<b>(151)</b>	<b>474</b>	<b>270</b>

For Pension Benefits, the largest contributor to the actuarial gain in 2021 was the increase in the discount rate from 2.72% at December 31, 2020 to 3.01% at December 31, 2021. In 2020, the largest contributor of actuarial loss was the decrease in the discount rate from 3.35% at December 31, 2019 to 2.72% at December 31, 2020. This loss was partially offset by a change in mortality assumptions.

For Other Benefits, the largest contributor to the actuarial gain in 2021 was attributable to reductions in future health care costs and the increase in the discount rate from 2.80% at December 31, 2020 to 3.11% at December 31, 2021. In 2020, the largest contributor of actuarial gain was attributable to reductions in future health care costs. The gain was partially offset by a decrease in the discount rate from 3.43% at December 31, 2019 to 2.80% at December 31, 2020.

#### Amounts recognized in accumulated other comprehensive loss:

(In millions)	12/31/2020	2021		12/31/2021
		Amortization	Activity	
<b>Pensions</b>				
Prior Service Cost	\$ 14	\$ (2)	\$ —	\$ 12
Actuarial Losses	1,764	(231)	(237)	1,296
<b>Other Benefits</b>				
Prior Service Credit	(103)	29	—	(74)
Actuarial Gains	(556)	23	(160)	(693)

As of December 31, 2021 and 2020, the following amounts were recognized in the Consolidated Balance Sheet:

(In millions)	Pension Benefits		Other Benefits	
	2021	2020	2021	2020
Noncurrent assets <sup>(a)</sup>	252	12	535	326
Current liabilities	(1)	(9)	(3)	(4)
Noncurrent liabilities	(41)	(154)	(59)	(52)
Accumulated other comprehensive loss <sup>(b)</sup>	1,308	1,778	(767)	(659)
Net amount recognized	\$ 1,518	\$ 1,627	\$ (294)	\$ (389)

<sup>(a)</sup> Included in noncurrent assets for Other Benefits are \$41 million of expected retiree medical and life insurance payments for the next twelve months.

<sup>(b)</sup> Accumulated other comprehensive loss effects associated with accounting for pensions and other benefits in accordance with ASC Topic 715 at December 31, 2021 and December 31, 2020, respectively, are reflected net of tax of \$531 million and \$678 million respectively, on the Consolidated Statements of Stockholders' Equity.

The Accumulated Benefit Obligation (ABO) for all defined benefit pension plans was \$5,274 million and \$5,979 million at December 31, 2021 and 2020, respectively.

(In millions)	December 31,	
	2021	2020
<b>Information for pension plans with an accumulated benefit obligation in excess of plan assets:</b>		
Aggregate accumulated benefit obligations (ABO)	\$ (294)	\$ (5,979)
Aggregate projected benefit obligations (PBO)	(309)	(6,186)
Aggregate fair value of plan assets	268	6,035

The aggregate PBO in excess of plan assets reflected above is included in the payroll and benefits payable and employee benefits lines on the Consolidated Balance Sheet.

Following are the details of net periodic benefit costs related to Pension and Other Benefits:

(In millions)	Pension Benefits			Other Benefits		
	2021	2020	2019	2021	2020	2019
<b>Components of net periodic benefit cost (credits):</b>						
Service cost	\$ 53	\$ 51	\$ 44	\$ 11	\$ 12	\$ 13
Interest cost	163	193	237	50	63	91
Expected return on plan assets	(361)	(333)	(324)	(81)	(80)	(79)
Amortization - prior service costs (credits)	2	2	2	(29)	(6)	29
- actuarial losses (gains)	132	145	132	(23)	(16)	3
Net periodic benefit cost, excluding below	(11)	58	91	(72)	(27)	57
Multiemployer plans <sup>(a)</sup>	75	76	77	—	—	—
Settlement, termination and curtailment losses	135	11	11	19	4	—
Net periodic benefit cost (credits)	\$ 199	\$ 145	\$ 179	\$ (53)	\$ (23)	\$ 57

(a) Primarily represents pension expense for the SPT covering USW employees hired from National Steel Corporation and new USW employees hired after May 21, 2003.

Net periodic benefit (credits) for pensions and Other Benefits is projected to be approximately \$(7) million and approximately \$(114) million, respectively, in 2022. The pension cost projection includes approximately \$74 million of contributions to the SPT.

Weighted average assumptions used to determine the benefit obligation at December 31 and net periodic benefit cost for the year ended December 31 are detailed below.

	Pension Benefits		Other Benefits	
	2021	2020	2021	2020
	U.S. and Europe	U.S. and Europe	U.S.	U.S.
<b>Actuarial assumptions used to determine benefit obligations at December 31:</b>				
Discount rate	3.01 %	2.72 %	3.11 %	2.80 %
Increase in compensation rate	2.60 %	2.62 %	N/A	N/A

	Pension Benefits			Other Benefits		
	2021	2020	2019	2021	2020	2019
	U.S. and Europe	U.S. and Europe	U.S. and Europe	U.S.	U.S.	U.S.
<b>Actuarial assumptions used to determine net periodic benefit cost for the year ended December 31:</b>						
Discount rate	2.72 %	3.35 %	4.41 %	2.80 %	3.42 %	4.47 %
Expected annual return on plan assets	6.82 %	6.47 %	6.50 %	4.25 %	4.25 %	4.25 %
Increase in compensation rate	2.60 %	2.62 %	2.60 %	N/A	N/A	N/A

The discount rate reflects the current rate at which the pension and Other Benefit liabilities could be effectively settled at the measurement date. In 2017, we refined our discount rate determination process for our U.S. plans by using a bond matching approach to select specific bonds that would satisfy our projected benefit payments. We believe the bond matching approach more closely reflects the process we would employ to settle our pension and other benefits obligations. For our European pension plan, the discount rate is determined using data published by European Central Bank and underlying data provided by EuroMTS Ltd. The discount rate assumptions are updated annually.

	2021	2020
Assumed health care cost trend rates at December 31:	U.S.	U.S.
Health care cost trend rate assumed for next year	5.75%	6.50%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	4.50%	4.50%
Year that the rate reaches the ultimate trend rate	2029	2029

U. S. Steel reviews its actual historical rate experience and expectations of future health care cost trends to determine the escalation of per capita health care costs under U. S. Steel's benefit plans. About three quarters of our costs for the domestic USW participants' retiree health benefits in the Company's main domestic benefit plan are limited to a per capita dollar maximum calculation based on 2006 base year actual costs incurred under the main U. S. Steel benefit plan for USW participants (cost cap). The full effect of the cost cap is expected to be realized around 2028. After 2028, the Company's costs for a majority of USW retirees and their dependents are expected to remain fixed and as a result, the cost impact of health care escalation for the Company is projected to be limited for this group.

### Plan Assets

ASC Topic 820 establishes a single definition of fair value, creates a three-tier hierarchy as a framework for measuring fair value based on inputs used to value the Plan's investments, and requires additional disclosure about fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3). The three levels of the fair value hierarchy are summarized below:

- Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has the ability to access.
- Level 2 – Inputs to the valuation methodology include:
  - Quoted prices for similar assets or liabilities in active markets;
  - Quoted prices for identical or similar assets or liabilities in inactive markets;
  - Inputs other than quoted prices that are observable for the asset or liability;
  - Inputs that are derived principally from or corroborated by observable market data by correlation or other means

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

- Level 3 – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

An instrument's level is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs. The following is a description of the valuation methodologies used for assets measured at fair value. There have been no changes in the methodologies used at December 31, 2021 and 2020.

Short-term investments are valued at amortized cost which approximates fair value due to the short-term maturity of the instruments. Equity securities - U.S. & International are valued at the closing price reported on the active exchange on which the individual securities are traded. U.S. and Non U.S. government bonds are valued using pricing models maximizing the use of observable inputs for similar securities. Corporate U.S. & Non U.S. bonds are also valued using pricing models maximizing the use of observable inputs for similar securities, which includes basing value on yields currently available on comparable securities of issuers with similar credit ratings. When quoted prices are not available for identical or similar bonds, the bond is valued under a discounted cash flow approach that maximizes observable inputs, such as current yields of similar instruments, but includes adjustments for certain risks that may not be observable, such as credit and liquidity risks. Mortgage and asset-backed securities are valued using quotes from a broker dealer. Private equities and real estate are valued using information provided by external managers for each individual investment held in the fund or using NAV (net asset value) as a practical expedient. Timberland investments are valued at their appraised value. Mineral Interests and other alternatives are valued at the present value of estimated future cash flows discounted at estimated market rates for assets of similar quality and duration.



The fair value of U. S. Steel's pension plan assets by asset category at December 31 were as follows (in millions):

Asset Category	2021					2020				
	Level 1	Level 2	Level 3	measured at NAV <sup>(a)</sup>	Total	Level 1	Level 2	Level 3	measured at NAV <sup>(a)</sup>	Total
<b>Equity</b>										
U. S. companies	\$ 433	\$ —	\$ —	\$ —	\$ 433	\$ 306	\$ —	\$ —	\$ —	\$ 306
International companies	183	—	—	—	183	177	—	—	—	177
Total equity	616	—	—	—	616	483	—	—	—	483
<b>Fixed Income</b>										
Corporate Bonds - U.S.	—	1,405	—	—	1,405	—	1,514	—	—	1,514
Corporate Bonds - Non-U.S.	—	251	—	—	251	—	252	—	—	252
U.S. government and agencies	—	426	—	—	426	—	202	—	—	202
Non-U.S. government	—	78	—	—	78	—	97	—	—	97
Mortgage and asset-backed securities	—	1	—	—	1	—	213	—	—	213
Total fixed income	—	2,161	—	—	2,161	—	2,278	—	—	2,278
<b>Alternatives</b>										
Timberlands	—	—	—	268	268	—	—	269	—	269
Mineral Interests and other alternatives	—	—	22	9	31	—	—	19	—	19
Private equity	—	—	—	259	259	—	—	—	231	231
Real estate	—	—	32	187	219	—	—	36	205	241
Total alternatives	—	—	54	723	777	—	—	324	436	760
Commingled Funds	—	—	—	1,964	1,964	—	—	—	2,289	2,289
Short-Term Investments	117	—	—	—	117	173	—	—	—	173
Other <sup>(b)</sup>	(3)	—	—	—	(3)	52	—	—	—	52
Total assets at fair value	\$ 730	\$ 2,161	\$ 54	\$ 2,687	\$ 5,632	\$ 708	\$ 2,278	\$ 324	\$ 2,725	\$ 6,035

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

(b) Includes cash, accrued income, and miscellaneous payables.

The following table sets forth a summary of changes in the fair value of U. S. Steel's Pension plan Level 3 assets for the years ended December 31, 2021 and 2020:

(In millions)	Level 3 assets only	
	2021	2020
Balance at beginning of period	\$ 324	\$ 317
Transfers in and/or out of Level 3	(269)	—
Actual return on plan assets:		
Realized gain	3	2
Net unrealized loss	2	(9)
Purchases, sales, issuances and settlements:		
Purchases	24	17
Sales	(30)	(3)
Balance at end of period	\$ 54	\$ 324

The fair value of U. S. Steel's Other Benefits plan assets by asset category at December 31 were as follows (in millions):

Asset Category	2021					2020				
	Level 1	Level 2	Level 3	measured at NAV <sup>(a)</sup>	Total	Level 1	Level 2	Level 3	measured at NAV <sup>(a)</sup>	Total
<b>Equity</b>										
U. S. companies	\$ 186	\$ —	\$ —	\$ —	\$ 186	\$ 77	\$ —	\$ —	\$ —	\$ 77
International companies	97	—	—	—	97	27	—	—	—	27
Total equity	283	—	—	—	283	104	—	—	—	104
<b>Fixed Income</b>										
Corporate Bonds - U.S.	—	718	—	—	718	—	1,121	—	—	1,121
Corporate Bonds - Non-U.S.	—	191	—	—	191	—	231	—	—	231
U.S. government and agencies	—	198	—	—	198	—	365	—	—	365
Non-U.S. government	—	17	—	—	17	—	9	—	—	9
Mortgage and asset-backed securities	—	9	—	—	9	—	31	—	—	31
Total fixed income	—	1,133	—	—	1,133	—	1,757	—	—	1,757
<b>Alternatives</b>										
Timberlands	—	—	—	35	35	—	—	35	—	35
Other alternatives	—	—	39	2	41	—	—	—	—	—
Private equity	—	—	—	59	59	—	—	—	48	48
Real estate	—	—	—	26	26	—	—	—	29	29
Total alternatives	—	—	39	122	161	—	—	35	77	112
Commingled Funds	—	—	—	434	434	—	—	—	—	—
Short-Term Investments	71	—	—	—	71	102	—	—	—	102
Other <sup>(b)</sup>	12	—	—	—	12	36	—	—	—	36
Total assets at fair value	\$ 366	\$ 1,133	\$ 39	\$ 556	\$ 2,094	\$ 242	\$ 1,757	\$ 35	\$ 77	\$ 2,111

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

(b) Includes cash, accrued income, and miscellaneous payables.

The following table sets forth a summary of changes in the fair value of U. S. Steel's Other Benefits plan Level 3 assets for the years ended December 31, 2021 and 2020:

(In millions)	Level 3 assets only	
	2021	2020
Balance at beginning of period	\$ 35	\$ 35
Transfers in and/or out of Level 3	(35)	—
Actual return on plan assets:		
Realized gain	—	—
Net unrealized loss	1	—
Purchases, sales, issuances and settlements:		
Purchases	39	2
Sales	(1)	(2)
Balance at end of period	\$ 39	\$ 35

U. S. Steel's investment strategy for its U.S. pension and Other Benefits plan assets provides for a diversified mix of high quality bonds, public equities and selected smaller investments in private equities, private credit, timber and mineral interests. For its U.S. pension, U. S. Steel has a target allocation for plan assets of 50 percent in corporate bonds, government bonds and mortgage, private credit, and asset-backed securities. The balance is invested in equity securities, timber, private equity and real estate partnerships. U. S. Steel believes that returns on equities over the long term will be higher than returns from fixed-income securities as actual historical returns from U. S. Steel's trusts have shown. Returns on bonds tend to offset some of the short-term volatility of stocks. Both equity and fixed-income investments are made across a broad range of industries and companies (both domestic and foreign) to provide protection against the impact of volatility in any single industry as well as company specific developments. U. S. Steel will use a 6.90 percent assumed rate of return on assets for the development of net periodic cost for the main defined benefit pension plan in 2022. Actual returns since the inception of the plan have exceeded this 6.90 percent rate and while recent annual returns have been volatile, it is U. S. Steel's expectation that rates will achieve this level in future periods.

The UPI investment strategy for its pension plan is to minimize the volatility of the value of pension assets relative to obligations and to ensure assets are sufficient to pay plan benefits. To achieve this strategy, UPI has a liability driven allocation of 60 percent in fixed income with the balance primarily invested in return seeking U.S. and global equity. UPI will use a 5.35 percent assumed rate of return on assets for the development of net periodic cost for the UPI defined benefit pension plan in 2022.

For its Other Benefits plan, U. S. Steel is employing a liability driven investment strategy. The plan assets are allocated to match the plan cash flows with maturing investments. To achieve this strategy, U. S. Steel has a target allocation for plan assets of 72 percent in fixed income and private credit. The balance is primarily invested in equity securities, timber, private equity and real estate partnerships. U. S. Steel will use a 4.50 percent assumed rate of return on assets for the development of net periodic cost for its Other Benefit plans for 2022. The 2022 assumed rate of return was updated after a review of capital market forecasted returns based on target allocations. As a result, the expected asset return for 2022 was increased to 4.50 percent from the rate of return used for 2021 domestic net periodic benefit cost of 4.25 percent.

### Steelworkers Pension Trust

For most bargaining unit employees participating in the SPT, U. S. Steel contributed to the SPT a fixed dollar amount for each hour worked of \$3.35 through December 31, 2020. SPT contributions per hour worked increased to \$3.50 effective January 1, 2021. U. S. Steel's contributions to the SPT represented greater than 5% of the total combined contributions of all employers participating in the plan for the years ended December 31, 2021, 2020 and 2019.

Participation in a multi-employer pension plan agreed to under the terms of a collective bargaining agreement differ from a traditional qualified single employer defined benefit pension plan. The SPT shares risks associated with the plan in the following respects:

- a. Contributions to the SPT by U. S. Steel may be used to provide benefits to employees of other participating employers;
- b. If a participating employer stops contributing to the SPT, the unfunded obligations of the plan may be borne by the remaining participating employers;
- c. If U. S. Steel chooses to stop participating in the SPT, U. S. Steel may be required to pay an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

On March 21, 2011 the Board of Trustees of the SPT elected funding relief which has the effect of decreasing the amount of required minimum contributions in near-term years, but will increase the minimum funding requirements during later plan years. As a result of the election of funding relief, the SPT's zone funding under the Pension Protection Act may be impacted.

In addition to the funding relief election, the Board of Trustees also elected a special amortization rule, which allows the SPT to separately amortize investment losses incurred during the SPT's December 31, 2008 plan year-end over a 29 year period, whereas they were previously required to be amortized over a 15 year period.

U. S. Steel's participation in the SPT for the annual periods ended December 31, 2021, 2020 and 2019 is outlined in the table below.

Pension Fund	Employer Identification Number/ Pension Plan Number	Pension Protection Act Zone Status as of December 31 <sup>(a)</sup>		FIP/RP Status Pending/Implemented <sup>(b)</sup>	U.S. Steel Contributions (in millions)			Surcharge Imposed <sup>(c)</sup>		Expiration Date of Collective Bargaining Agreement
		2021	2020		2021	2020	2019	2021	2020	
Steelworkers Pension Trust	23-6648508/499	Green	Green	No	\$ 75	\$ 76	\$ 77	No	No	September 1, 2022

(a) The zone status is based on information that U. S. Steel received from the plan and is certified by the plan's actuary. Among other factors, plans in the green zone are at least 80 percent funded, while plans in the yellow zone are less than 80 percent funded and plans in the red zone are less than 65 percent funded.

(b) Indicates if a financial improvement plan (FIP) or a rehabilitation plan (RP) is either pending or has been implemented.

(c) Indicates whether there were charges to U. S. Steel from the plan.

### Cash Flows

The following information is in addition to the contributions to the SPT noted in the table above.

**Employer Contributions** – U. S. Steel did not make any voluntary or mandatory contributions to the U. S. Steel Retirement Plan Trust in 2021 or 2020. The U. S. Steel Retirement Plan Trust is the funding vehicle for the Company's main defined benefit pension plan.

For pension plans not funded by trusts, U. S. Steel made \$11 million, \$7 million and \$8 million of pension payments not funded by trusts in 2021, 2020 and 2019, respectively.

Cash payments totaling \$46 million, \$46 million and \$45 million were made for other post-employment benefit payments not funded by trusts in 2021, 2020 and 2019, respectively. In 2021, 2020 and 2019, U. S. Steel continued to use assets from our VEBA trust for represented retiree health care and life insurance benefits to pay USW post-employment benefit claims.

**Estimated Future Benefit Payments** – The following benefit payments, which reflect expected future service as appropriate, are expected to be paid from U. S. Steel's defined benefit plans:

(In millions)	Pension Benefits	Other Benefits
2022	\$ 407	\$ 135
2023	397	130
2024	427	127
2025	378	127
2026	368	126
Years 2027 - 2029	1,690	562

#### **Defined contribution plans**

U. S. Steel also contributes to several defined contribution plans for its salaried employees. Effective January 1, 2016, all non-represented salaried employees in North America receive pension benefits in the form of a separate retirement account through a defined contribution plan with contribution percentages based upon age, for which company contributions totaled \$20 million, \$10 million and \$23 million in 2021, 2020 and 2019, respectively. U. S. Steel's matching contributions to salaried employees' defined contribution plans, which are 100 percent of the employees' contributions up to six percent of their eligible salary, totaled \$18 million, \$8 million and \$18 million in 2021, 2020 and 2019, respectively. U. S. Steel also maintains non-qualified defined contribution plans to provide benefits which are otherwise limited by the Internal Revenue Code for qualified plans. U. S. Steel's contributions under these defined contribution plans totaled \$1 million, \$1 million, and \$1 million in 2021, 2020 and 2019, respectively.

Most represented employees are eligible to participate in a defined contribution plan where there is no company match on savings except for certain Tubular hourly employees. Effective with the 2015 Labor Agreement, represented hires on or after January 1, 2016 are eligible for a \$0.50 per hour savings account contribution. As a result of the 2018 Labor Agreements, the savings account contribution for each hour worked will increase to \$0.55 effective January 1, 2019, \$0.60 effective January 1, 2020, and \$0.65 effective January 1, 2021. These Company contributions for represented employees totaled \$4 million, \$4 million and \$3 million in 2021, 2020 and 2019, respectively.

#### **Other post-employment benefits**

The Company provides benefits to former or inactive employees after employment but before retirement. Certain benefits including workers' compensation and black lung benefits represent material obligations to the Company and under the guidance for nonretirement post-employment benefits, have historically been treated as accrued benefit obligations. Liabilities for these benefits recorded at December 31, 2021, totaled \$110 million as compared to \$115 million at December 31, 2020. Liability amounts were developed assuming a discount rate of 2.87% and 2.54% at December 31, 2021 and 2020. Net periodic benefit cost for these benefits is projected to be \$15 million in 2022 compared to \$17 million in 2021 and \$20 million in 2020.

#### **Pension Funding**

In March 2021, the American Rescue Plan Act (ARPA - H.R. 1319) further extended the pension relief interest rate corridor used to measure defined benefit pension obligations for calculating minimum annual contributions. The new interest rate formula results in higher interest rates for minimum funding calculations as compared to prior law over the next few years, which will improve the funded status of our main defined benefit pension plan and reduce minimum required contributions.

U. S. Steel will monitor the funded status of the plan to determine when voluntary contributions may be prudent in order to mitigate potentially larger mandatory contributions in later years.

## 19. Asset Retirement Obligations

U. S. Steel's asset retirement obligations (AROs) primarily relate to mine, landfill closure and post-closure costs. The following table reflects changes in the carrying values of AROs for the years ended December 31, 2021 and 2020:

(In millions)	December 31,	
	2021	2020
Balance at beginning of year	\$ 60	\$ 58
Additional obligations incurred	3	5
Obligations settled	(7)	(7)
Change in estimate of obligations	(1)	—
Foreign currency translation effects	(1)	1
Accretion expense	12	3
Balance at end of period	\$ 66	\$ 60

Certain AROs related to disposal costs of the majority of fixed assets at our integrated steel facilities have not been recorded because they have an indeterminate settlement date. These AROs will be initially recognized in the period in which sufficient information exists to estimate their fair value.

## 20. Fair Value of Financial Instruments

The carrying value of cash and cash equivalents, current accounts and notes receivable, accounts payable and accrued interest included in the Consolidated Balance Sheet approximate fair value. See Note 16 for disclosure of U. S. Steel's derivative instruments, which are accounted for at fair value on a recurring basis.

### Stelco Option for Minntac Mine Interest

On April 30, 2020, the Company entered into an Option Agreement with Stelco, Inc. (Stelco), that grants Stelco the option to purchase a 25 percent interest (the Option Interest) in a to-be-formed entity (the Joint Venture) that will own the Company's current iron ore mine located in Mt. Iron, Minnesota (the Minntac Mine). As consideration for the option, Stelco paid the Company an aggregate amount of \$100 million in five \$20 million installments during the year-ended December 31, 2020 which are recorded net of transaction costs in the 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 assets and liabilities that were not carried at fair value at December 31, 2021 and 2020.

(In millions)	December 31, 2021		December 31, 2020	
	Fair Value	Carrying Amount	Fair Value	Carrying Amount
<b>Financial liabilities:</b>				
Short-term and long-term debt <sup>(a)</sup>	\$ 4,379	\$ 3,702	\$ 5,323	\$ 4,806

(a) Excludes finance lease obligations.

The fair value of long-term debt was determined using Level 2 inputs which were derived from quoted market prices.

Fair value of the financial assets and liabilities disclosed herein is not necessarily representative of the amount that could be realized or settled, nor does the fair value amount consider the tax consequences of realization or settlement.

Financial guarantees are U. S. Steel's only unrecognized financial instrument. For details relating to financial guarantees see Note 26.

## 21. 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, 2019	\$ (843)	\$ 381	\$ (16)	\$ (478)
Other comprehensive income (loss) before reclassifications	271	68	(49)	290
Amounts reclassified from AOCI <sup>(a)</sup>	114	—	27	141
Net current-period other comprehensive income (loss)	385	68	(22)	431
Balance at December 31, 2020	\$ (458)	\$ 449	\$ (38)	\$ (47)
Other comprehensive income (loss) before reclassifications	297	(78)	(56)	163
Amounts reclassified from AOCI <sup>(a)</sup>	136	—	79	215
Net current-period other comprehensive income (loss)	433	(78)	23	378
Balance at December 31, 2021	\$ (25)	\$ 371	\$ (15)	\$ 331

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

(In millions) <sup>(a)</sup>	Amount reclassified from AOCI		
Details about AOCI components	2021	2020	2019
Amortization of pension and other benefit items			
Prior service costs <sup>(a)</sup>	\$ (27)	\$ (4)	\$ 31
Actuarial losses <sup>(a)</sup>	109	129	135
Settlements, termination and curtailment gains <sup>(a)</sup>	100	2	3
UPI purchase accounting adjustment	—	23	—
Total pensions and other benefits items	182	150	169
Derivative reclassifications to Consolidated Statements of Operations	105	32	22
Total before tax	287	182	191
Tax provision	(72)	(41)	(48)
Net of tax	\$ 215	\$ 141	\$ 143

<sup>(a)</sup> These AOCI components are included in the computation of net periodic benefit cost (see Note 18 for additional details).

## 22. Supplemental Cash Flow Information

(In millions)	Year Ended December 31,		
	2021	2020	2019
<b>Net cash (used in) provided by operating activities included:</b>			
Interest and other financial costs paid (net of amount capitalized)	\$ (319)	\$ (248)	\$ (151)
Income taxes (paid) refunded	\$ (75)	\$ 45	\$ 38
<b>Non-cash investing and financing activities:</b>			
Change in accrued capital expenditures	\$ 40	\$ (121)	\$ (70)
U. S. Steel common stock issued for employee/non-employee director stock plans	\$ 28	\$ 19	\$ 19
Capital expenditures funded by finance lease borrowings	\$ 18	\$ 31	\$ 46
Export Credit Agreement (ECA) financing	\$ 23	\$ 34	\$ —
Big River Steel put and call options <sup>(a)</sup>	\$ —	\$ —	\$ 21

<sup>(a)</sup> The Big River Steel put and call options amount represents the excess of the Class B Common Put Option and the Class B Common Call Option liabilities over the U. S. Steel Call Option asset from U. S. Steel's acquisition of its 49.9% ownership interest in Big River Steel on October 31, 2019. The exercise of the U. S. Steel Call Option on December 8, 2020 legally extinguished the remaining Big River Steel put and call options. See Note 7 for further details. U. S. Steel completed the purchase of the remaining interest in Big River Steel on January 15, 2021. See Note 5 for further details.

## 23. Transactions with Related Parties

Related party sales and service transactions are primarily related to equity investees and were \$1,311 million, \$976 million and \$1,431 million in 2021, 2020 and 2019, respectively.

Accounts payable to related parties include balances due to PRO-TEC Coating Company (PRO-TEC) of \$98 million and \$86 million at December 31, 2021 and 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 December 31, 2021 and 2020, respectively.



Purchases from related parties for outside processing services provided by equity investees amounted to \$38 million, \$90 million and \$31 million during 2021, 2020 and 2019, respectively. Purchases of iron ore pellets from related parties amounted to \$111 million, \$78 million and \$104 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Upon the acquisition of Big River Steel on January 15, 2021, there were related party payables of approximately \$27 million for steel substrate sales from Big River Steel to U. S. Steel. After the acquisition, the related party payables became intercompany payables that are eliminated in consolidation.

Upon the acquisition of UPI on February 29, 2020 there were \$135 million of related party receivables for prior sales of steel substrate from U. S. Steel to UPI. After the acquisition, the related party receivables became intercompany receivables that are eliminated in consolidation.

## 24. Leases

Operating lease assets consist primarily of office space, heavy mobile equipment used in our mining operations and facilities and equipment under operating service agreements for electricity generation and scrap processing. We also have operating lease assets for light mobile equipment and information technology assets. The Company also has short term leases related to transportation services for which we apply the short-term lease exception. Significant finance leases primarily consist of heavy mobile equipment used in our mining operations (see Note 17 for further details). Variable lease payments are primarily related to operating service agreements where payment is solely dependent on consumption of certain services, such as raw material and by-product processing. Most long-term leases include renewal options and, in certain leases, purchase options. Generally, we are not reasonably certain that these options will be exercised. We have residual value guarantees under certain light mobile equipment leases. There is no impact to our leased assets for residual value guarantees as the potential loss is not probable (see "Other Contingencies" in Note 26 for further details). We do not have material restrictive covenants associated with our leases or material amounts of sublease income. From time to time, U. S. Steel may enter into arrangements for the construction or purchase of an asset and then enter into a financing arrangement to lease the asset. U. S. Steel recognizes leased assets and liabilities under these arrangements when it obtains control of the asset.

The following table summarizes the lease amounts included in our Consolidated Balance Sheet as of December 31, 2021.

(In millions)	Balance Sheet Location	December 31, 2021	December 31, 2020
<b>Assets</b>			
Operating	Operating lease assets <sup>(a)</sup>	\$ 185	\$ 214
Finance	Property, plant and equipment <sup>(b)</sup>	101	73
<b>Total Lease Assets</b>		<b>\$ 286</b>	<b>\$ 287</b>
<b>Liabilities</b>			
<b>Current</b>			
Operating	Current operating lease liabilities	\$ 58	\$ 59
Finance	Current portion of long-term debt	16	16
<b>Non-Current</b>			
Operating	Noncurrent operating lease liabilities	136	163
Finance	Long-term debt less unamortized discount and issue costs	76	65
<b>Total Lease Liabilities</b>		<b>\$ 286</b>	<b>\$ 303</b>

<sup>(a)</sup> Operating lease assets are recorded net of accumulated amortization of \$128 million and \$96 million as of December 31, 2021, and December 31, 2020, respectively.

<sup>(b)</sup> Finance lease assets are recorded net of accumulated depreciation of \$59 million and \$40 million as of December 31, 2021, and December 31, 2020, respectively.

The following table summarizes lease costs included in our Consolidated Statement of Operations for the years ended December 31, 2021, December 31, 2020 and December 31, 2019.

(In millions)	Classification	Year Ended December 31, 2021	Year Ended December 31, 2020	Year Ended December 31, 2019
Operating Lease Cost <sup>(a)</sup>	Cost of sales	\$ 69	\$ 67	\$ 81
Operating Lease Cost	Selling, general and administrative expenses	14	14	11
Finance Lease Cost				
Amortization	Depreciation, depletion and amortization	21	14	7
Interest	Interest expense	9	4	3
<b>Total Lease Cost</b>		<b>\$ 113</b>	<b>\$ 99</b>	<b>\$ 102</b>

<sup>(a)</sup> Operating lease cost recorded in cost of sales includes \$11 million, \$7 million and \$15 million of variable lease cost for the years ended December 31, 2021, December 31, 2020 and December 31, 2019, respectively. An immaterial amount of variable lease cost was included in cost of sales and selling, general and administrative expenses for the years ended December 31, 2021, December 31, 2020 and December 31, 2019, respectively. \$1 million of short-term lease cost is included in cost of sales and selling, general and administrative expenses for both of the years ended December 31, 2021, and December 31, 2020. An immaterial amount of short-term lease cost is included in cost of sales and selling, general and administrative expenses for the year ended December 31, 2019.

Lease liability maturities as of December 31, 2021, are shown below.

(In millions)	Operating	Finance	Total
2022	\$ 68	\$ 20	\$ 88
2023	48	20	68
2024	38	18	56
2025	28	15	43
2026	19	12	31
After 2026	22	18	40
Total Lease Payments	\$ 223	\$ 103	\$ 326
Less: Interest	29	11	40
Present value of lease liabilities	\$ 194	\$ 92	\$ 286

Lease terms and discount rates are shown below.

	December 31, 2021
<b>Weighted average lease term</b>	
Finance	5 years
Operating	4 years
<b>Weighted average discount rate</b>	
Finance	4.16 %
Operating	6.56 %

Supplemental cash flow information related to leases is as follows:

(In millions)	Year Ended December 31, 2021	Year Ended December 31, 2020	Year Ended December 31, 2019
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows from operating leases	\$ 70	\$ 71	\$ 72
Operating cash flows from finance leases	9	4	3
Financing cash flows from finance leases	30	13	7
Right-of-use assets exchanged for lease liabilities:			
Operating leases	40	41	53
Finance leases	18	31	46

## 25. Restructuring and Other Charges

During 2021, the Company recorded restructuring and other charges of \$128 million, which consists of charges of \$29 million for Great Lakes Works, charges of approximately \$89 million related to the planned sale of a component within the Flat-Rolled segment and environmental-related charges at other facilities of \$10 million. Cash payments were made related to severance and exit costs of approximately \$58 million.

During 2020, the Company recorded restructuring and other charges of \$138 million, which consists of charges of \$66 million for the indefinite idling of a significant portion of Great Lakes Works, and our Keetac mining operations which was restarted in the fourth quarter, \$25 million for the indefinite idling of Lorain Tubular Operations and Lone Star Tubular Operations, and \$15 million and \$32 million for employee benefit costs related to Company-wide headcount reductions and headcount reductions under a voluntary early retirement program offered at USSK, respectively. Cash payments were made related to severance and exit costs of approximately \$169 million. A portion of these cash payments, approximately \$38 million, were funded by the postretirement benefit trust (VEBA) per an agreement with the United Steelworkers of America.

During 2019, U. S. Steel recorded restructuring and other charges of \$275 million, which consists of charges of \$25 million at USSK for headcount reductions and plant exit costs, \$227 million for the indefinite idling of our East Chicago Tin operations, our finishing facility in Dearborn, Michigan, and the intended indefinite idling of a significant portion of Great Lakes Works and \$23 million for Company-wide headcount reductions. Cash payments were made related to severance and exit costs of \$35 million.

Charges for restructuring and ongoing cost reduction initiatives are recorded in the period U. S. Steel commits to a restructuring or cost reduction plan, or executes specific actions contemplated by the plan and all criteria for liability recognition have been met. Charges related to the restructuring and cost reductions are reported in restructuring and other charges in the Consolidated Statements of Operations.

The activity in the accrued balances incurred in relation to restructuring during the years ended December 31, 2021, and December 31, 2020, were as follows:

(in millions)	Employee Related Costs	Exit Costs	Non-cash Charges	Total
Balance at December 31, 2019	\$ 87	\$ 125	\$ —	\$ 212
Additional charges	81	53	4	138
Cash payments/utilization	(117)	(52)	(4)	(173)
Balance at December 31, 2020	\$ 51	\$ 126	\$ —	\$ 177
Additional charges	76	51	1	128
Cash payments/utilization <sup>(a)</sup>	(36)	(28)	(1)	(65)
Balance at December 31, 2021	\$ 91	\$ 149	\$ —	\$ 240

<sup>(a)</sup>\$7 million of payments were made from the pension fund trust assets in the Employee Related Cost column.

Accrued liabilities for restructuring and other cost reduction programs are included in the following balance sheet lines:

(in millions)	December 31, 2021		December 31, 2020	
Accounts payable	\$	34	\$	34
Payroll and benefits payable		2		29
Employee benefits		88		22
Deferred credits and other noncurrent liabilities		116		92
Total	\$	240	\$	177

## 26. 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 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 December 31, 2021, U. S. Steel was a defendant in approximately 915 active cases involving approximately 2,505 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 jurisdictions which permit 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 year and the prior two years:

Period ended	Opening Number of Claims	Claims Dismissed, Settled and Resolved	New Claims	Closing Number of Claims
December 31, 2019	2,320	195	265	2,390
December 31, 2020	2,390	240	295	2,445
December 31, 2021	2,445	198	258	2,505

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

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

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

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

(In millions)	Year Ended December 31,	
	2021	2020
Beginning of period	\$ 146	\$ 186
Accruals for environmental remediation deemed probable and reasonably estimable	43	7
Obligations settled	(31)	(47)
End of period	\$ 158	\$ 146

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

(In millions)	December 31, 2021	December 31, 2020
Accounts payable	\$ 65	\$ 43
Deferred credits and other noncurrent liabilities	93	103
Total	\$ 158	\$ 146

Expenses related to remediation are recorded in cost of sales and were \$47 million for the year ended December 31, 2021. Expenses for the years ended December 31, 2020 and December 31, 2019 were immaterial. It is not currently possible to estimate the ultimate amount of all remediation costs that might be incurred or the penalties that may be imposed. Due to uncertainties inherent in remediation projects and the associated liabilities, it is reasonably possible that total remediation costs for active matters may exceed the accrued liabilities by as much as 15 to 30 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, we categorize 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 four 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-UPI LLC (UPI) formerly known as USS-POSCO Industries and the former steelmaking plant at Joliet, Illinois. As of December 31, 2021, accrued liabilities for these projects totaled \$1 million for the costs of studies, investigations, interim measures, design and/or remediation. It is reasonably possible that additional liabilities associated with future requirements regarding studies, investigations, design and remediation for these projects could be as much as \$22 million to \$36 million.
- (2) *Significant Projects with Defined Scope* – Projects with significant accrued liabilities with a defined scope. As of December 31, 2021, there are three significant projects with defined scope greater than or equal to \$5 million each, with a total accrued liability of \$102 million. These projects are: Gary Resource Conservation and Recovery Act (RCRA) (accrued liability of \$24 million), Duluth Works (accrued liability of \$59 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 December 31, 2021 was \$6 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 December 31, 2021 was approximately \$5 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 \$24 million at December 31, 2021 and were based on known scopes of work.

*Administrative and Legal Costs* – As of December 31, 2021, U. S. Steel had an accrued liability of \$10 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 \$27 million and \$42 million in 2021 and 2020, respectively. U. S. Steel anticipates making additional such expenditures in the future, which may be material; however, the exact amounts and timing of such expenditures are uncertain because of the continuing evolution of specific regulatory requirements.

**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, after consent from the European Commission, allocated free allowances to USSE in December 2021. The final volume was reduced to reflect USSE production cuts in 2019 and 2020. In the fourth quarter of 2020 USSE started purchasing European Union Allowances (EUA) for the Phase IV period. As of December 31, 2021, we have purchased approximately 4.0 million EUA totaling €176 million (approximately \$199 million) to fully cover the estimated 2021 shortfall and 1.1 million EUA totaling €68 million (approximately \$77 million) to cover the expected 2022 shortfall of emission allowances.

The EU's Industrial Emissions Directive requires implementation of EU determined best available techniques (BAT) for Iron and Steel production to reduce environmental impacts as well as compliance with BAT associated emission levels. Total capital expenditures for projects to comply with or go beyond BAT requirements is €138 million (approximately \$156 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 December 31, 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 \$158 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 December 31, 2021.

**Other contingencies** – Under certain operating lease agreements covering various equipment, U. S. Steel has the option to renew the lease or to purchase the equipment at the end of the lease term. If U. S. Steel does not exercise the purchase option by the end of the lease term, U. S. Steel guarantees a residual value of the equipment as determined at the lease inception date (totaling approximately \$13 million at December 31, 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 \$216 million as of December 31, 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 \$78 million and \$133 million at December 31, 2021 and December 31, 2020 respectively.

**Capital Commitments** – At December 31, 2021, U. S. Steel's contractual commitments to acquire property, plant and equipment totaled \$1,483 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):

2022	2023	2024	2025	2026	Later years	Total
\$513	\$568	\$334	\$329	\$251	\$705	\$2,700



The majority of U. S. Steel's unconditional purchase obligations relate 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 December 31, 2021, if U. S. Steel were to terminate the agreement, it may be obligated to pay in excess of \$78 million.

Total payments relating to unconditional purchase obligations were approximately \$767 million in 2021, \$553 million in 2020 and \$653 million in 2019.

## **27. Common Stock Issued and Repurchased**

On October 28, 2021, U. S. Steel announced a common stock repurchase program that allowed for the repurchase of up to \$300 million of its outstanding common stock from time to time in the open market or privately negotiated transactions. U. S. Steel repurchased 6,556,855 shares of common stock for approximately \$150 million under this program during 2021.

In February 2021, U. S. Steel issued 48.3 million 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.

In November 2018, U. S. Steel announced a common stock repurchase program that allowed for the repurchase of up to \$300 million of its outstanding common stock from time to time in the open market or privately negotiated transactions through 2020 at the discretion of management. U. S. Steel repurchased 5,289,475 shares of common stock for approximately \$88 million under this program during 2019. In December 2019, the Board of Directors terminated the authorization for the common stock repurchase program.

## **28. Subsequent Event**

On January 24, 2022, the Board of Directors authorized a \$500 million increase to its stock repurchase program under which it may acquire shares of the Company's outstanding common stock at the discretion of management. The shares will be purchased from time to time at prevailing market prices, through open market or privately negotiated transactions, depending upon the market conditions. Under the program, the purchases will be funded from cash on hand, and the repurchased shares will be held as treasury shares.

### FIVE-YEAR OPERATING SUMMARY (Unaudited)

(Thousands of tons, unless otherwise noted)	2021	2020	2019	2018	2017
<b>Raw Steel Production</b>					
Gary, IN	5,664	4,675	4,974	5,958	5,755
Great Lakes, MI	—	328	1,964	2,369	2,592
Mon Valley, PA	2,668	2,552	2,331	2,640	2,473
Granite City, IL	1,549	1,758	2,140	926	—
Total Flat-Rolled facilities	9,881	9,313	11,409	11,893	10,820
Mini Mill facility	2,688	—	—	—	—
U. S. Steel Košice	4,931	3,366	3,903	5,023	5,091
Tubular facility	464	16	—	—	—
Total	17,964	12,695	15,312	16,916	15,911
<b>Raw Steel Capability</b>					
Flat-Rolled	13,200	17,000	17,000	17,000	17,000
Mini Mill	3,300	—	—	—	—
USSE	5,000	5,000	5,000	5,000	5,000
Tubular <sup>(c)</sup>	900	900	—	—	—
Total	22,400	22,900	22,000	22,000	22,000
<b>Production as % of total capability:</b>					
Flat-Rolled	58 %	55 %	67 %	70 %	64 %
Mini Mill	81 %	— %	— %	— %	— %
USSE	99 %	67 %	78 %	100 %	102 %
Tubular <sup>(c)</sup>	52 %	7 %	— %	— %	— %
<b>Coke Production</b>					
Flat-Rolled	3,848	2,557	3,485	3,718	3,416
USSE	1,548	1,116	1,328	1,514	1,497
Total	5,396	3,673	4,813	5,232	4,913
<b>Iron Ore Pellet Production <sup>(a)</sup></b>					
Total	23,369	16,981	21,450	23,054	23,246
<b>Steel Shipments by Segment <sup>(b)</sup></b>					
Flat-Rolled	9,018	8,711	10,700	10,510	9,887
Mini Mill	2,230	—	—	—	—
USSE	4,302	3,041	3,590	4,457	4,585
Tubular	444	464	769	780	688
Total steel shipments	15,994	12,216	15,059	15,747	15,160
<b>Average Realized Price (dollars per net ton)</b>					
Flat-Rolled	\$ 1,172	\$ 718	\$ 753	\$ 811	\$ 726
Mini Mill	\$ 1,314	\$ —	\$ —	\$ —	\$ —
USSE	\$ 966	\$ 626	\$ 652	\$ 693	\$ 622
Tubular	\$ 1,696	\$ 1,271	\$ 1,450	\$ 1,483	\$ 1,253

(a) Includes our share of production from Hibbing and Tilden. As a result of the sale of our ownership interest, iron ore pellet production amounts do not include Tilden after September 29, 2017.

(b) Does not include intersegment shipments or shipments by joint ventures and other equity investees of U. S. Steel. Includes shipments from U. S. Steel to joint ventures and equity investees of substrate materials, primarily hot-rolled and cold-rolled sheets.

(c) The Fairfield Electric Arc Furnace commenced operation in October 2020. The 2020 production as a % of total capability amount is based on an October 1, 2020 start date.

# FIVE-YEAR OPERATING SUMMARY (Unaudited) (Continued)

(Thousands of net tons)	2021	2020	2019	2018	2017
<b>Steel Shipments by Market - North American Facilities <sup>(a) (c)</sup></b>					
Steel service centers	2,660	1,450	1,902	1,904	1,953
Further conversion:					
Trade customers	2,385	2,063	2,823	2,273	1,738
Joint ventures <sup>(b)</sup>	490	415	819	810	715
Transportation and automotive <sup>(b)</sup>	2,372	2,012	2,620	2,874	2,982
Construction and construction products	1,524	1,295	1,120	991	951
Containers and packaging	959	913	652	768	715
Appliances and electrical equipment	679	497	570	599	594
Oil, gas and petrochemicals	426	430	725	742	647
All other	197	100	238	329	280
Total	11,692	9,175	11,469	11,290	10,575
<b>Steel Shipments by Market - USSE</b>					
Steel service centers	995	690	740	799	761
Further conversion:					
Trade customers	314	202	214	287	284
Transportation and automotive	590	517	676	728	708
Construction and construction products	1,346	775	1,048	1,637	1,831
Containers and packaging	449	435	440	439	438
Appliances and electrical equipment	266	194	220	261	247
Oil, gas and petrochemicals	8	5	—	11	10
All other	334	223	252	295	306
Total	4,302	3,041	3,590	4,457	4,585

(a) Does not include shipments by joint ventures and other equity investees of U. S. Steel, but instead reflects the shipments of substrate materials, primarily hot-rolled and cold-rolled sheets, to those entities.

(b) PRO-TEC automotive substrate shipments are included in the Transportation and Automotive category.

(c) Shipments previously reported in 2018 and 2017 as Exports have been reclassified to one of the other categories to which they relate.

# **FIVE-YEAR FINANCIAL SUMMARY (Unaudited) (Continued)**

<b>(Dollars in millions, except per share amounts)</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>
<b>Net sales by segment:</b>					
Flat-Rolled	\$ 12,358	\$ 7,279	\$ 9,560	\$ 9,912	\$ 8,491
Mini Mill	\$ 3,516	\$ —	\$ —	\$ —	\$ —
USSE	4,266	1,970	2,420	3,228	2,974
Tubular	809	646	1,191	1,236	945
Total reportable segments	\$ 20,949	\$ 9,895	\$ 13,171	\$ 14,376	\$ 12,410
Other	101	162	168	186	179
Intersegment sales	(775)	(316)	(402)	(384)	(339)
Total	<u>\$ 20,275</u>	<u>\$ 9,741</u>	<u>\$ 12,937</u>	<u>\$ 14,178</u>	<u>\$ 12,250</u>
<b>Segment earnings (loss) before interest and income taxes:</b>					
Flat-Rolled	\$ 2,630	\$ (596)	\$ 196	\$ 883	\$ 375
Mini Mill	\$ 1,206	\$ —	\$ —	\$ —	\$ —
USSE	975	9	(57)	359	327
Tubular	1	(179)	(67)	(58)	(99)
Total reportable segments	\$ 4,812	\$ (766)	\$ 72	\$ 1,184	\$ 603
Other	(11)	(39)	23	55	44
Items not allocated to segments <sup>(b)</sup>	145	(270)	(325)	(115)	22
Total (loss) earnings before interest and income taxes <sup>(a)</sup>	\$ 4,946	\$ (1,075)	\$ (230)	\$ 1,124	\$ 669
<b>Net interest and other financial costs <sup>(a)</sup></b>	<b>602</b>	<b>232</b>	<b>222</b>	<b>312</b>	<b>368</b>
<b>Income tax provision expense (benefit)</b>	<b>170</b>	<b>(142)</b>	<b>178</b>	<b>(303)</b>	<b>(86)</b>
<b>Net (loss) earnings attributable to United States Steel Corporation</b>	<b>\$ 4,174</b>	<b>\$ (1,165)</b>	<b>\$ (630)</b>	<b>\$ 1,115</b>	<b>\$ 387</b>
Per common share:					
- Basic	\$ 15.77	\$ (5.92)	\$ (3.67)	\$ 6.31	\$ 2.21
- Diluted	\$ 14.88	\$ (5.92)	\$ (3.67)	\$ 6.25	\$ 2.19

(a) Amount has been adjusted to include \$61 million in 2017 of postretirement benefit expense (other than service cost) related to the retrospective presentation change of net periodic benefit cost of our defined benefit pension and other post-employment benefits as a result of the adoption of Accounting Standards Update 2017-07, *Compensation - Retirement Benefits* on January 1, 2018.

(b) See Note 4 to the Consolidated Financial Statements.

## **Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

## **Item 9A. CONTROLS AND PROCEDURES**

### **Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of U. S. Steel's management, including the chief executive officer and chief financial officer, U. S. Steel conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act). Based on this evaluation, U. S. Steel's chief executive officer and chief financial officer concluded that U. S. Steel's disclosure controls and procedures were effective as of the end of the period covered by this annual report.

### **Management's Report on Internal Control Over Financial Reporting**

See "Item 8. Financial Statements and Supplementary Data – Management's Reports to Stockholders – Internal Control Over Financial Reporting."

### **Attestation Report of Independent Registered Public Accounting Firm**

See "Item 8. Financial Statements and Supplementary Data – Report of Independent Registered Public Accounting Firm."

### **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 fourth quarter of 2021 which have materially affected, or are reasonably likely to materially affect, U. S. Steel's internal control over financial reporting.

## **Item 9B. OTHER INFORMATION**

None.

## **Item 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

Not Applicable.

## **PART III**

## **Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information concerning the directors of U. S. Steel required by this item is incorporated and made part hereof by reference to the material appearing under the heading "Election of Directors" in U. S. Steel's Proxy Statement for the 2022 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission, pursuant to Regulation 14A, no later than 120 days after the end of the fiscal year. Information concerning the Audit Committee and its financial expert required by this item is incorporated and made part hereof by reference to the material appearing under the heading "Corporate Governance - Board Committees – Audit" in U. S. Steel's Proxy Statement for the 2022 Annual Meeting of Stockholders. Information regarding the Nominating Committee required by this item is incorporated and made part hereof by reference to the material appearing under the heading "Corporate Governance - Board Committees – Corporate Governance & Sustainability" in U. S. Steel's Proxy Statement for the 2022 Annual Meeting of Stockholders. Information regarding the ability of stockholders to communicate with the Board of Directors is incorporated and made part hereof by reference to the material appearing under the heading "Corporate Governance - Commitment to Stockholder Engagement - Communications from Stockholders and Interested Parties" in U. S. Steel's Proxy Statement for the 2022 Annual Meeting of Stockholders. Information regarding compliance with Section 16(a) of the Exchange Act required by this item is incorporated and made part hereof by reference to the material appearing under the heading "Delinquent Section 16(a) Reports" in U. S. Steel's Proxy Statement for the 2022 Annual Meeting of Stockholders. Information concerning the executive officers of U. S. Steel is contained in Part I of this Form 10-K under the caption "Information about our Executive Officers."

U. S. Steel has adopted a Code of Ethical Business Conduct that applies to all of our directors and officers, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. U. S. Steel will provide a copy of this code free of charge upon request. To obtain a copy, contact the Office of the Corporate Secretary, United States Steel Corporation, 600 Grant Street, Pittsburgh, Pennsylvania, 15219-2800 (telephone: 412-433-1121). The Code of Ethical Business Conduct is also available through the Company's website at [www.ussteel.com](http://www.ussteel.com). U. S. Steel does not intend to incorporate the contents of our website into this Annual Report on Form 10-K.

## Item 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated and made part hereof by reference to the material appearing under the heading “Compensation & Organization Committee Report” in U. S. Steel’s Proxy Statement for the 2022 Annual Meeting of Stockholders.

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

### Equity Compensation Plan Information

Plan Category	(1) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(2) Weighted-average exercise price of outstanding options, warrants and rights	(3) Number of securities remaining available for future issuance under equity compensation plans excluding securities reflected in Column (1) <sup>(b)</sup>
Equity compensation plans approved by security holders <sup>(a)</sup>	11,337,288	\$25.31	13,329,554
Equity compensation plans not approved by security holders <sup>(c)</sup>	—	(one for one)	—
Total	11,337,288	—	13,329,554

<sup>(a)</sup> The numbers in columns (1) and (2) of this row contemplate all shares that could potentially be issued as a result of outstanding grants under the 2005 Stock Incentive Plan and the 2016 Omnibus Incentive Compensation Plan, as amended and restated as of December 31, 2021. (For more information, see Note 15 to the Consolidated Financial Statements. Column (1) includes (i) 548,583 shares of common stock that could be issued for the Common Stock Units outstanding under the Deferred Compensation Program for Non-Employee Directors and (ii) 5,429,252 shares that could be issued for the 2,714,626 performance awards outstanding under the Long-Term Incentive Compensation Program (a program under the 2016 Omnibus Incentive Compensation Plan, as amended and restated). The calculation in column (2) does not include the Common Stock Units since the weighted average exercise price for Common Stock Units is one for one; that is, one share of common stock will be given in exchange for each unit of such phantom stock accumulated through the date of the director’s retirement. Also, the calculation in column (2) does not include the performance awards since the shares issued for performance awards can range from zero for one to two for one; that is, performance awards may result in up to 5,429,252 of common stock being issued (two for one), or some lesser number of shares (including zero shares of common stock issued), depending upon the Corporation’s common stock performance versus that of a peer group of companies or the Corporation’s return on capital employed performance over a performance period.

<sup>(b)</sup> Represents shares available under the 2016 Omnibus Incentive Compensation Plan, as amended and restated.

<sup>(c)</sup> At December 31, 2021, U. S. Steel had no securities remaining for future issuance under equity compensation plans that had not been approved by security holders. Column (1) represents Common Stock Units that were issued pursuant to the Deferred Compensation Plan for Non-Employee Directors prior to its being amended to make it a program under the 2005 Stock Incentive Plan and 2016 Omnibus Incentive Compensation Plan, as amended and restated. The weighted average exercise price for Common Stock Units in column (2) is one for one; that is, one share of common stock will be given in exchange for each unit of phantom stock upon the director’s retirement from the Board of Directors. All future grants under this amended plan/program will count as shares issued under to the 2016 Omnibus Incentive Compensation Plan, as amended and restated, a stockholder approved plan.

Other information required by this item is incorporated and made part hereof by reference to the material appearing under the headings “Stock Ownership of Directors and Executive Officers” and “Stock Ownership of Certain Beneficial Owners” in U. S. Steel’s Proxy Statement for the 2022 Annual Meeting of Stockholders.

## Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated and made part hereof by reference to the material appearing under the headings “Corporate Governance - Respect to Related Person Transactions Policy” and “Corporate Governance – Director Independence” in U. S. Steel’s Proxy Statement for the 2022 Annual Meeting of Stockholders.

## Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by this item is incorporated and made part hereof by reference to the material appearing under the heading “Audit Fees” in U. S. Steel’s Proxy Statement for the 2022 Annual Meeting of Stockholders.



## PART IV

### Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULE

#### A. Documents Filed as Part of the Report

1. **Financial Statements and Supplementary Data**  
Financial Statements filed as part of this report are included in "Item 8 – Financial Statements and Supplementary Data" list on page 61.
2. **Financial Statement Schedules**  
"Schedule II – Valuation and Qualifying Accounts and Reserves" for years ended December 31, 2021, 2020, and 2019 is included on page 107. All other schedules are omitted because they are not applicable or the required information is contained in the applicable financial statements or notes thereto.

#### B. Exhibits

Exhibit No.

2. **Plan of acquisition, reorganization, arrangement, liquidation or succession**
  - (a) [Call Option Equity Purchase Agreement, by and among U. S. Steel Holdco LLC, Big River Steel Holdings LLC, Pinnacle Mountain Holding Company III, LLC and Consolidated Steel Equity Investors, LLC, dated as of December 15, 2020.](#) Incorporated by reference to Exhibit 2.1 to United States Steel Corporation's Form 8-K filed on December 18, 2020, Commission File Number 1-16811.
3. **Articles of Incorporation and By-Laws**
  - (a) [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.
  - (b) [Amended and Restated By-Laws of United States Steel Corporation, dated as of October 26, 2021.](#) Incorporated by reference to Exhibit 3.1 to United States Steel Corporation's Form 8-K filed on October 28, 2021, Commission File Number 1-16811.
4. **Instruments Defining the Rights of Security Holders, Including Indentures**
  - (a) [Indenture between United States Steel Corporation and The Bank of New York Mellon \(f/k/a The Bank of New York, dated as of May 21, 2007\).](#) Incorporated by reference to Exhibit 4.1 to United States Steel Corporation's Form 8-K filed on May 22, 2007, Commission File Number 1-16811.
  - (b) [First Supplemental Indenture between United States Steel Corporation and The Bank of New York Mellon\(f/k/a The Bank of New York, dated as of May 21, 2007\).](#) Incorporated by reference to Exhibit 4.2 to United States Steel Corporation's Form 8-K filed on May 22, 2007, Commission File Number 1-16811.
  - (c) [Tenth Supplemental Indenture between United States Steel Corporation and The Bank of New York Mellon, dated as of February 11, 2021.](#) Incorporated by reference to Exhibit 4.1 to United States Steel Corporation's Form 8-K filed on February 11, 2021, Commission File Number 1-16811.
  - (d) [Indenture by and between United States Steel Corporation and The Bank of New York Mellon, dated as of October 21, 2019.](#) Incorporated by reference to Exhibit 4.1 to United States Steel Corporation's Form 8-K filed on October 21, 2019, Commission File Number 1-16811.
  - (e) [Indenture among Big River Steel LLC, BRS Finance Corp., BRS Intermediate Holdings LLC, each Guarantor that may become party thereto and U.S. Bank National Association, dated as of September 18, 2020.](#) Incorporated by reference to Exhibit 4.1 to United States Steel Corporation's Form 8-K filed on January 19, 2021, Commission File Number 1-16811.
  - (f) [Description of Securities.](#) Incorporated by reference to Exhibit 4.1 to United States Steel Corporation's Form 10-K filed on February 14, 2020, Commission File Number 1-16811.

Certain long-term debt instruments are omitted pursuant to Item 601(b)(4)(iii) of Regulation S-K. U. S. Steel agrees to furnish to the Commission on request a copy of any instrument defining the rights of holders of long-term debt of U. S. Steel and of any subsidiary for which consolidated or unconsolidated financial statements are required to be filed.

## 10. Material Contracts

- |     |                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                      |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) | <a href="#"><u>Recapitalization and Equity Purchase Agreement by and among U. S. Steel Holdco LLC, BRS Stock Holdco LLC, Big River Steel Holdings LLC, the Equityholders of Big River Steel Corp. and Big River Steel Holdings LLC and United States Steel Corporation, dated as of September 30, 2019.</u></a>                                                  | Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on October 1, 2019, Commission File Number 1-16811.    |
| (b) | <a href="#"><u>Purchase and Sale Agreement by and among U. S. Steel Holdco LLC, United States Steel Corporation and TPG Growth II BDH, L.P. dated as of September 30, 2019.</u></a>                                                                                                                                                                              | Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 8-K filed on October 1, 2019, Commission File Number 1-16811.    |
| (c) | <a href="#"><u>Option Agreement by and between United States Steel Corporation and Stelco Inc., dated as of April 30, 2020. on and Stelco.</u></a>                                                                                                                                                                                                               | Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on April 30, 2020, Commission File Number 1-16811.     |
| (d) | <a href="#"><u>Underwriting Agreement by and between United States Steel Corporation and Credit Suisse Securities (USA) LLC on behalf of the several Underwriters, dated February 8, 2021.</u></a>                                                                                                                                                               | Incorporated by reference to Exhibit 1.1 to United States Steel Corporation's Form 8-K filed on February 11, 2021, Commission File Number 1-16811.   |
| (e) | <a href="#"><u>Membership Interest Purchase Agreement by and between United States Steel Corporation and Percy Acquisition LLC, dated June 7, 2021.**</u></a>                                                                                                                                                                                                    | 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.       |
| (f) | <a href="#"><u>Fifth Amended and Restated Credit Agreement among United States Steel Corporation, the Lenders party thereto, the LC Issuing Banks party thereto, and JPMorgan Chase Bank, N.A., dated as of October 25, 2019.</u></a>                                                                                                                            | Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on October 28, 2019, Commission File Number 1-16811.   |
| (g) | <a href="#"><u>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 September 30, 2020.</u></a>                                                                                                                                   | Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 8-K filed on October 2, 2020, Commission File Number 1-16811.    |
| (h) | <a href="#"><u>Amendment No. 2 to Fifth Amended and Restated Credit Agreement, dated March 26, 2021.</u></a>                                                                                                                                                                                                                                                     | Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.    |
| (i) | <a href="#"><u>Amendment No. 3 to Fifth Amended and Restated Credit Agreement, dated July 23, 2021.</u></a>                                                                                                                                                                                                                                                      | Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on July 30, 2021, Commission File Number 1-16811.     |
| (j) | <a href="#"><u>Second Amended and Restated Borrower Security Agreement between United States Steel Corporation and JPMorgan Chase Bank, N.A., dated as of October 25, 2019.</u></a>                                                                                                                                                                              | Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 8-K filed on October 28, 2019, Commission File Number 1-16811.   |
| (k) | <a href="#"><u>Second Amended and Restated Subsidiary Security Agreement between the Subsidiary Guarantors and JPMorgan Chase Bank, N.A., dated as of October 25, 2019.</u></a>                                                                                                                                                                                  | Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 8-K filed on October 28, 2019, Commission File Number 1-16811.   |
| (l) | <a href="#"><u>Agreement of Sale between United States Steel Corporation and The Industrial Development Board of the City of Hoover, dated as of October 1, 2019.</u></a>                                                                                                                                                                                        | Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 8-K filed on October 28, 2019, Commission File Number 1-16811.   |
| (m) | <a href="#"><u>Loan Agreement between United States Steel Corporation and the Allegheny County Industrial Development Authority, dated as of October 1, 2019.</u></a>                                                                                                                                                                                            | Incorporated by reference to Exhibit 10.5 to United States Steel Corporation's Form 8-K filed on October 28, 2019, Commission File Number 1-16811.   |
| (n) | <a href="#"><u>Credit Agreement, dated December 10, 2019, by and among United States Steel Corporation, KfW IPEX-Bank GMBH, as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent, KfW IPEX-Bank as ECA Agent, and the financial institutions listed therein as lenders, and other parties party thereto from time to time</u></a> | Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-K filed on February 14, 2020, Commission File Number 1-16811. |
| (o) | <a href="#"><u>First Amendment to the Credit Agreement among United States Steel Corporation and KfW IPEX-BANK GMBH, dated as of November 17, 2020.</u></a>                                                                                                                                                                                                      | Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-K filed on February 12, 2021, Commission File Number 1-16811. |
| (p) | <a href="#"><u>Agreement of Sale between United States Steel Corporation and The Industrial Development Board of the City of Hoover regarding \$63,400,000 million 6.375% Environmental Improvement Revenue Bonds, Series 2020 (United States Steel Corporation Project), dated as of November 1, 2020.</u></a>                                                  | Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on November 24, 2020, Commission File Number 1-16811.  |

(q)	<a href="#">Loan Agreement dated between United States Steel Corporation and the Indiana Finance Authority regarding \$33,300,000 Indiana Finance Authority Environmental Improvement Revenue Bonds, Series 2020A (United States Steel Corporation Project) and Indiana Finance Authority Environmental Improvement Revenue Refunding Bonds, Series 2020B (United States Steel Corporation Project), dated as of November 1, 2020.</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 8-K filed on November 24, 2020, Commission File Number 1-16811.
(r)	<a href="#">First Amendment to ABL Credit Agreement by and among Big River Steel LLC, BRS Intermediate Holdings LLC, Goldman Sachs Bank USA and each lender party thereto, dated as of September 10, 2020.</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on January 19, 2021, Commission File Number 1-16811.
(s)	<a href="#">Second Amendment to ABL Credit Agreement by and among Big River Steel LLC, BRS Intermediate Holdings LLC, Goldman Sachs Bank USA and each lender party thereto, dated as of July 23, 2021.</a>	Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-Q filed on July 30, 2021, Commission File Number 1-16811.
(t)	<a href="#">Bond Financing Agreement between Arkansas Development Finance Authority and each of Big River Steel LLC, BRS Finance Corp. and BRS Intermediate Holdings LLC relating to \$265 million Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds), dated as of September 10, 2020.</a>	Incorporated by reference to Exhibit 10.2.1 to United States Steel Corporation's Form 8-K filed on January 19, 2021, Commission File Number 1-16811.
(u)	<a href="#">Definitions Annex relating to Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds), dated as of September 10, 2020.</a>	Incorporated by reference to Exhibit 10.2.2 to United States Steel Corporation's Form 8-K filed on January 19, 2021, Commission File Number 1-16811.
(v)	<a href="#">Bond Financing Agreement between Arkansas Development Finance Authority and each of Big River Steel LLC, BRS Finance Corp. and BRS Intermediate Holdings LLC relating to \$487 million Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Series 2019, dated as of May 31, 2019.</a>	Incorporated by reference to Exhibit 10.3.1 to United States Steel Corporation's Form 8-K filed on January 19, 2021, Commission File Number 1-16811.
(w)	<a href="#">Definitions Annex relating to Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Series 2019, dated as of May 31, 2019.</a>	Incorporated by reference to Exhibit 10.3.2 to United States Steel Corporation's Form 8-K filed on January 19, 2021, Commission File Number 1-16811.
(x)	<a href="#">EUR 300,000,000 Unsecured Sustainability Linked Revolving Credit Facility Agreement among U. S. Steel Košice, s.r.o., and Commerzbank Aktiengesellschaft, ING Bank N.V., Komerční banka, a.s., Slovenská sporiteľňa, a.s., Unicredit Bank Czech Republic and Slovakia, a.s., Československá Obchodná Banka, a.s., and Citibank Europe plc, dated September 29, 2021.</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on October 1, 2021, Commission File Number 1-16811.
(y)	<a href="#">United States Steel Corporation 2005 Stock Incentive Plan, Effective April 26, 2005.*</a>	Incorporated by reference to Appendix B to United States Steel Corporation's Definitive Proxy Statement on Schedule 14A filed on March 11, 2005, Commission File Number 1-16811.
(z)	<a href="#">United States Steel Corporation 2005 Stock Incentive Plan, Amended and Restated Effective April 27, 2010.*</a>	Incorporated by reference to Appendix A to United States Steel Corporation's Definitive Proxy Statement on Schedule 14A filed on March 12, 2010, Commission File Number 1-16811.
(aa)	<a href="#">United States Steel Corporation 2005 Stock Incentive Plan, Amended and Restated Effective April 29, 2014.*</a>	Incorporated by reference to Appendix A to United States Steel Corporation's Definitive Proxy Statement on Schedule 14A filed on March 14, 2014, Commission File Number 1-16811.
(bb)	<a href="#">Form of Stock Option Grant under the Long-Term Incentive Compensation Program, a program under the United States Steel Corporation 2005 Stock Incentive Plan.*</a>	Incorporated by reference to Exhibit 10(x) to United States Steel Corporation's Form 10-K filed on February 27, 2007, Commission File Number 1-16811.
(cc)	<a href="#">Form of Performance Award Grant Agreement under the Long-Term Incentive Compensation Program, a program under the United States Steel Corporation 2005 Stock Incentive Plan.*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on April 26, 2011, Commission File Number 1-16811.

(dd)	<a href="#">Form of Stock Option Grant Agreement under the Long-Term Incentive Compensation Program, a program under the United States Steel Corporation 2005 Stock Incentive Plan.*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on April 26, 2011, Commission File Number 1-16811.
(ee)	<a href="#">Form of Restricted Stock Unit Retention Grant Agreement under the Long-Term Incentive Compensation Program, a program under the United States Steel Corporation 2005 Stock Incentive Plan.*</a>	Incorporated by reference to Exhibit 10.5 to United States Steel Corporation's Form 10-Q filed on April 26, 2011, Commission File Number 1-16811
(ff)	<a href="#">Form of Restricted Stock Unit Annual Grant Agreement under the Long-Term Incentive Compensation Program, a program under the United States Steel Corporation 2005 Stock Incentive Plan.*</a>	Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-Q filed on April 26, 2011, Commission File Number 1-16811.
(gg)	<a href="#">Form of Retention Performance Award Grant Agreement under the Long-Term Incentive Compensation Program, a program under the United States Steel Corporation 2005 Stock Incentive Plan.*</a>	Incorporated by reference to Exhibit 10.5 to United States Steel Corporation's Form 8-K filed on July 2, 2012, Commission File Number 1-16811.
(hh)	<a href="#">Form of Non-Qualified Stock Option Grant Agreement under the Long-Term Incentive Compensation Program, a program under the United States Steel Corporation 2005 Stock Incentive Plan.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on April 29, 2015, Commission File Number 1-16811.
(ii)	<a href="#">Administrative Regulations for the Long-Term Incentive Compensation Program under the United States Steel Corporation 2005 Stock Incentive Plan, Amended and Restated Effective May 28, 2013.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on May 30, 2013, Commission File Number 1-16811.
(jj)	<a href="#">Administrative Regulations for the Long-Term Incentive Compensation Program under the United States Steel Corporation 2005 Stock Incentive Plan, Amended and Restated Effective February 25, 2014.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on March 3, 2014, Commission File Number 1-16811.
(kk)	<a href="#">Administrative Procedures for the Long-Term Incentive Compensation Program under the United States Steel Corporation 2005 Stock Incentive Plan, as Amended and Restated, and under the United States Steel Corporation 2010 Annual Incentive Compensation Plan, as amended February 24, 2015.*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on April 29, 2015, Commission File Number 1-16811.
(ll)	<a href="#">Administrative Procedures for the Long-Term Incentive Compensation Program under the United States Steel Corporation 2005 Stock Incentive Plan, as Amended and Restated, and under the United States Steel Corporation Annual Incentive Compensation Plan, Effective February 22, 2016.*</a>	Incorporated by reference to Exhibit 10(kk) to United States Steel Corporation's Form 10-K filed on February 29, 2016, Commission File Number 1-16811.
(mm)	<a href="#">United States Steel Corporation Deferred Compensation Program for Non-Employee Directors, a program under the 2005 Stock Incentive Plan, effective as of November 29, 2005.*</a>	Incorporated by reference to Exhibit 10(d) to United States Steel Corporation's Form 10-K filed on February 28, 2012, Commission File Number 1-16811.
(nn)	<a href="#">United States Steel Corporation 2010 Annual Incentive Compensation Plan, Effective April 27, 2010.*</a>	Incorporated by reference to Appendix B to United States Steel Corporation's Definitive Proxy Statement on Schedule 14A filed on March 12, 2010, Commission File Number 1-16811.
(oo)	<a href="#">Form of Incentive Award Agreement under the United States Steel Corporation 2010 Annual Incentive Compensation Plan.*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on April 29, 2015, Commission File Number 1-16811.
(pp)	<a href="#">Administrative Regulations for the Executive Management Annual Incentive Compensation Program under the United States Steel Corporation 2010 Annual Incentive Compensation Plan, as amended January 27, 2014.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on January 31, 2014, Commission File Number 1-16811.
(qq)	<a href="#">Administrative Procedures for the Executive Management Annual Incentive Compensation Program under the United States Steel Corporation 2010 Annual Incentive Compensation Plan, as amended January 27, 2015*</a>	Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-Q filed on April 29, 2015, Commission File Number 1-16811.



(rr)	<a href="#">Administrative Procedures for the Executive Management Annual Incentive Compensation Program under the United States Steel Corporation 2010 Annual Incentive Compensation Plan, as amended February 22, 2016.*</a>	Incorporated by reference to Exhibit 10(II) to United States Steel Corporation's Form 10-K filed on February 29, 2016, Commission File Number 1-16811.
(ss)	<a href="#">Administrative Procedures for the Executive Management Annual Incentive Compensation Program under the United States Steel Corporation 2010 Annual Incentive Compensation Plan, as amended November 1, 2016.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on November 2, 2016, Commission File Number 1-16811.
(tt)	<a href="#">United States Steel Corporation Supplemental Thrift Program, Amended and Restated Effective July 31, 2013.*</a>	Incorporated by reference to Exhibit 10.7 to United States Steel Corporation's Form 10-Q filed on October 29, 2013, Commission File Number 1-16811.
(uu)	<a href="#">United States Steel Corporation Supplemental Thrift Program, Amended and Restated Effective November 1, 2016.*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on November 2, 2016, Commission File Number 1-16811.
(vv)	<a href="#">United States Steel Corporation Supplemental Thrift Program, Amended and Restated Effective January 1, 2019.*</a>	Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-Q filed on May 3, 2019, Commission File Number 1-16811.
(ww)	<a href="#">United States Steel Corporation Non Tax-Qualified Retirement Account Program, Amended and Restated Effective November 13, 2013.</a>	Incorporated by reference to Exhibit 10(dd) to United States Steel Corporation's Form 10-K filed on February 25, 2014, Commission File Number 1-16811.
(xx)	<a href="#">United States Steel Corporation Non Tax-Qualified Retirement Account Program, Amended and Restated Effective January 1, 2016.*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on November 2, 2016, Commission File Number 1-16811.
(yy)	<a href="#">United States Steel Corporation Non Tax-Qualified Retirement Account Program, Amended and Restated Effective January 1, 2019.*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on May 3, 2019, Commission File Number 1-16811.
(zz)	<a href="#">United States Steel Corporation Non Tax-Qualified Pension Plan, Amended and Restated Effective December 31, 2015.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on August 21, 2015, Commission File Number 1-16811.
(aaa)	<a href="#">United States Steel Corporation Executive Management Supplemental Pension Program, Amended and Restated Effective December 31, 2015.*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 8-K filed on August 21, 2015, Commission File Number 1-16811.
(bbb)	<a href="#">United States Steel Corporation Supplemental Retirement Account Program, Amended and Restated Effective January 1, 2016.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on November 4, 2015, Commission File Number 1-16811.
(ccc)	<a href="#">United States Steel Corporation Supplemental Retirement Account Program, Amended and Restated Effective January 1, 2019.*</a>	Incorporated by reference to Exhibit 10.5 to United States Steel Corporation's Form 10-Q filed on May 3, 2019, Commission File Number 1-16811.
(ddd)	<a href="#">United States Steel Corporation Change in Control Severance Plan, Effective January 1, 2016.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on November 6, 2015, Commission File Number 1-16811.
(eee)	<a href="#">United States Steel Corporation Change in Control Severance Plan, Amended and Restated Effective July 28, 2020*.</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on July 30, 2020, Commission File Number 1-16811.
(fff)	<a href="#">United States Steel Corporation Executive Severance Plan, Effective December 14, 2021.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on December 20, 2021, Commission File Number 1-16811.
(ggg)	<a href="#">United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Effective April 26, 2016.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on April 27, 2016, Commission File Number 1-16811.
(hhh)	<a href="#">First Amendment to United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Effective February 28, 2017.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on April 26, 2017, Commission File Number 1-16811.
(iii)	<a href="#">United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Amended and Restated Effective April 28, 2020*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 8-K filed on May 1, 2020, Commission File Number 1-16811.
(jjj)	<a href="#">United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Amended and Restated Effective April 27, 2021.*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.

(kkk)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Restricted Stock Unit Grant Agreement (Retention Grant)*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on July 27, 2016, Commission File Number 1-16811.
(lll)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Restricted Stock Unit Grant Agreement (Annual Grant)*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on July 27, 2016, Commission File Number 1-16811
(mmm)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan (Stock Option Grant)*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on July 27, 2016, Commission File Number 1-16811.
(nnn)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Restricted Stock Unit Grant Agreement (Annual Grant)*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on April 27, 2018, Commission File Number 1-16811.
(ooo)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Restricted Stock Unit Grant Agreement (Retention Grant)*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on April 27, 2018, Commission File Number 1-16811.
(ppp)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement (TSR Grant)*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on April 27, 2018, Commission File Number 1-16811.
(qqq)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement (ROCE Grant)*</a>	Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-Q filed on April 27, 2018, Commission File Number 1-16811.
(rrr)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement (TSR Grant)*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on May 3, 2019, Commission File Number 1-16811.
(sss)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Cash Award Grant Agreement (ROCE Grant)*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on May 1, 2020, Commission File Number 1-16811.
(ttt)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Restricted Stock Unit Grant Agreement (Retention Grant)*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on May 1, 2020, Commission File Number 1-16811.
(uuu)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement (2021 Grants)*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.
(vvv)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Cash Award Grant Agreement (2021 Grants)*</a>	Incorporated by reference to Exhibit 10.5 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.
(www)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Restricted Stock Unit Grant Agreement (2021 Grants)*</a>	Incorporated by reference to Exhibit 10.6 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.
(xxx)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Retention Restricted Stock Unit Grant Agreement (2021 Grants)*</a>	Incorporated by reference to Exhibit 10.7 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.
(yyy)	<a href="#">Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan TSR Performance Share Award Grant Agreement (2021 Grants)*</a>	Incorporated by reference to Exhibit 10.8 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.
(zzz)	<a href="#">Administrative Procedures for the Executive Management Annual Compensation Incentive Program under the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Effective February 27, 2018.*</a>	Incorporated by reference to Exhibit 10.5 to United States Steel Corporation's Form 10-Q filed on April 27, 2018, Commission File Number 1-16811.
(aaaa)	<a href="#">Administrative Procedures for the Executive Management Annual Incentive Compensation Plan under the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Effective February 26, 2019.*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-Q filed on May 3, 2019, Commission File Number 1-16811.
(bbbb)	<a href="#">Administrative Procedures for the Executive Management Annual Incentive Compensation Plan under the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Effective February 25, 2020.*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-Q filed on May 1, 2020, Commission File Number 1-16811.



(cccc)	<a href="#">Administrative Procedures for the Executive Management Annual Incentive Compensation Plan under the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Effective February 23, 2021.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-Q filed on April 30, 2021, Commission File Number 1-16811.
(dddd)	<a href="#">United States Steel Corporation Deferred Compensation Program for Non-Employee Directors, a program under the United States Steel Corporation 2016 Omnibus Incentive Plan, effective as of July 26, 2016, as amended on October 30, 2018.*</a>	Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-K filed on February 15, 2019, Commission File Number 1-16811.
(eeee)	<a href="#">United States Steel Corporation Deferred Compensation Program for Non-Employee Directors, a program under the United States Steel Corporation 2016 Omnibus Incentive Plan, effective as of July 26, 2016, as amended on October 28, 2019.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-K filed on February 14, 2020, Commission File Number 1-16811.
(ffff)	<a href="#">United States Steel Corporation Non-Employee Director Stock Program of the 2016 Omnibus Incentive Compensation Plan, Effective November 1, 2019.*</a>	Incorporated by reference to Exhibit 10.2 to United States Steel Corporation's Form 10-K filed on February 14, 2020, Commission File Number 1-16811.
(gggg)	<a href="#">Letter Agreement between Scott D. Buckiso and United States Steel Corporation, dated July 30, 2020.*</a>	Incorporated by reference to Exhibit 10.4 to United States Steel Corporation's Form 10-K filed on February 12, 2021, Commission File Number 1-16811.
(hhhh)	<a href="#">Separation Agreement and Release by and between Kevin P. Bradley and United States Steel Corporation, dated October 7, 2019.*</a>	Incorporated by reference to Exhibit 10.3 to United States Steel Corporation's Form 10-K filed on February 14, 2020, Commission File Number 1-16811.
(iiii)	<a href="#">Separation Agreement and Release by and between Douglas R. Matthews and United States Steel Corporation, dated December 24, 2020.*</a>	Incorporated by reference to Exhibit 10.1 to United States Steel Corporation's Form 10-K filed on February 12, 2021, Commission File Number 1-16811.

- 10.1 [Commitment Agreement by and among United States Steel Corporation, Banner Life Insurance Company, William Penn Life Insurance Company of New York and State Street Global Advisors Trust Company, dated November 9, 2021.\\*\\*](#)
- 10.2 [ABL Credit Agreement by and among Big River Steel LLC, BRS Intermediate Holdings LLC, Goldman Sachs Bank USA and each lender party thereto, dated as of August 23, 2017.\\*\\*](#)
- 10.3 [Supplemental Agreement No. 9 between U. S. Steel Košice, s.r.o. and ING Bank N.V., dated December 3, 2021.](#)
- 10.4 [Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement \(2021 SVP Performance Awards\)\\* \\*\\*](#)
- 10.5 [Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement \(2021 CEO Performance Award\)\\* \\*\\*](#)
- 10.6 [Form of United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Non-Qualified Stock Option Grant Agreement \(2021 CEO PSO\)\\* \\*\\*](#)
- 10.7 [United States Steel Corporation Deferred Compensation Program for Non-Employee Directors, a program under the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, Effective January 1, 2022.\\*](#)
- 10.8 [United States Steel Corporation Non-Employee Director Compensation Policy, Effective as of January 1, 2022.\\*](#)
- 10.9 [Form of Offer Letter to Kenneth E. Jaycox Jr., dated September 19, 2020.\\*](#)
- 21. [List of Subsidiaries](#)
- 23. [Consent of PricewaterhouseCoopers LLP](#)
- 24. [Powers of Attorney](#)
- 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](#)
- 96.1 [Technical Report Summary relating to the Minntac and Keetac iron ore mines, dated February 9, 2022.](#)
- 101. The following financial information from United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) the Consolidated Statement of Operations, (ii) the Consolidated Statement of Comprehensive Income (Loss), (iii) the Consolidated Balance Sheet, (iv) the Consolidated Statement of Cash Flows, and (v) Notes to the Consolidated Financial Statements.
- 104. Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

\* Indicates management contract or compensatory plan or arrangement.

\*\* Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Corporation hereby undertakes to furnish supplemental copies of the omitted schedules and exhibits upon request by the U.S. Securities and Exchange Commission.

## SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019

(Millions of Dollars)

Description	Balance at Beginning of Period	Additions		Deductions		Balance at End of Period
		Charged to Costs and Expenses	Charged to Other Accounts	Charged to Costs and Expenses	Charged to Other Accounts	
Year ended December 31, 2021:						
Reserves deducted in the balance sheet from the assets to which they apply:						
Allowance for doubtful accounts	\$ 34	\$ 16	\$ 4	\$ —	\$ 10	\$ 44
Investments and long-term receivables reserve	5	—	—	—	1	4
Deferred tax valuation allowance:						
Domestic	793	86	25	745	—	159
Foreign	3	—	—	—	—	3
Year ended December 31, 2020:						
Reserves deducted in the balance sheet from the assets to which they apply:						
Allowance for doubtful accounts	\$ 28	\$ 6	\$ 2	\$ —	\$ 2	\$ 34
Investments and long-term receivables reserve	5	—	3	—	3	5
Deferred tax valuation allowance:						
Domestic	560	240	2	—	9	793
Foreign	3	—	—	—	—	3
Year ended December 31, 2019:						
Reserves deducted in the balance sheet from the assets to which they apply:						
Allowance for doubtful accounts	\$ 29	\$ —	\$ —	\$ —	\$ 1	\$ 28
Investments and long-term receivables reserve	5	—	—	—	—	5
Deferred tax valuation allowance:						
Domestic	211	349	—	—	—	560
Foreign	3	—	—	—	—	3

### Item 16. FORM 10-K SUMMARY

None.

## SIGNATURES

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

Date: February 11, 2022

### UNITED STATES STEEL CORPORATION

By: /s/ Manpreet S. Grewal

**Manpreet S. Grewal**

**Vice President, Controller & Chief Accounting Officer**

<u>Signature</u>	<u>Title</u>
<u>/s/ David B. Burritt</u> <b>David B. Burritt</b>	President & Chief Executive Officer & Director (Principal Executive Officer)
<u>/s/ Christine S. Breves</u> <b>Christine S. Breves</b>	Senior Vice President & Chief Financial Officer (Principal Financial Officer)
<u>/s/ Manpreet S. Grewal</u> <b>Manpreet S. Grewal</b>	Vice President, Controller & Chief Accounting Officer (Principal Accounting Officer)
* <b>Tracy A. Atkinson</b>	Director
* <b>John J. Engel</b>	Director
* <b>John V. Faraci</b>	Director
* <b>Murry S. Gerber</b>	Director
* <b>Jeh C. Johnson</b>	Director
* <b>Paul A. Mascarenas</b>	Director
* <b>Michael H. McGarry</b>	Director
* <b>David S. Sutherland</b>	Board Chair
* <b>Patricia A. Tracey</b>	Director

\* BY: /s/ Manpreet S. Grewal

**Manpreet S. Grewal**  
**Attorney-in-Fact**

## GLOSSARY OF CERTAIN DEFINED TERMS

The following definitions apply to terms used in this document:

401(k) plans	defined contribution plans
ABL	Asset-Based Loan
ACE	Affordable Clean Energy
ACHD	Allegheny County Health Department
AD	antidumping
AD/CVD	antidumping and countervailing duty
ADFA	Arkansas Development Finance Authority
AISI	American Iron and Steel Institute
AMT	Alternative Minimum Tax
AOCI	Accumulated Other Comprehensive Income
ARO	Asset Retirement Obligation
ARPA	American Rescue Plan Act
ASC	Accounting Standards Codification
ASU	Accounting Standards Update
BART	Best Available Retrofit Technology
BAT	Best Available Technique
Big River Steel ABL Facility	Big River Steel amendment to its senior secured asset-based revolving credit facility
BOF	Basic Oxygen Furnace Steelmaking
BOP	Basic Oxygen Process
BRS	Big River Steel
BRS Intermediate	BRS Intermediate Holdings LLC
CAA	Clean Air Act
CAFC	U.S. Court of Appeals for the Federal Circuit
CAFE	Corporate Average Fuel Economy
CAMU	Corrective Action Management Unit
CBAM	Carbon Border Adjustment Mechanism
CDC	Chrome Deposit Corporation
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CIT	U.S. Court of International Trade
CMS	Corrective Measure Study
CO <sub>2</sub>	carbon dioxide
commodity purchase swaps	financial swaps associated with purchases of natural gas, zinc, tin and electricity
CORE	corrosion-resistant steel
COSO	Committee of Sponsoring Organizations of the Treadway Commission
cost cap	per capita dollar maximum the company is expected to pay per participant under the main U. S. Steel benefit plan
CPP	Clean Power Plan
Credit Facility Agreement	Fifth Amended and Restated Credit Facility Agreement
CRS	cold-rolled steel
CVD	countervailing duties
CWA	Clean Water Act
DAFW	OSHA Days Away From Work
DEC	Department of Environmental Conservation
DOC	U.S. Department of Commerce
DOJ	The United States Department of Justice
Double G	Double G Coatings Company LLC
EAF	Electric Arc Furnace
EBITDA	earnings before interest, taxes, depreciation and amortization
EC	European Commission
ECA	Export Credit Agreement
EGLE	Environment, Great Lakes and Energy
ERGs	employee resource groups
ERISA	Employee Retirement Income Security Act of 1974
ERW	electric resistance welded
EU	European Union
EU ETS	EU Emissions Trading System

ETS	Emissions Trading System
EUA	European Union Allowances
EWPM	electric-weld pipe mil
Export-Import Credit Agreement	Export-Import Transaction Specific Loan and Security Agreement
FASB	Financial Accounting Standards Board
FIFO	first in, first out
FIP	Federal Implementation Plan
Flat-Rolled	North American Flat-Rolled segment
foreign exchange forwards	foreign exchange forward sales contracts
FX	foreign exchange
GAAP	Generally Accepted Accounting Principles
Gateway	Gateway Energy and Coke Company LLC
GDPR	General Data Protection Regulation
GHG	greenhouse gas
GLNPO	Great Lakes National Program Office
Green Steels	steels made with low greenhouse gas emissions intensity
HDC	Hibbing Development Company
Hibbing	Hibbing Taconite Company
HRS	hot-rolled steel
IDEM	Indiana Department of Environmental Management
IEPA	Illinois Environmental Protection Agency
IRS	Internal Revenue Service
ISO	International Organization for Standardization
ITC	U.S. International Trade Commission
KDHE	Kansas Department of Health & Environment
Keetac	U. S. Steel's iron ore operations at Keewatin, Minnesota
LIFO	last in, first out
MACT	Maximum Achievable Control Technology
Midwest	Midwest Plant
Minntac	U. S. Steel's iron ore operations at Mt. Iron, Minnesota
mmbtus	Metric Million British Thermal Units
mnt	metric net ton
MPCA	Minnesota Pollution Control Agency
NAAQS	National Ambient Air Quality Standards
NAV	net asset value
NESHAP	National Emission Standards for Hazardous Air Pollutants
NGO	non-grain oriented
NLMK	NLMK Pennsylvania, LLC and NLMK Indiana,
non-GAAP	Non-Generally Accepted Accounting Principles
NOV	Notice of Violation
NOx	nitrogen oxide
NPDES	National Pollutant Discharge Elimination System
OCTG	oil country tubular goods
Order	Administrative Order on Consent
Other Benefits	defined benefit retiree health care and life insurance plans
PADEP	Pennsylvania Department of Environmental Protection
Patriot	Patriot Premium Threading Services, LLC
PBO	Projected Benefit Obligations
PCAOB	Public Company Accounting Oversight Board (United States)
PII	Personally Identifiable Information
PM	Particulate Matter
PPA	Pension Protection Act of 2006
ppb	parts per billion
PRO-TEC	PRO-TEC Coating Company, U. S. Steel and Kobe Steel Ltd. joint venture
PRP	potentially responsible party
PSU	Performance-based restricted Stock Unit
RCRA	Resource Conservation and Recovery Act



RFI	RCRA Facility Investigation
ROCE	Return On Capital Employed
RP	Rehabilitation plan
RSU	Restricted Stock Units
RTR	Residual Risk and Technology Review
S&P	Standard & Poor's
sales swaps	financial swaps hot-rolled coil and iron ore pellet sales
SEC	Securities and Exchange Commission
SIP	State Implementation Plan
SO <sub>2</sub>	Sulfur dioxide
SPT	Steelworkers Pension Trust
SSB	Salomon Smith Barney Holdings, Inc.
Stelco	Stelco Inc.
sunset	expiry
SWMU	Solid Waste Management Units
the 2005 Plan	2005 Stock Incentive Plan
the 2018 Labor Agreements	collective bargaining agreements with United Steelworkers effective September 1, 2018
the Committee	the Compensation & Organization Committee of the Board of Directors
the "Company"	United States Steel Corporation and its subsidiaries
the Exchange Act	the Securities Exchange Act of 1934
the "Insurers"	Banner Life Insurance Company and William Penn Life Insurance Company of New York
the Minntac Mine	iron ore mine located in Mt. Iron, Minnesota
the Omnibus Plan	2016 Omnibus Incentive Compensation Plan
USSK Credit Agreement	USSK €300 million unsecured sustainably linked credit agreement
Tilden	Tilden Mining Company, L.C.
TRQ	tariff rate quotas
Transtar	Transtar LLC and its direct and indirect subsidiaries
TSR	Total Shareholder Return
Tubular	Tubular Products segment
U. S. Steel	United States Steel Corporation
U. S. Steel Call Option	call option exercised by USS to acquire BRS
U.S. EPA	United States Environmental Protection Agency
U.S. GAAP	accounting standards generally accepted in the United States
UDEQ	Utah Department of Environmental Quality
ug/m <sup>3</sup>	micrograms per cubic meter
UPI	USS-POSCO Industries
USD	U.S. dollars
USSE	U. S. Steel Europe segment
USSK	U. S. Steel Košice
USSTP	U. S. Steel Tubular Products
USW	United Steelworkers
USX	United States Steel Corporation
VEBA	trusts for retiree healthcare and life insurance
welded	seamless and electric resistance welded
Worthington	Worthington Specialty Processing, U. S. Steel and Worthington Industries, Inc. joint venture
WTO	World Trade Organization

Insurer and Company each shall execute the NY Contract. Insurers and Company will subsequently amend the applicable Contract, as needed, based upon the data and premium adjustments described in paragraph 3.i., and Insurers will reflect any agreed upon changes in the final annuity exhibits, which will be attached to and become part of the applicable Contract. The final annuity exhibits will not include any participant or in-pay beneficiary for whom Insurers have not been provided a valid Social Security Number nor will Insurers be liable for such lives. With respect to spouses and other contingent beneficiaries of participants, Company will, to the extent possible, provide either (i) a Social Security Number or (ii) a full name, address and date of birth.

- c. Subject to each Insurer's receipt of the Premium Amount in accordance with paragraph 3, each Insurer irrevocably commits to make payments to annuitants (either directly or indirectly in accordance with paragraph 6.b.) commencing on the Insurer Financial Payment Date in accordance with the Specifications (as defined in paragraph 2.d.) and, once issued, the Contract. Each Insurer will make such payments even if the applicable Contract has not been issued by such Insurer as of the Insurer Financial Payment Date.
- d. Terms. The terms of each Contract and related forms of annuity certificates shall be consistent with the "U. S. Steel - Phase II RFI Letter\_L&G", dated September 22, 2021, (including the "Data," as defined therein), the contract specifications attached hereto as Schedule 3, the terms set forth in the applicable group annuity contract attached hereto as Schedule 1 with such modifications agreed on in accordance with paragraph 2.a., above (together, the "Specifications"), and the Insurers final proposal dated November 8, 2021.

### 3. Closing Premium.

- a. Premium Payment: So long as the conditions to Closing set forth in paragraph 10 have been satisfied, the Independent Fiduciary will direct the Plan Custodian to pay the Insurers from the Plan Trust an aggregate amount equal to \$293,230,000 (the "Premium Amount"), allocated to Primary Insurer (the "Primary Insurer Premium Amount") and NY Insurer (the "NY Insurer Premium Amount") as directed in writing by the Insurers and each as set forth and pursuant to the instructions in Schedule 5, on the Closing Date by:
  - i. (x) assigning, transferring, and delivering through re-registration to Primary Insurer by the Cut-Off Time, all rights, title and interests in and to each Eligible Asset allocated to the Primary Insurer and (y) paying Primary Insurer an amount in Cash equal to the excess, if any, of the Primary Insurer Premium Amount over the Transferred Asset Valuation of the Eligible Assets allocated to the Primary Insurer; and
  - ii. (x) assigning, transferring, and delivering through re-registration to NY Insurer by the Cut-Off Time, all rights, title and interests in and to each Eligible Asset allocated to the NY Insurer and (y) paying NY Insurer an amount in Cash equal to the excess, if any, of the NY Insurer Premium Amount over the Transferred Asset Valuation of the Eligible Assets allocated to the NY Insurer.

In addition, so long as the conditions to Closing set forth in paragraph 10 have been satisfied, on the Closing Date, Independent Fiduciary will direct the Plan Custodian to pay or cause to be paid to Insurers, as applicable, the Interim Asset Cash Flows due to each such Insurer (such payment, together with the payment of the Premium Amount, the "Closing Date Transfers"). Insurers will deposit the Closing Date Transfers into the general account that supports the applicable Contract. If on or following the Closing Date, the Plan Trust, the Plan, or Company receives any payments with respect to any

Transferred Asset, then to the extent any such payment (i) was not reflected in the Transferred Asset Valuation used to determine the Premium Amount or (ii) in the case of accrued interest on such Transferred Asset, was not made with respect to an accrual period that occurred after the Commitment Agreement Date such payments will be retained by the Plan Trust or, if the Plan Trust is no longer in existence at the time of such payment, Company; otherwise, Independent Fiduciary will direct the Plan Custodian to promptly pay to Insurers an amount in Cash equal to such payment. In all cases, Company, Independent Fiduciary and Insurers will work in good faith to cause any misdirected payments to be made to the correct party.

- b. Schedule 2 Updates. On the second Business Day after the Commitment Agreement Date, Insurers will deliver to Company an updated Schedule 2 that reflects the Transferred Asset Market Value of each Schedule 2 Asset by providing the information identified in columns P, Q, R, S and T of Schedule 2 with respect to each Schedule 2 Asset. If Company, Insurers and Independent Fiduciary, despite using good faith efforts, cannot resolve any dispute with respect to any such information on or prior to the Closing Date, then Insurers' determination will control for purposes of the Closing Date Transfers, but Company or Independent Fiduciary may immediately commence an arbitration dispute pursuant to Schedule 9 with respect to any such information, and Insurers' determination shall be subject to retroactive adjustment based on the determination of such arbitration. On the Closing Date, Insurers will, if needed, update Schedule 2 to reflect the removal of any asset that is not received by Insurer prior to the Cut-Off Time. Insurers will, if needed, further update Schedule 2 to reflect the removal of any asset that is determined to be an Ineligible Asset pursuant to paragraph 3.c. and is returned to the Plan Trust in accordance therewith.
- c. Asset Portfolio Activity. On and as of the Business Day prior to the Closing Date, Insurers will provide to Company asset portfolio activity information in the form of Schedule 2 with respect to each Schedule 2 Asset and reflecting all Interim Asset Cash Flows. Prior to the Closing Date, Company will confirm to Insurers in writing that such information is accurate and complete or will provide any additions, deletions, or corrections to such information. If Company and Insurers have a dispute with respect to any such information and, despite using commercially good faith efforts, cannot resolve such dispute on or prior to the Business Day prior to the Closing Date, then Insurers' asset portfolio activity information will control for purposes of the Closing Date Transfers, but Company or Independent Fiduciary may immediately commence an arbitration dispute pursuant to Schedule 9 with respect to any such information, and Insurers' asset portfolio activity shall be subject to retroactive adjustment based on the determination of such arbitration.
- d. Ineligible Assets. By written notice to the other party on or before the fifth Business Day following the Closing Date, Company or Insurers may identify as an Ineligible Asset any asset that was transferred to Insurer as part of the Closing Date Transfers, and the parties will work in good faith for seven (7) Business Days following the receipt of such notice to agree on which, if any, assets constituting part of the Closing Date Transfers are Ineligible Assets. If the parties agree that an asset is an Ineligible Asset within such seven (7) Business Days following the receipt of such notice, then, on or before the date that is three (3) Business Days following such agreement, Independent Fiduciary will direct the Plan Custodian to promptly pay or cause to be paid to Insurers an amount, in Cash, per instructions in Schedule 5, equal to the Transferred Asset Market Value of each such asset, and, simultaneously with receipt of such payment, Insurers will return each such asset to the Plan Trust together with any Interim Asset Cash Flows associated with such asset.

- e. Interest Payments. Any payment made pursuant to paragraph 3.d. or 3.i. will also include an amount, in Cash, equal to the interest on such payment calculated at an annual rate equal to the average of the 10-year treasury rate and the 30-year treasury rate as of the Closing Date, from the Closing Date through but excluding the date of such payment.
- f. Additional Actions with Respect to Eligible Assets. Independent Fiduciary will direct the Plan Custodian to promptly give or cause to be given all notices that are required, under applicable law and the terms of each Eligible Asset, in connection with the sale, assignment, transfer, and delivery of the Eligible Assets on the Closing Date. Independent Fiduciary will direct the Plan Custodian to and Insurers will promptly execute, deliver, record, file, or cause to be executed, delivered, recorded, or filed any and all releases, affidavits, waivers, notices, or other documents that Company or Insurers may reasonably request in order to implement the transfer of the Eligible Assets to Insurer.
- g. Risk of Loss on Transferred Assets; Gains on Transferred Assets. Insurers acknowledge and agree that, if the Closing Date Transfers occur, then, from and after the Commitment Agreement Date, Insurers bear any and all risks associated with each Transferred Asset.
- h. Available Assets. Company will cause the Plan Trust to have sufficient Cash or other assets (whether by means of a Cash contribution or otherwise) to enable the Plan Custodian to pay all amounts that it is directed to pay to Insurers by Independent Fiduciary pursuant to this Commitment Agreement.
- i. Premium Adjustments. The Premium Amount is based solely on the Specifications and the data control totals, attached as Schedules 3 and 4, respectively, and initial pricing census as a separate filed called "2021-11-08\_Census Data\_U.S. Steel". After the Commitment Agreement Date and prior to 180 days from the Commitment Agreement Date, Company and Insurers will cooperate in good faith to identify any data errors ("Data Changes"), including new lives, deaths prior to the Closing Date, deleted lives not related to death and changes in or adjustments to existing annuitant data including, but not limited to the following: date of birth, monthly benefit amount, gender, form of annuity, description of annuity, state of residence and qualified domestic relations orders (including the type of qualified domestic relations order). To the extent that the Data Changes occurring prior to 180 days from the Commitment Agreement Date fall within a 3% pricing corridor (meaning that the resulting adjustment to the premium, whether positive or negative, does not exceed an amount equal to 3% of the Premium Amount), Insurers will calculate the adjustment to the premium for each Data Change on a life-by-life basis, consistent with pricing assumptions and methodologies that are the same as the pricing assumptions and methodologies used by such Insurer to calculate the Premium Amount (the "Original Pricing Assumptions"). Any adjustment in excess of the 3% corridor will be priced by updating the Original Pricing Assumptions based on then-current changes in capital market conditions and other relevant factors. All premium adjustments will be paid as follows:
  - i. If the premium adjustment is a positive number, then Independent Fiduciary will direct the Plan Custodian to (or, if the Plan is not in existence as of such date, Company will) pay to Insurers an amount, in Cash, equal to such premium adjustment, plus interest calculated in accordance with paragraph 3.e. from the Closing Date through the date of payment, allocated to Primary Insurer and NY Insurer as directed in writing by the Insurers with respect to the individuals

covered under the corresponding Primary Contract and NY Contract and Insurers will deposit the Cash into the general account that supports the applicable Contract; or

- ii. If the premium adjustment is a negative number, then Insurers will pay to the Plan Trust (or if the Plan Trust is not in existence as of such date, Company) their allocable portion of an amount, in Cash, equal to the absolute value of such premium adjustment plus interest calculated in accordance with paragraph 3.e. from the Closing Date through the date of payment with respect to the individuals covered under the corresponding Primary Contract and NY Contract.

Each Insurer will provide the premium adjustment on a life-by-life basis for Company and Independent Fiduciary's review by approximately 180 days following the Closing Date. Company will respond to Insurers with any questions on the premium adjustment calculation within fourteen (14) days of receiving the premium adjustment. Insurers and Company will cooperate in good faith to resolve any discrepancies on or prior to seven (7) days following receipt of Company's questions on the premium adjustment calculation, and Insurers will reflect in the annuity exhibit to the applicable Contract any changes that have been agreed to on or prior to such date.

#### **4. Public Announcements and Other Communications.**

- a. Press Releases. From the Commitment Agreement Date to the date of any SEC filing, as provided in paragraph 4.b., below, Insurers and Company (and if referenced in the release, Independent Fiduciary) shall cooperate in good faith to agree on any press release by Insurers, Company, or Independent Fiduciary regarding the annuity purchase and the transactions contemplated by this Commitment Agreement; provided, however, that no party shall issue a press release or otherwise publicly disclose the transactions described in this letter unless and until each other party, in its discretion, approves such disclosure in writing prior to such disclosure.
- b. SEC Filings. If either Insurers or Company concludes that disclosure of this Commitment Agreement is required by the rules of the Securities and Exchange Commission ("SEC"), (1) Company and Insurers will cooperate in good faith to make an application by Company and/or Insurers, as applicable, with the SEC for confidential treatment of information relating to the pricing of the Contract and such other information as Company and Insurers mutually conclude is competitively sensitive from the perspective of Company or Insurers or otherwise merits confidential treatment, (2) Company and/or Insurers, as applicable, will include the other party in any material correspondence (written or oral) with the SEC regarding such application for confidential treatment, and (3) Company and Insurers will otherwise reasonably cooperate in connection with such application.
- c. No Insurer Communications. From the Commitment Agreement Date until the issuance of an annuity certificate by such Insurer to an annuitant, other than as provided for in this Commitment Agreement, without Company's prior written consent, (1) such Insurer will cause its employees not to initiate any contact or communication with any participant or beneficiary of the Plan in connection with any transactions other than those transactions contemplated by this Commitment Agreement, and (2) such Insurer will not, and will cause all of its affiliates not to, provide any of their respective insurance agents, wholesalers, retailers, or other representatives with any contact information of such participants and beneficiaries of the Plan obtained from Company

or any of its representatives in connection with the transactions contemplated by this Commitment Agreement, except for those representatives of such Insurer or any of their respective affiliates who need to know such information for purposes of the transactions contemplated by this Commitment Agreement and agree to comply with the requirements of this Commitment Agreement. However, this paragraph 4.c. will not restrict employees of Insurers from contacting any participant or beneficiary of the Plan in connection with, or to facilitate, such Insurer's performance of its obligations under the Contract, the annuity certificates or this Commitment Agreement. Until the issuance of an annuity certificate by Insurers to an annuitant, other than as provided for in this Commitment Agreement, if any participant or beneficiary of the Plan contacts an employee of Insurers, Insurers and Company will cooperate to coordinate on a response to such participant or beneficiary.

## **5. Welcome Kit and Annuity Certificates.**

- a. Cooperation. Insurers, Company and Independent Fiduciary will cooperate in good faith to agree on communications to be provided by Insurers to annuitants, including the Welcome Kit and the annuity certificates, subject to paragraphs 5.b. and 5.c.
- b. Welcome Kit. On or before February 15, 2022, Insurer will mail a welcome kit to annuitants (the "Welcome Kit"). Insurers will send a preliminary draft of the Welcome Kit to Company and Independent Fiduciary as soon as practicable, and Insurers will consider in good faith any comments made by Company or Independent Fiduciary on or before ten (10) business days after they receive the preliminary draft of the Welcome Kit from Insurers.
- c. Annuity Certificates. Insurers will use commercially reasonable efforts to obtain all regulatory approvals that are necessary for the issuance of any annuity certificate. Insurers will mail an annuity certificate to each annuitant no later than the later of (i) sixty (60) days following the premium adjustment described in paragraph 3.i and (ii) sixty (60) days after all required regulatory approvals of the annuity certificates have been obtained. To the extent that any regulator requires changes to be made to the forms of annuity certificate or the related benefit terms after Company, the applicable Insurer, and Independent Fiduciary have agreed on the forms of annuity certificates to be filed and the related benefit terms, the mailing of an annuity certificate to each applicable annuitant shall be extended by the number of days elapsed since Company, the applicable Insurer, and Independent Fiduciary had first agreed on the form of such annuity certificate and the related benefit terms. Each annuity certificate will include statements informing an annuitant of (A) his or her right to obtain a copy of the Contract, (B) how to obtain such copy of the Contract (redacted to exclude information concerning other annuitants), and (C) his or her right to enforce all provisions of the Contract, including, without limitation, provisions with respect to such annuitant's annuity payments under the Contract, solely against the applicable Insurer and against no other person including the Plan, Company, or any affiliate thereof. The rights of an annuitant are not conditioned on the issuance of the annuity certificates, and any delay in issuing a certificate will not have any effect on the date as of which the annuitant has enforceable rights against the applicable Insurer.

## **6. Administration and Transfer.**

- a. Administrative Transition. Company and Insurers will use commercially reasonable efforts to take or cause to be taken all actions and do or cause to be done all things necessary to coordinate the takeover by Insurers of all administration responsibilities



necessary to effectively provide recordkeeping and administration services regarding payments under the Contract commencing on the Insurer Direct Payment Date.

- b. **Bulk Payment.** Beginning on the Insurer Financial Payment Date until but not including the Insurer Direct Payment Date, Insurers will, before the fifth to last business day preceding the 1st day of each month in which annuity benefit payments are owed under this Commitment Agreement and, when issued, the Contract, make a single monthly payment to JPMorgan Chase Bank, N.A., the existing payor for the Plan (“Plan Payor”), equal to the aggregate amount of all annuity benefit payments owed for such month in accordance with the Specifications. Company shall provide or shall cause to be provided to Insurers the aggregate amount of all annuity benefit payments owed for such month by the 20th day of the month preceding. Upon receipt of such aggregate amount, Plan Payor shall make annuity benefit payments on behalf of Insurers in strict accordance with the processes, procedures and information which were in place for Plan Payor to make such payments on behalf of the Plan, unless otherwise directed in writing by Company. Any fee or service charge owed to Plan Payor shall be paid by Company. Plan Payor shall withhold from the gross amount of the benefit payments to be paid to each annuitant the amount of taxes which are required to be withheld from each such payment in accordance with applicable federal and state law and shall remit such withheld amounts to the appropriate tax authorities; furthermore, Plan Payor shall be responsible for tax reporting, including the production of Forms 1099R and any other required forms in respect of payments made pursuant to this paragraph 6.b.
  - c. **Call Center and Company Contact.** From the date the Welcome Kit is mailed, Insurers will maintain, at their cost and expense, a toll-free phone number and website (the “Call Center”) which will be available for annuitants (or any other payee designated in the Contract) to contact Insurers with questions related to the Contracts and the annuity certificates, including administration questions and data updates. Representatives of Insurers at their customer service center will, from the Closing Date until Insurers’ Call Center becomes available, respond to inquiries from annuitants (or any other caller) by providing a general description of the transfer of benefits and referring or transferring the caller to the current Plan administration customer line. Company will maintain for a period of one year following the Closing Date, at its cost and expense, a point of contact (the “Company Contact”) to which Insurers may refer annuitants who pose questions related to their previous Plan benefits. In the event that an annuitant contacts Company with questions related to the Contract and annuity certificates, Company may refer the caller to the Call Center. In the event that an annuitant contacts an Insurer with questions related to the annuitant’s Plan benefits that are not within the responsibilities of Insurers, such Insurer may refer the caller to the Company Contact.
7. **Insurers’ Representations and Warranties.** Each Insurer hereby represents and warrants to Company and Independent Fiduciary as of the Commitment Agreement Date and as of the Closing Date, severally as to itself and not jointly, that:
- a. **Due Organization, Good Standing and Corporate Power.** Such Insurer is a life insurance company, duly organized, validly existing and in good standing under the laws of the State of Maryland (in the case of Primary Insurer) and the State of New York (in the case of NY Insurer). Such Insurer is duly qualified or licensed to do business and is in good standing in each jurisdiction in which its performance of its obligations in the Commitment Agreement, the transactions contemplated hereunder and the applicable Contract makes such qualification or licensing necessary, except in such jurisdictions where the failure to be in good standing or so qualified or licensed would not be material. Such Insurer has all requisite corporate power and legal authority to enter

into and carry out its obligations under this Commitment Agreement and the applicable Contract and to consummate the transactions contemplated to be undertaken by such Insurer in this Commitment Agreement and the applicable Contract.

- b. Compliance with Laws. The business of insurance conducted by such Insurer has been and is being conducted in material compliance with applicable laws, and none of the licenses, permits or governmental approvals required for the continued conduct of the business of such Insurer as such business is currently being conducted will lapse, terminate, expire or otherwise be impaired as a result of the consummation of the transactions contemplated to be undertaken by Insurers in this Commitment Agreement, except as, in either case, would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of such Insurer to perform its obligations under this Commitment Agreement.
- c. Relationship to the Plan. Such Insurer is not (1) a trustee of the Plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the Plan), (2) a plan administrator (within the meaning of ERISA § 3(16)(A) and Code § 414(g)) or (3) an employer any of whose employees are covered by the Plan. Neither Insurer nor any of such Insurer's affiliates is a fiduciary of the Plan who either (1) has or exercises any discretionary authority or control with respect to the investment of Plan assets that are or will be involved in the transactions contemplated by the Commitment Agreement or the Contract or (2) renders investment advice (within the meaning of ERISA § 3(21)(A)(ii) or Code § 4975(e)(3)(B)) with respect to such assets. Schedule 6 sets forth a true and complete list of (I) such Insurer and such Insurer's affiliates that are investment managers within the meaning of ERISA § 3(38)(B) and (II) without duplication of clause (I), such Insurer and such Insurer's affiliates that are registered as investment advisers under the Investment Advisers Act of 1940; provided, however, that solely with respect to the representation and warranty as to Schedule 6 to be made by such Insurer on and as of the Closing Date, Insurers may update Schedule 6 through the Closing Date by providing a written update to Company so that the information included therein is current on and as of the Closing Date.
- d. No Post-Closing Liability. Following the Closing, the Plan, Company and Independent Fiduciary and their respective affiliates and representatives will not have any liability to pay any annuity payment under the Contracts.
- e. RBC Ratio. As of the Commitment Agreement Date, each Insurer's most recent Projected RBC Ratio is at least 350% and to such Insurer's knowledge no event (including a change to financial market metrics) has occurred between the date of such Insurer's most recent Projected RBC Ratio and the Commitment Agreement Date that would be expected to cause such Insurer's most recent Projected RBC Ratio to fall below 350%.
- f. No Commissions. No commissions are or will be owed by such Insurer to any individual or entity in connection with the transactions contemplated in this Commitment Agreement and the Contract for which any other party, or its respective affiliates or representatives, could be liable.
- g. Enforceability; No Conflict. Such Insurer has received all necessary corporate approvals and no other action on the part of such Insurer is necessary to authorize the execution, delivery and performance of this Commitment Agreement and the applicable Contract, and the consummation of the transactions contemplated to be undertaken by such Insurer in this Commitment Agreement and the applicable Contract. This Commitment Agreement has been duly executed and delivered by each Insurer, and is a valid and

binding obligation of Insurers and enforceable against Insurers in accordance with its terms, subject to the applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles ("Enforceability Exceptions"). The execution, delivery, and performance of this Commitment Agreement and the Contract by Insurers, and the consummation by Insurers of the transactions contemplated to be undertaken by Insurers in this Commitment Agreement, do not (1) violate or conflict with any provision of its certificates or articles of incorporation, bylaws, code of regulations, or comparable governing documents, (2) except for the filings and approvals of state insurance governmental authorities in the states listed on Schedule 7, violate or conflict with any law or order of any governmental authority applicable to such Insurer, (3) require any governmental or governmental agency approval other than any filing made or approval received as of the Commitment Agreement Date and filings with and approvals of state insurance governmental authorities in the states listed on Schedule 7 or (4) require any consent of or other action by any person under, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, or cause or permit termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit under, any provision of any contract to which such Insurer is a party, except where the occurrence of any of the foregoing would not have a material adverse effect on such Insurer's ability to consummate the transactions and perform its obligations contemplated by this Commitment Agreement. No filing or approval is required to issue the annuity certificates in accordance with the Contract, other than any filing made or approval received as of the Commitment Agreement Date and filings with and approvals of state insurance governmental authorities in the states listed on Schedule 7.

- h. The Applicable Contract. The applicable Contract, when executed, will be duly executed and delivered by the applicable Insurer and will be a valid and binding irrevocable obligation of such Insurer and enforceable against such Insurer by the contract-holder, and each annuitant, contingent annuitant, and beneficiary in accordance with its terms, subject to the Enforceability Exceptions. No governmental approval is required for such Insurer to issue the Contract, other than any filing made or approval received as of the Commitment Agreement Date and filings with and approvals of state insurance governmental authorities in the states listed on Schedule 7. At all times, the right to a benefit and all other provisions under the applicable Contract, in accordance with the Contract's terms, will be enforceable by the sole choice of the annuitant, contingent annuitant, or beneficiary to whom the benefit is owed under the Contract, subject to the Enforceability Exceptions. Even if Company, as the contract-holder, ceases to exist, notifies such Insurer that it will cease to perform its obligations under the applicable Contract, or no longer has obligations under the applicable Contract, the applicable Contract will remain a valid and binding obligation of such Insurer, irrevocable and in full force and effect, and enforceable against such Insurer by each annuitant, contingent annuitant, or beneficiary in accordance with its terms, subject to the Enforceability Exceptions.
- i. Accuracy of Information. To such Insurer's knowledge (i) all information provided by Insurers to Company or Independent Fiduciary (other than any component incorporated into the calculation of the Premium Amount or the premium adjustment under paragraph 3.i. not calculated, determined or provided by Insurers, including the Data as defined in the Specifications, and any information provided by Insurers based on any such component) in connection with the transactions contemplated by this Commitment Agreement was, as of the date indicated on such information, true and correct in all material respects and (ii) no change has occurred since the date indicated

on such information that Insurers have not publicly disclosed or disclosed to the recipient of such information that would cause such information, taken as a whole, to be false or misleading.

- j. Litigation. There is no action pending or, to such Insurer's knowledge, threatened against either Insurer that in any manner challenges or seeks to prevent, enjoin or materially alter or delay the transactions contemplated by this Commitment Agreement or that could reasonably be expected to materially impair or restrict either Insurer's ability to consummate the transactions contemplated by this Commitment Agreement and to perform its obligations hereunder.
  - k. Sophisticated Investor. Each Insurer is a sophisticated investor with experience in the purchase of the assets of the type to be included in the Transferred Assets. Each Insurer has had access to such information as it deems necessary in order to make its decision to acquire the Transferred Assets from the Plan. Each Insurer acknowledges and agrees that neither Company, Independent Fiduciary, nor the Plan has given any investment advice or rendered any opinion to Insurer as to whether the acquisition of the Transferred Assets is prudent.
8. **Company Representations and Warranties.** Company hereby represents and warrants to Insurers and Independent Fiduciary as of the Commitment Agreement Date and as of the Closing Date that:
- a. Due Organization, Good Standing and Corporate Power. Company is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which its performance of its obligations in the Commitment Agreement and the Contracts makes such qualification or licensing necessary, except in such jurisdictions where the failure to be in good standing or so qualified or licensed would not be material. Company has all requisite corporate power and legal authority to enter into and carry out its obligations under this Commitment Agreement and the Contracts and to consummate the transactions contemplated to be undertaken by Company in this Commitment Agreement and the Contracts.
  - b. Accuracy of Information. To Company's knowledge, (1) the mortality experience data file labeled "USS PRT Data Phase II - to insurers - upd MED" provided on October 8, 2021, by or on behalf of Company to Insurers did not contain any misstatements or omissions that were, in the aggregate, material, and (2) the data in respect of benefit amounts, forms of annuities, and census data for date of birth, date of death, state of residence, or gender, in each case, with respect to the annuitants or survivor annuitants that is furnished on behalf of Company to Insurers was not generated using any materially incorrect systematic assumptions and did not contain any material omissions.
  - c. Compliance with ERISA. The Plan and Plan Trust are maintained under and are subject to ERISA and, to Company's knowledge, are in compliance with ERISA in all material respects. To Company's knowledge, no event has occurred that is reasonably likely to result in the Plan losing its status as qualified by the Code for preferential tax treatment under Code §§ 401(a) and 501(a). All amendments to the Plan necessary to effect the transactions contemplated by this Commitment Agreement and the Contracts have been duly executed and, to the extent that they require authorization by Company, have been or will be by the Closing Date, duly authorized and made by Company.

- d. Plan Investments. Neither Insurer nor any of Insurers' affiliates is a fiduciary of the Plan who either (A) has or exercises any discretionary authority or control with respect to the investment of Plan Assets that are or will be involved in the transactions contemplated by the Commitment Agreement or the Contracts or (B) renders investment advice (within the meaning of ERISA § 3(21)(A)(ii) or Code § 4975(e)(3)(B)) with respect to such assets. There are no commingled investment vehicles that hold Plan Assets, the units of which are or will be Plan assets involved in the transactions contemplated by this Commitment Agreement or the Contracts. No assets of the Plan that are or will be involved in the transactions contemplated by this Commitment Agreement or the Contracts are or will be managed by any investment manager listed on Schedule 6, and no investment advisor listed on Schedule 6 renders or will render investment advice (within the meaning of ERISA § 3(21)(A)(ii)) with respect to those assets.
- e. Independent Fiduciary. Independent Fiduciary has been duly appointed as independent fiduciary of the Plan with respect to the purchase of one or more group annuity contracts to be the designated fiduciary responsible for (1) selecting one or more insurers to provide annuities in accordance and compliance with the ERISA Requirements, (2) determining whether the transactions contemplated by this Commitment Agreement and the Contracts satisfy the ERISA Requirements, (3) representing the interests of the Plan and all its participants and beneficiaries in connection with the negotiation of a commitment agreement and, to the extent set forth in the engagement letter dated October 19, 2021 by and between Independent Fiduciary and the fiduciary of the Plan with authority to hire Independent Fiduciary (the "IF Engagement Letter"), the terms of any agreements with Insurers, including the Contracts and the annuity certificates, (4) directing the Plan Custodian on behalf of the Plan to transfer the Closing Date Transfers in connection with the consummation of the transactions contemplated by this Commitment Agreement and any amounts required pursuant to paragraph 3 and (5) taking all other actions on behalf of the Plan necessary to effectuate the foregoing to the extent set forth in the IF Engagement Letter.
- f. Plan Custodian is Directed Custodian. The Plan Custodian has been duly appointed as the directed custodian of the trust formed under the Plan and is obligated to follow Independent Fiduciary's directions to effectuate and consummate the transactions contemplated by this Commitment Agreement and the IF Engagement Letter.
- g. No Commissions. No commissions are or will be owed by Company to any individual or entity in connection with the transactions contemplated in this Commitment Agreement and the Contracts for which any other party, or its respective affiliates or representatives, could be liable.
- h. Enforceability; No Conflict. Company has received all necessary corporate approvals and no other action on the part of Company is necessary to authorize the execution, delivery and performance of this Commitment Agreement and the Contracts, and the consummation of the transactions contemplated to be undertaken by Company in this Commitment Agreement and the Contracts. This Commitment Agreement and the Contracts have been or will be duly executed and delivered by Company, and is (or when executed will be) a valid and binding obligation of Company and enforceable against Company in accordance with its terms, subject to the Enforceability Exceptions. The execution, delivery and performance of this Commitment Agreement and the Contracts by Company, and the consummation by Company of the transactions contemplated to be undertaken by Company in this Commitment Agreement do not (1) violate or conflict with any provision of the Plan and any documents and instruments governing the Plan as contemplated under ERISA § 404(a)(1)(D) (the "Plan Governing

Documents”), the certificates or articles of incorporation, bylaws, code of regulations, or the comparable governing documents of Company, (2) violate or conflict with any law or order of any governmental authority applicable to Company or the Plan Governing Documents, (3) require any governmental or governmental agency approval or (4) require any consent of or other action by any person under, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, or cause or permit termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit under, any provision of any contract to which Company is a party, except where the occurrence of any of the foregoing would not have a material adverse effect on Company’s ability to consummate the transactions contemplated by this Commitment Agreement.

- i. Litigation. There is no action pending or, to Company’s knowledge, threatened against Company or the Plan that in any manner challenges or seeks to prevent, enjoin or materially alter or delay the transactions contemplated by this Commitment Agreement or that could reasonably be expected to materially impair or restrict such party’s ability to consummate the transactions contemplated by this Commitment Agreement and to perform its obligations hereunder.

9. **Independent Fiduciary Representations and Warranties.** Independent Fiduciary hereby represents and warrants to the Insurers and Company as of the Commitment Agreement Date and as of the Closing Date that:

- a. Due Organization, Good Standing, and Corporate Power. Independent Fiduciary is a trust company duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts. Independent Fiduciary is duly qualified or licensed to do business and is in good standing in each jurisdiction in which its performance of its obligations in the Commitment Agreement and the transactions contemplated hereunder makes such qualification or licensing necessary, except in such jurisdictions where the failure to be in good standing or so qualified or licensed would not be material. Independent Fiduciary has all requisite corporate power and legal authority to enter into and carry out its obligations under this Commitment Agreement and to consummate the transactions contemplated to be undertaken by Independent Fiduciary in this Commitment Agreement.
- b. Independent Fiduciary Compliance with ERISA.
  - i. Independent Fiduciary meets the requirements of and in the transactions contemplated by this Commitment Agreement is acting as, an “investment manager” under ERISA § 3(38), and further constitutes a “qualified professional asset manager” under the U.S. Department of Labor Prohibited Transaction Class Exemption 84-14 solely with respect to the transfer of assets to Insurers in connection with the transactions contemplated by this Commitment Agreement and the Contracts (but not the selection of such assets or the management of such assets prior to the transfer).
  - ii. Independent Fiduciary has accepted, and has not rescinded or terminated, its designation as the designated fiduciary of the Plan with authority to select one or more insurers to issue one or more group annuity contracts in the IF Engagement Letter, and the Independent Fiduciary reaffirms its fiduciary status with respect to the Plan as set forth in the IF Engagement Letter.



- iii. The Independent Fiduciary is fully qualified and has the requisite expertise together with its reliance on its consultant, Aon Consulting, Inc., to serve as an independent fiduciary in connection with the transactions contemplated by this Commitment Agreement.

c. ERISA Determinations.

- i. Independent Fiduciary has selected Insurers to issue the Contracts as set forth in this Commitment Agreement. If an Independent Fiduciary MAC has not occurred between the Commitment Agreement Date and the Closing Date or, if an Independent Fiduciary MAC has occurred but is not continuing on the Closing Date, such selection, the transactions contemplated by this Commitment Agreement, the Plan's use of assets for the purchase of the Contracts as contemplated by this Commitment Agreement, and the Contracts (including its terms) all satisfy the ERISA Requirements. Independent Fiduciary has delivered a certification confirming the foregoing, executed by a duly authorized officer of Independent Fiduciary, to the Plan's fiduciary that retained the Independent Fiduciary.
  - ii. The transactions contemplated by this Commitment Agreement and the purchase of the Contracts do not result in a Non-Exempt Prohibited Transaction, provided that the representations in paragraph 7.c. and 8.d. are true and correct in all material respects as of the Closing Date.
  - iii. The Plan Trust (1) will receive no less than "adequate consideration" for the Transferred Assets and (2) will pay no more than "adequate consideration" for the Contracts, in each case within the meaning of "adequate consideration" under ERISA § 408(b)(17)(B) and Code § 4975(f)(10).
- d. No Commissions. No commissions are or will be owed by Independent Fiduciary to any individual or entity in connection with the transactions contemplated by this Commitment Agreement and the Contracts for which any other party, or its respective affiliates or representatives, could be liable.
- e. Enforceability; No Conflict. This Commitment Agreement is duly executed and delivered by Independent Fiduciary, and is a valid and binding obligation of Independent Fiduciary and enforceable against Independent Fiduciary in accordance with its terms, subject to the Enforceability Exceptions. The execution, delivery, and performance of this Commitment Agreement by Independent Fiduciary, and the consummation by Independent Fiduciary of the transactions contemplated to be undertaken by Independent Fiduciary in this Commitment Agreement, do not (1) violate or conflict with the certificates or articles of incorporation, bylaws, code of regulations, or comparable governing documents of Independent Fiduciary, (2) violate or conflict with any law or order of any governmental authority applicable to Independent Fiduciary, (3) require any governmental approval, (4) violate or conflict with any law or order of any governmental authority applicable to any provision of the Plan Governing Documents or (5) require any consent of or other action by any person under, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, or cause or permit termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit under, any provision of any contract to which the Independent Fiduciary is a party, except where the occurrence of any of the foregoing would not have a material adverse effect on the Independent Fiduciary's

ability to consummate the transactions and perform its obligations contemplated by this Commitment Agreement.

- f. Litigation. There is no action pending or, to Independent Fiduciary's knowledge, threatened against Independent Fiduciary that in any manner challenges or seeks to prevent, enjoin or materially alter or delay the transactions contemplated by this Commitment Agreement or that could reasonably be expected to materially impair or restrict Independent Fiduciary's ability to consummate the transactions contemplated by this Commitment Agreement and to perform its obligations hereunder.

**10. Conditions to Closing.** The parties' obligations to consummate the transactions contemplated by this Commitment Agreement in connection with the Closing, including Independent Fiduciary's obligation to direct the Plan Custodian to consummate the transactions contemplated by this Commitment Agreement, are subject to the conditions that:

- a. Independent Fiduciary will have confirmed that the transactions contemplated by this Commitment Agreement continue to satisfy the ERISA Requirements because an Independent Fiduciary MAC has not occurred or, if an Independent Fiduciary MAC has occurred, it is not continuing on the Closing Date.
- b. No court or government agency has taken any action after the Commitment Agreement Date that would cause the consummation of the transactions contemplated by this Commitment Agreement to violate the law or cause the Plan to fail to remain qualified under Code § 401(a).
- c. Each of the representations and warranties of the other parties (which, for each Insurer, shall not include the other Insurer) set forth in paragraphs 7, 8 and 9 shall be materially true and correct as of the Commitment Agreement Date and as of the Closing Date.

To the extent not satisfied as of the Closing Date, all conditions set forth in this paragraph 10 shall be deemed to have been waived following the delivery of the Closing Date Transfers; provided, however, the requirements of paragraph 10.a. shall never be waived. Notwithstanding the foregoing, (1) each of the representations and warranties set forth in paragraphs 7, 8 and 9 shall survive the Closing and remain in effect until the expiration of the applicable statute of limitations and (2) each of the covenants or other agreements in this Commitment Agreement that by their terms (x) do not contemplate performance after the Closing, shall not survive the Closing (except for pre-Closing breach thereof) and (y) contemplate performance after the Closing shall survive the Closing consistent with the terms of the relevant covenant or agreement.

**11. Miscellaneous.**

- a. The parties each hereby acknowledge that they jointly and equally participated in the drafting of this Commitment Agreement and all other agreements it contemplates, and no presumption will be made that any provision of this Commitment Agreement will be construed against any party by reason of such role in the drafting of this Commitment Agreement or any other agreement contemplated hereby. The Schedules to this Commitment Agreement are incorporated by reference and made a part of this Commitment Agreement as if set forth fully in this Commitment Agreement.
- b. This Commitment Agreement will be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, excluding those provisions relating to

conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the Courts of the Commonwealth of Pennsylvania in respect of all matters arising out of or in connection with this Commitment Agreement. The parties agree that irreparable damage may occur if any of the provisions of this Commitment Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each party will be entitled to seek an injunction or injunctions to prevent breaches of this Commitment Agreement by the breaching party and to enforce specifically the terms and provisions of this Commitment Agreement, in addition to any other remedy to which such party is entitled by law or in equity. To the fullest extent permitted by law, none of the parties will be liable to any other party for any punitive or exemplary damages of any nature in respect of matters arising out of this Commitment Agreement.

- c. The Non-Disclosure Agreement, dated as of August 8, 2021, between Company and Insurers shall continue in full force and effect.
- d. Insurers will comply in good faith and in all material respects, and will ensure that all of its affiliates, agents and subcontractors comply in good faith and in all material respects, with all applicable laws and regulations governing the confidential information of all annuitants, contingent annuitants and beneficiaries, including those laws relating to privacy, data security and protection and the safeguarding of such information, and its maintenance, disclosure and use. Insurers will maintain administrative, technical and physical safeguards to protect the privacy and security of the confidential information related to annuitants, contingent annuitants and beneficiaries. Insurers will comply in all material respects with any internal written policies relating to the confidential information of any annuitant, contingent annuitant or beneficiary as in effect from time to time. Insurers acknowledge that they are solely responsible from and after the Commitment Agreement Date for any Data Breach. For purposes of this paragraph 11.d., “Data Breach” means any act or omission by an Insurer or its agents, subcontractors or service providers (“Authorized Persons”) that compromises either the security, confidentiality or integrity of any data related to annuitants, contingent annuitants or beneficiaries in its custody or under its control or the physical, technical, administrative or organizational safeguards put in place by such Insurer (or any Authorized Persons) that relate to the protection of the security, confidentiality or integrity of any personally identifying information of any annuitant, contingent annuitant or beneficiary that is in its custody or under its control.
- e. From and after the Closing Date, each Insurer will indemnify, defend and hold Company, the Plan, the Plan Trust, Independent Fiduciary, and their respective affiliates, officers, directors, stockholders, employees, plan fiduciaries, agents, consultants and other representatives (each, a “Company Indemnified Party”) harmless from and against any and all losses, claims and other liabilities (in each case, including reasonable out-of-pocket expenses and reasonable fees and expenses of counsel) to the extent arising out of or relating to (a) any breach by such Insurer of a representation, warranty or covenant under this Commitment Agreement or the applicable Contract, or (b) any alleged or actual failure by such Insurer to perform its obligations under or comply with this Commitment Agreement and the applicable Contract, including to make, or cause to be made, any payments required to be made to an annuitant, contingent annuitant or beneficiary pursuant to this Commitment Agreement or the applicable Contract.
- f. Subject to the fulfilment of the conditions to closing described in Section 10, Company shall indemnify Insurers from and against all reasonably foreseeable direct economic costs, losses, and expenses relating to or resulting from any delay or failure to pay the Premium Amount on the Closing Date to the extent such delay was directly caused by the Company.

- g. Neither Insurer will assign or transfer this Commitment Agreement or any of its rights or obligations hereunder without the prior written consent of Company and Independent Fiduciary. Any assignment or transfer by an Insurer in violation of this paragraph 11.g. will be null and void from the outset, without any effect whatsoever.
- h. This Commitment Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

**12. Definitions.** For purposes of this Commitment Agreement, the following defined terms will have the following meanings:

- a. “Business Day” means any day other than a Saturday, a Sunday or a day on which banks located in New York, New York are authorized or required by law to close.
- b. “Cash” means a wire transfer, through the Federal Reserve System, of currency of the United States of America.
- c. “Code” means the Internal Revenue Code of 1986 and the applicable Treasury Regulations and other official guidance issued thereunder.
- d. “Cut-Off Time” means 4:00 p.m. eastern time on the Closing Date.
- e. “Eligible Asset” means a Schedule 2 Asset that meets the Asset Eligibility Criteria as laid out in Schedule 3 as of the Commitment Agreement Date and to which Company or Plan Trust has valid title, free and clear of all Liens, other than Permitted Liens on the Closing Date at the time of transfer.
- f. “ERISA” means Employee Retirement Income Security Act of 1974, as amended, and any federal agency regulations and other official guidance promulgated thereunder that are currently in effect and applicable.
- g. “ERISA Requirements” mean all of the applicable requirements of ERISA and applicable guidance promulgated thereunder, including Interpretive Bulletin 95-1.
- h. “Fair Market Value” means the fair market value as of the applicable date for a Schedule 2 Asset as in an amount equal to the fair market value as of such date for such Schedule 2 Asset as indicated (1) by the primary pricing source set forth in the table below in Schedule 5 that corresponds to the applicable asset class of such Schedule 2 Asset, (2) if such primary pricing source is not available or no fair market value is indicated by such primary pricing source for such Schedule 2 Asset, by the secondary pricing source set forth in the table below that corresponds to the applicable asset class of such Schedule 2 Asset, or (3) if neither such primary nor secondary pricing source is available or no fair market value is indicated by either such source for such Schedule 2 Asset, Company, Independent Fiduciary, and Insurer will discuss the appropriate pricing source for such Schedule 2 Asset. For any applicable pricing source, the Mid Price will be used.
- i. “Ineligible Asset” means a Schedule 2 Asset that does not meet the Asset Eligibility Criteria set forth on Schedule 3.
- j. “Independent Fiduciary MAC” means (i) the occurrence of a material adverse change, as determined in Independent Fiduciary’s sole discretion, in or directly affecting either Insurer after the Commitment Agreement Date that would cause the selection of either

Insurer and the purchase of either Contract to fail to satisfy the ERISA Requirements, or (ii) the occurrence of a change in ERISA Requirements after the Commitment Agreement Date that would cause the selection of either Insurer and the Plan's purchase of either Contract to fail to satisfy ERISA Requirements.

- k. "Insurer Direct Payment Date" means March 1, 2022.
- l. "Insurer Financial Payment Date" means January 1, 2022.
- m. "Interim Asset Cash Flows" means, with respect to the Transferred Assets, the aggregate amount paid by the issuer of each asset to the record owner as of any day during the period from and including the Commitment Agreement Date and to but excluding the date that the Closing Date Transfers occur, (i) with respect to any coupon, *plus* (ii) with respect to cash flows received on such assets, including but not limited to principal payments, principal redemptions and tender offers but not including coupons described in clause (i). Interim Asset Cash Flows will not include any payments made with respect to any Transferred Asset that were due prior to the Commitment Agreement Date and any other cash flows not principal- or interest-related (such as class action payment receipt and litigation payment) relevant to events occurring prior to the Commitment Agreement Date. For purposes of paragraph 3.c., which relates to "Schedule 2 Assets" instead of "Transferred Assets," the reference in this definition to "Transferred Assets" shall instead refer to "Schedule 2 Assets." For purposes of paragraph 3.d, which relates to "Ineligible Assets" instead of "Transferred Assets," the reference in this definition to "Transferred Assets" shall instead refer to "Ineligible Assets."
- n. "Mid Price" means, for any applicable pricing source set forth in the definition of Fair Market Value, the mid price as provided by the pricing source.
- o. "Non-Exempt Prohibited Transaction" means a transaction prohibited by ERISA § 406 or Code § 4975, for which no statutory exemption or U.S. Department of Labor class exemption is available.
- p. "Permitted Liens" means:
  - i. any Liens created by operation of law in respect of restrictions on transfer of securities (other than restrictions relating to the transfer of a Transferred Asset on the Closing Date in violation of applicable law); or
  - ii. with respect to any Transferred Asset, any transfer restrictions or other limitations on assignment, transfer or the alienability of rights under any indenture, debenture or other similar governing agreement to which such assets are subject (other than restrictions relating to the transfer of such an asset on the Closing Date in violation of any such restriction).
- q. "Plan Custodian" means JPMorgan Chase Bank, N.A. as custodian under that certain Global Custody Agreement between the Plan Trustee and JPMorgan Chase Bank, N.A.
- r. "Plan Trust" means the U.S. Steel Retirement Plan Trust.
- s. "Plan Trustee" means the United States Steel and Carnegie Pension Fund.
- t. "Projected RBC Ratio" means, as of the day of determination, the projection of the RBC Ratio as of December 31, 2021, as calculated under the method set forth on Schedule 8.

- u. "RBC Ratio" means the company action level risk-based capital ratio of an Insurer, which will be calculated in a manner consistent with the requirements and methodologies prescribed under Maryland and New York law (as applicable), as applied by such Insurer in the ordinary course of its business, consistent with its historic practice.
- v. "Schedule 2 Asset" means each asset listed from time to time on Schedule 2 that is not an Ineligible Asset.
- w. "Transferred Asset" means each Eligible Asset transferred to and received by Insurer by the Cut-Off Time on the Closing Date. Until valid title to an Eligible Asset has transferred to Insurer, such asset is not a Transferred Asset.
- x. "Transferred Asset Market Value" means (i) the close-of-market Fair Market Value of a Transferred Asset as of the close of business on the Business Day prior to the Commitment Agreement Date, plus (ii) accrued interest on such Transferred Asset as of the close of business on the Business Day prior to the Commitment Agreement Date. For purposes of paragraph 3.d., which relates to "Ineligible Assets" instead of "Transferred Assets," the reference in this definition to "Transferred Asset" will instead refer to "Ineligible Asset."
- y. "Transferred Asset Valuation" means the sum of the Transferred Asset Market Value for each Transferred Asset.

[signature page follows]

IN WITNESS WHEREOF, Company, each Insurer, and Independent Fiduciary have executed this Commitment Agreement as of the date first written above.

**UNITED STATES STEEL CORPORATION**

By: /s/ Bryan Lewis

Print Name: Bryan Lewis

Title: Vice President & Chief Investment Officer

**BANNER LIFE INSURANCE COMPANY**

By: /s/ George Palms

Print Name: George Palms

Title:

**STATE STREET GLOBAL ADVISORS TRUST  
COMPANY, acting solely in its capacity as  
Independent Fiduciary of the Plan**

By: /s/ Denise Sisk

Print Name: Denise Sisk

Title: Managing Director

**WILLIAM PENN LIFE INSURANCE COMPANY OF  
NEW YORK**

By: /s/ George Palms

Print Name: George Palms

Title: President



## SCHEDULES

[Omitted.]

\$225,000,000  
ABL CREDIT AGREEMENT

Dated as of August 23, 2017

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

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J	Joinder Agreement
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## **ABL CREDIT AGREEMENT**

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

## **PRELIMINARY STATEMENTS**

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

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

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

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

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

## **Article I**

### **Definitions and Accounting Terms**

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

“**ABL Intercreditor Agreement**” shall mean that certain Intercreditor Agreement, dated as of the date hereof, 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 from time to time.

“**ABL Priority Collateral**” has the meaning assigned to “ABL Priority Collateral” in the ABL Intercreditor Agreement.

“**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.

“**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 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.

“**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	≥ 50%	0.25%
Category 2	< 50%	0.375%

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.

“**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	≥ 66%	0.75%	1.75%
Category 2	≥ 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.

“**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 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.

**“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, 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.

**“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.

**“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.

**“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
- (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% 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); 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 Subsidiary), which as of the Closing Date shall include those that are listed on Schedule 1.01(2) hereto and (c) any Restricted Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) any Pari Passu Lien Obligations or any Subordinated Indebtedness (the Persons in the preceding clauses (a) through (c) 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) 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.

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 date hereof, among the Pari Collateral Agent, the Term Agent, the Notes Trustee, 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 4.2(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;

(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”** means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien; *provided* that Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

**“Consolidated Total 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 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; *provided* that Consolidated Total 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 depository bank that maintains such lockbox or the depository 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).

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

**“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).

**“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.

**“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 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.

**“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 delegate) 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];

(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 amount of such Accounts that are otherwise eligible under this clause);

(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 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;

(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);

(d) is located on 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 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 in a third party warehouse or is in the possession of a consignee or bailee where the aggregate value of the Inventory exceeds \$2,000,000, unless (i) such warehouse, 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;

(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;

(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.

“**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.

“**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 date hereof 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 date hereof (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 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 published on the next succeeding Business Day and (b) 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 (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%.

**“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.

**“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 to the extent financed with long term Indebtedness or equity, excluding Capital Expenditures financed with Revolving Loans) 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, (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 date of the Agreement.

**"Grant Clawback Agreement"** means that certain letter agreement, dated as of the date hereof, 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.

**“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, 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.

**“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.

**“Internally Generated Cash”** means, with respect to any period, any cash of Holdings or any Restricted Subsidiary generated during such period, excluding Net Proceeds of any Asset Sale or Casualty Event and any cash that is generated from an incurrence of Indebtedness, an issuance of Equity Interests or a capital contribution.

**“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 equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, 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 “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 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.

“**IRS**” means Internal Revenue Service of the United States, or any successor federal agency.

“**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.

“**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.

“**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, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent under the Loan Documents.

**“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).

“**Maturity Date**” means the fifth anniversary of the Closing Date.

“**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 Closing Date is \$225,000,000.

“**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% 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.

**“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, 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 date hereof) or any Debt Representative in respect of Additional Pari Passu Lien Debt (as defined in the Collateral Trust Agreement in effect on the date hereof).

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.

“**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 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).

**“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”** 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;

(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 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

(e) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to such clause (15), 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) be no less than the Senior Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Indebtedness secured by such Lien or (b) not exceed 2.50 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 obligations 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 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 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 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];

(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), (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), (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% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries 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 the Collateral Trust Agreement and the ABL Intercreditor 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;

(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 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 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”.

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, and such refinancing 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 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 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.

**“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).

**“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.

**“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 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 Moody’s and S&P, or if Moody’s or S&P (or both) 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 Moody’s or S&P (or both), as the case may be.

**“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.

“**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.

**“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 Closing Date is \$225,000,000.

**“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 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 the United States Department of State or by the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in any jurisdictions subject to Sanctions or (c) any Person controlled by any such Person.

**“Sanctions”** has the meaning specified in Section 5.17.

“SEC” means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Secured Indebtedness**” means any Indebtedness of the Borrower or any Restricted Subsidiary secured by a Lien.

“**Secured Parties**” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Lender Counterparties, 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 date hereof, 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 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.

“**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).

**“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 Indemnitor”** 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 date hereof, 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.

**“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 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**” has the meaning assigned to such term in Section 7.05(b)(2)(a).

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“**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.

**"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% 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% 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% 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, 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.

“**Yen**” means the lawful currency of Japan.

SECTION 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(1) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(2) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

(4) The term “including” is by way of example and not limitation.

(5) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(6) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(7) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(8) The word “or” is not intended to be exclusive unless expressly indicated otherwise.

(9) With respect to any Default or Event of Default, the words “exists,” “is continuing” or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived.

(10) For purposes of determining compliance with the incurrence of any Refinancing Indebtedness that restricts the amount of such Indebtedness relative to the amount of Refinanced Debt, the Borrower and Restricted Subsidiaries may incur an incremental principal amount of Refinancing Indebtedness in such refinancing to the extent that the excess portion of the Refinancing Indebtedness would otherwise be permitted to be incurred in accordance with this Agreement. For purposes of determining compliance with the incurrence of any Indebtedness under Designated Revolving Commitments in reliance on compliance with any ratio, if on the date such Designated Revolving Commitments are established, the applicable ratio is satisfied after giving *pro forma* effect to the incurrence of the entire committed amount of then proposed Indebtedness thereunder, then such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with any ratio.

(11) For purposes hereof, unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

SECTION 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Unless the context indicates otherwise, any reference to a “fiscal year” or a “fiscal quarter” shall refer to a fiscal year ending December 31 or fiscal quarter ending March 31, June 30, September 30 or December 31 of the Borrower. Any reference to a “fiscal month” shall refer to a calendar month. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings, the Borrower or any of its Subsidiaries at “fair value,” as defined therein.

SECTION 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, (1) all references herein to times of day shall be references to New York time (daylight or standard, as applicable) and (2) when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day.

SECTION 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Senior Secured Net Leverage Ratio and the Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this Section 1.07; *provided* that notwithstanding anything to the contrary in clauses (2), (3), (4) or (5) of this Section 1.07, when calculating the Fixed Charge Coverage Ratio for purposes of the Financial Covenant (other than for the purpose of determining *pro forma* compliance with the Financial Covenant), the events described in this Section 1.07 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) (it being understood that for purposes of determining actual compliance (and not *pro forma* compliance) with the Financial Covenant, the reference to "Test Period" shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2)).

(2) For purposes of calculating any financial ratio or test (or Consolidated EBITDA or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Consolidated EBITDA or Total Assets) shall be calculated to give *pro forma* effect for such Test Period as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period.

(3) Whenever *pro forma* effect is to be given to any Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from or relating to any Specified Transaction which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost

savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements), whether prior to or following the Closing Date, net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (a) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (b) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty-four (24) months after the date of such Specified Transaction (or actions undertaken or implemented prior to the consummation of such Specified Transaction), and (c) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period.

(4) In the event that (a) the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced), (b) the Borrower or any Restricted Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Restricted Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Restricted Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Fixed Charge Coverage Ratio (or similar ratio), in which case such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period; *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, 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, 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 1.09 Guaranties of Hedging Obligations. Notwithstanding anything else to the contrary in any Loan Document, no non-Qualified ECP Guarantor shall be required to guarantee or provide security for Excluded Swap Obligations, and any reference in any Loan Document with respect to such non-Qualified ECP Guarantor guaranteeing or providing security for the Obligations shall be deemed to be all Obligations other than the Excluded Swap Obligations.

SECTION 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the Dollar equivalent amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of

currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

(2) For purposes of determining the Senior Secured Net Leverage Ratio, the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

## **Article II**

### **The Commitments and Borrowings**

#### **SECTION 2.01 Revolving Loans.**

(1) Revolving Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender agrees to make Revolving Loans to the Borrower in Dollars in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding its Revolving Commitment or (ii) the Total Utilization of Revolving Commitments exceeding the lesser of (A) the Maximum Credit and (B) the Borrowing Base then in effect. 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 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 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 a.m. (New York City time)) 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.

#### SECTION 2.02 Swing Line Loans.

(1) General. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Swing Line Lender agrees to make Swing Line Loans to the Borrower in Dollars in an aggregate principal amount at any time outstanding not to exceed the Swing Line Sublimit; provided that no Swing Line Loan shall be made if immediately after giving effect thereto the Total Utilization of Revolving Commitments would exceed the lesser of (i) the Maximum Credit and (ii) the Borrowing Base then in effect. 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; (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; (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) 10

Business Days prior to the Maturity Date and (2) the date which is one year from the date of issuance of such standby Letter of Credit; (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; (xi) 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.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% 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 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, 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) 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.

#### 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 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 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) in the case of any Protective Advance or any interest accrued in accordance with Section 2.10, on demand; (iii) 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. 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 no event shall Overadvances be required that would cause the Total Utilization of Revolving Commitments to exceed the Maximum Credit. 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 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 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 a.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 (any such increase, the "**New Revolving Loan Commitments**"). Each such notice shall specify (A) the date (each, an "**Increased Amount Date**") on which Borrower proposes that the New Revolving Loan Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to Administrative Agent or such shorter period of time as consented to by Administrative Agent (B) the amount of the New Revolving Loan Commitments (which amount shall be at least \$5,000,000) and (C) the identity of each Lender or other Person that is an

Eligible Assignee (each, a “**New Revolving Loan Lender**”) to whom Borrower proposes any portion of such New Revolving Loan Commitments be allocated and the amounts of such allocations; provided that Administrative Agent may elect or decline to arrange such New Revolving Loan Commitments in its sole discretion and any Lender approached to provide all or a portion of the New Revolving Loan Commitments may elect or decline, in its sole discretion, to provide a New Revolving Loan Commitment; provided, further, that, if the consent of the Administrative Agent, each Issuing Bank and each Swing Line Lender would be required pursuant to the terms of Section 10.07, each Lender and other Person that the Borrower proposes to become a New Revolving Loan Lender must be reasonably acceptable to Administrative Agent, each Issuing Bank and each Swing Line Lender (the consent of each of the Administrative Agent, each Issuing Bank and each Swing Line Lender not to be unreasonably withheld, conditioned or delayed). Such New Revolving Loan Commitments shall become effective, as of such Increased Amount Date; provided that (1) no Specified Event of Default shall exist at the time of, or result after giving effect to, such Increased Amount Date by giving effect to such New Revolving Loan Commitments; (2) the New Revolving Loan Commitments shall be effected pursuant to one or more Joinder Agreements executed and delivered by Borrower, the New Revolving Loan Lender, and Administrative Agent, and each of which shall be recorded in the Register and each New Revolving Loan Lender shall be subject to the requirements set forth in Section 3.01(3); (3) Borrower shall make any payments required pursuant to Section 3.04 in connection with the New Revolving Loan Commitments; and (4) Borrower shall deliver or cause to be delivered any legal opinions, mortgage amendments (including updated and increased title insurance amount), notes or other documents reasonably requested by Administrative Agent in connection with any such transaction.

On any Increased Amount Date on which New Revolving Loan Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (a) each of the Revolving Loan Lenders shall assign to each of the New Revolving Loan Lenders, and each of the New Revolving Loan Lenders shall purchase from each of the Revolving Loan Lenders, at the principal amount thereof (together with accrued interest), such interests in the Revolving Loans outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Revolving Loan Lenders and New Revolving Loan Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such New Revolving Loan Commitments to the Revolving Commitments, (b) each New Revolving Loan Commitment shall be deemed for all purposes a Revolving Commitment and each Loan made thereunder (a “**New Revolving Loan**”) shall be deemed, for all purposes, a Revolving Loan and (c) each New Revolving Loan Lender shall become a Lender with respect to the New Revolving Loan Commitment and all matters relating thereto.

Administrative Agent shall notify Lenders promptly upon receipt of Borrower’s notice of each Increased Amount Date and in respect thereof (y) the New Revolving Loan Commitments and the New Revolving Loan Lenders, and (z) in the case of each notice to any Revolving Loan Lender, the respective interests in such Revolving Loan Lender’s Revolving Loans, in each case subject to the assignments contemplated by this Section 2.15.

The terms and provisions of the New Revolving Loans shall be identical to the Revolving Loans; provided that if the Borrower determines to increase the Applicable Margin or fees payable in respect of the New Revolving Loan Commitments, such increase shall be permitted if the Applicable Margin or fees payable in respect of all Revolving Commitments and Revolving Loans shall be increased to equal such Applicable Margin or fees payable in respect of the New Revolving Loan Commitments; provided further that the Borrower at its election may pay arrangement, upfront or closing fees with respect to any New Revolving Loan Commitments without paying such fees with respect to the existing Revolving Commitments.

New Revolving Loan Commitments shall become Commitments under this Agreement pursuant to an amendment to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each New Revolving Loan Lender providing such New Revolving Loan Commitments and the Administrative Agent. Such amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15. In connection with any such amendment, Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such New Revolving Loan Commitments are provided with the benefit of the applicable Loan Documents.

#### SECTION 2.16 Defaulting Lenders.

(1) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.10 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent (including, for the avoidance of doubt, amounts owing in respect of any Protective Advance) hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to Issuing Bank or Swing Line Lender hereunder; *third*, to Cash Collateralize Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16(2)(b); *fourth*, as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a Deposit Account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.16(2)(b); *sixth*, to the payment of any amounts owing to the Lenders, Issuing Bank or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, Issuing Bank or Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its Pro Rata Share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, or such Loans are Protective Advances, such payment shall be applied solely to pay the Loans of, and reimbursement obligations with respect to Letters of Credit, Swing Line Loans and Protective Advances owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or reimbursement or participation obligations with respect to Letters of Credit, Swing Line Loans and Protective Advances owed



to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans are held by the Lenders pro rata in accordance with the applicable Commitments without giving effect to Section 2.16(1)(b)(iii). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(1)(a) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.09 for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender); provided such Defaulting Lender shall be entitled to receive fees pursuant to Section 2.09 for any period during which that Lender is a Defaulting Lender only to extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16(2)(b).

(ii) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (i) above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit, Swing Line Loans or Protective Advances that has been reallocated to such Non-Defaulting Lender pursuant to clause (iii) below, (y) pay to Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iii) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) in the case of any Protective Advance, such Protective Advance is made in compliance with Section 2.10(1), (y) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless Borrower shall have otherwise notified Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (z) such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.25, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iv) Repayment of Swing Line Loans and Protective Advances; Cash Collateral. If the reallocation described in Section 2.16(1)(b)(iii) cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (A) first, prepay Protective Advances in an amount equal to the Administrative Agent's Fronting Exposure in respect of Protective Advances, (b) second, prepay Swing Line Loans in an amount equal to the Swing Line Lender's Fronting Exposure and (C) Cash Collateralize the Issuing Banks' Fronting Exposures in accordance with Section 2.16(2)(b).

(2) Defaulting Lender Cure. If Borrower, Administrative Agent and each Swing Line Lender and Issuing Bank agree in writing that a Lender is no longer a Defaulting

Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to Section 2.16(1)(b)(iii)), and if Cash Collateral has been posted with respect to such Defaulting Lender, the Administrative Agent will promptly return or release such Cash Collateral to Borrower, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(a) New Swing Line Loans/Protective Advances/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Line Loans unless it is satisfied that the participations therein will be fully allocated among Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and the Defaulting Lender shall not participate therein, (ii) no Issuing Bank shall be required to issue, extend or increase any Letter of Credit unless it is satisfied that the participations in any existing Letters of Credit as well as the new, extended or increased Letter of Credit has been or will be fully allocated among the Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and such Defaulting Lender shall not participate therein except to the extent such Defaulting Lender's participation has been or will be fully Cash Collateralized in accordance with Section 2.16(2)(b), and (iii) each Protective Advance will be fully allocated among Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and the Defaulting Lender shall not participate therein.

(b) Cash Collateral. At any time that there shall exist a Defaulting Lender, promptly following the written request of Administrative Agent or Issuing Bank (with a copy to Administrative Agent) Borrower shall Cash Collateralize Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.16(1)(b)(iii) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Grant of Security Interest. Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to Administrative Agent, for the benefit of Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (ii) below. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and Issuing Bank as herein provided (other than any Permitted Liens), or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.16 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund

participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.16 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (ii) the determination by Administrative Agent and Issuing Bank that there exists excess Cash Collateral; provided that, (x) subject to the other provisions of this Section 2.16, the Person providing Cash Collateral and Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations, and (y) Cash Collateral shall not be released during the continuance of a Default or Event of Default; provided further that to the extent that such Cash Collateral was provided by Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

(c) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall cease to be a Lender Counterparty with respect to any Hedge Agreement entered into while such Lender was a Defaulting Lender.

SECTION 2.17 Reserves.(a) Notwithstanding anything in this Agreement to the contrary, the Administrative Agent may at any time and from time to time in the exercise of its Permitted Discretion establish and increase or decrease any Reserves (such change in Reserves, a "Change") (including Reserves with respect to Hedging Agreements and Designated Cash Management Services Agreements); provided that (i) the Administrative Agent shall have provided the Borrower at least three Business Days' prior written notice of any such establishment or material increase of any Reserves (which notice shall include a reasonably detailed description of such Reserve being established or increased); provided that no such prior notice shall be required for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized; and (ii) the circumstances, conditions, events or contingencies existing or arising prior to the Closing Date and disclosed or known to the Administrative Agent shall not be the basis for any establishment or modification of any Reserves after the Closing Date, unless (x) such Reserves relate to Taxes or (y) such circumstances, conditions, events or contingencies shall have changed in any material adverse respect since the Closing Date; provided, further, that the Administrative Agent may not implement reserves with respect to matters which are already specifically reflected in the eligibility standards for Eligible Accounts and Eligible Inventory.

(b) The amount of the Reserve established by the Administrative Agent shall have a reasonable relationship to the event, condition or other matter that is the basis for the Reserve and shall be based upon its consideration as to any factor, event, condition or other circumstance which the Administrative Agent reasonably determines: (i) will or could reasonably be expected to adversely affect the quantity, quality, mix or value of any ABL Priority Collateral, the enforceability or priority of the Collateral Agent's Liens thereon or the amount which the Secured Parties would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation thereof, (ii) will or could reasonably be expected to result in a Default or an Event of Default or (iii) could arise as a result of any collateral report or financial information delivered to the Administrative Agent by the Borrower or any Person on behalf of thereof being incomplete, inaccurate or misleading in any material respect. In exercising such judgment, the Administrative Agent may consider, without duplication, factors already included in or tested by the definition of Eligible Accounts and Eligible Inventory, and any other criteria including: (A) changes after the Closing Date in any concentration of risk with

respect to Eligible Accounts or Eligible Inventory from the concentration of risk set forth in the field examinations and collateral audits conducted prior to the Closing Date and (B) any other factors arising after the Closing Date that affect or that could reasonably be expected to affect the credit risk of lending to the Borrower on the security of the ABL Priority Collateral.

(c) Upon the notification of any Change, the Administrative Agent shall be available to discuss such Change, and the Borrower and its Restricted Subsidiaries may take such action as may be required so that the event, condition, circumstance or new fact that is the basis for such Change no longer exists. In no event shall such notice and opportunity limit the right of the Administrative Agent to make a Change, unless the Administrative Agent shall have determined in its Permitted Discretion that the event, condition, other circumstance or new fact that is the basis for such Change no longer exists or has otherwise been adequately addressed by the Borrower or its Restricted Subsidiaries.

(d) Notwithstanding anything herein to the contrary, Reserves shall not duplicate eligibility criteria contained in the definition of “Eligible Accounts” or “Eligible Inventory” and vice versa, or reserves or criteria deducted in computing the cost or fair market value or book value of any Eligible Accounts or any Eligible Inventory and vice versa.

### **Article III**

#### **Taxes, Increased Costs Protection and Illegality**

##### **SECTION 3.01 Taxes.**

(1) Defined Terms. For purposes of this Section 3.01, the term “applicable Law” includes FATCA.

(2) Except as required by applicable Law, all payments by or on account of any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made without deduction or withholding for any Taxes.

(3) If any Loan Party or any other applicable withholding agent is required (as determined in the good faith discretion of an applicable withholding agent) by applicable Law to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on account of any Loan Party to or for the account of any Lender or Agent under any of the Loan Documents:

(a) the applicable Loan Party shall use commercially reasonable efforts to notify the Administrative Agent of any such requirement or any change in any such requirement as soon as practicable after such Loan Party becomes aware of it; *provided* that any failure to provide such notification shall not affect the applicable payee’s indemnification rights hereunder;

(b) the applicable Loan Party or other applicable withholding agent shall make such deduction or withholding and pay to the relevant Governmental Authority any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for such Loan Party’s account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-

Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), such Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after the due date of payment of any Tax which it is required by clause (b) above to pay (or as soon as reasonably practicable thereafter), the applicable Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(4) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with such properly completed and executed documentation as is prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document, in each case as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (4)(a), (b)(i) through (iv) and (c) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each such Lender shall, whenever any such documentation (including any specific documentation required below in this Section 3.01(4)) it previously delivered becomes obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent in writing of its legal ineligibility to do so.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower and the Administrative Agent) two properly completed and duly executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(b) Each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming eligibility for the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, properly completed and duly executed copies of IRS

Form W-8BEN (or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments 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 date of this Agreement.

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. 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.

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).

#### SECTION 3.07 Mitigation Obligations; Replacement of Lenders under Certain Circumstances.

(1) If (a) any Lender requests compensation under Section 3.04 or (b) a Loan Party is required to pay any Non-Excluded Taxes or Other Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, then such Lender shall (at the request of the applicable Loan Party) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 3.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be

disadvantageous to such Lender. The Loan Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If (a) any Lender requests compensation under Section 3.04 or ceases to make Eurodollar Rate 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;

(4) Either (a) the Administrative Agent shall have received a Funding Notice in accordance with the requirements hereof or (b) on or before the date of issuance of any Letter of Credit, Administrative Agent and Issuing Bank shall have received all other information required by the applicable Issuance Notice, and such other documents or information as Issuing Bank may reasonably require in connection with the issuance of such Letter of Credit.

(5) Each Funding Notice submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(1), (2) and (3) have been satisfied on and as of the date of the applicable Borrowing.

(6) If any proposed Credit Extension would trigger a Covenant Period that did not then exist or otherwise be made during a Covenant Period, the Administrative Agent shall have received within one (1) Business Day prior to such request a Compliance Certificate demonstrating (with detailed calculations) that the Fixed Charge Coverage Ratio (calculated for purposes of demonstrating compliance with Section 7.12) is no less than 1.00:1.00 based on the most recent financial statements delivered pursuant to Section 6.01.

In addition, solely to the extent the Borrower has delivered to the Administrative Agent a Notice of Intent to Cure pursuant to Section 8.04, no request for a Credit Extension shall be honored after delivery of such notice until the applicable Cure Amount specified in such notice is actually received by the Borrower. For the avoidance of doubt, the preceding sentence shall have no effect on the continuation or conversion of any Loans outstanding.

## **Article V**

### **Representations and Warranties**

The Borrower and, in respect of Sections 5.01, 5.02, 5.04, 5.06, 5.13 and 5.17 only, Holdings, represent and warrant to the Administrative Agent and the Lenders, at the time of each Credit Extension (solely to the extent required to be true and correct for such Credit Extension pursuant to Article IV):

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,



(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws orders, writs, injunctions and orders (including the United States Foreign Corrupt Practices Act of 1977 (the “FCPA”)); 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 (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 (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 creation of Liens) referred to in the preceding clauses (b) and (c), 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.

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 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, 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.

SECTION 5.08 Ownership of Property; Liens. Each Loan Party 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, 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.

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 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) No ERISA Event has occurred or is reasonably expected to occur; and

(b) 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 reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(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 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, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

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.

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 5.18 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.

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.

## **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;

(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 is holding a conference call open to the public to discuss the financial condition and results of operations of the Borrower 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, 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.

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).

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, but subject to the limitations set forth in Section 6.10 and Section 10.09, such additional information regarding the business and financial affairs of any Loan Party or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time.

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); *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.

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) (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.

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 the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

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; *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 in any Collateral Document, 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 (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting 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 a Subsidiary Guarantor under the Collateral and Guarantee Requirement 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) 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 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 1.12 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.

SECTION 1.13 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 1.14 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.

SECTION 1.15 [Intentionally Omitted].

SECTION 1.16 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 1.17 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% 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. 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 1.18 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 1.19 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.

(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 (III) 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;

*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 1.04 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) 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*

(c) 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) 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 date of this Agreement 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.

(c) 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) 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 7.09 Accounting Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any change in fiscal year; *provided, however*, that the Borrower may, upon written notice 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 to this Agreement that are necessary to reflect such change in fiscal year.

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 7.11 Holdings.

(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 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), 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) 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

(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), the effect of which default or other event 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 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 reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(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), 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, 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, 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 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 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 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 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. 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.

## **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, 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, 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” 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 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 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, 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 (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];

(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 or any of its 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) 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 Indemnatee is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnatee, 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 Indemnatee 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 Indemnatee 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 Indemnatee 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). 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 Indemnatee 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 Indemnatee), nor shall any Indemnatee 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 Indemnatee to a third party for which such Indemnatee 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 Indemnatee or any other Person, whether or not any Indemnatee 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 Indemnatee 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 Indemnatee for any such fees, expenses or damages to the extent such Indemnatee is not entitled to payment of such amounts in accordance with the terms hereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

SECTION 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently

invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect.

#### SECTION 10.07 Successors and Assigns; Participations.

(1) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders and Issuing Bank. No Loan Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Loan Party without the prior written consent of all Lenders except as permitted by Section 7.03. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents, Issuing Bank and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(2) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment and Assumption effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.07(4). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment and Assumption and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment and Assumption shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "**Assignment Effective Date.**" Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(3) Right to Assign. Each Lender shall have the right, subject to Section 10.07(9), at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (a) of the definition of the term "Eligible Assignee" upon the giving of notice to Borrower and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (b) of the definition of the term "Eligible Assignee" upon giving of notice to Borrower and Administrative Agent and the prior written consent of Issuing Bank, Swing Line Lender, Borrower and Administrative Agent (such consent not to be (x) unreasonably withheld or delayed or, (y) in the case of Borrower, required at any time an Event of Default under Section

8.01(1), (6) or (7) shall have occurred and then be continuing); provided further that (A) Borrower shall be deemed to have consented to any such assignment of Revolving Loans or Revolving Commitments unless it shall object thereto by written notice to Administrative Agent within 10 Business Days after having received notice thereof and (B) each such assignment pursuant to this Section 10.07(3) shall be in an aggregate amount of not less than (w) \$5,000,000 with respect to the assignment of the Revolving Commitments and the Revolving Loans, (x) such lesser amount as agreed to by Borrower and Administrative Agent, (y) the aggregate amount of the Loans of the assigning Lender with respect to the Class being assigned or (z) the amount assigned by an assigning Lender to an Affiliate or Approved Fund of such Lender.

(4) Mechanics.

(i) Assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to Administrative Agent of an Assignment and Assumption. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment and Assumption may be required to deliver pursuant to Section 3.01(3), together with payment to Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to Goldman Sachs or any Affiliate thereof or (z) in the case of an assignee which is already a Lender or is an affiliate or Approved Fund of a Lender.

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent, Issuing Bank, Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(5) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.07, the disposition of

such Commitments or Loans or any interests therein shall at all times remain within its exclusive control); and (iv) it is not a Disqualified Institution.

(6) Effect of Assignment. Subject to the terms and conditions of this Section 10.07, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.14) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Loan Documents to the contrary notwithstanding, (y) Issuing Bank shall continue to have all rights and obligations thereof with respect to each Letter of Credit until the cancellation or expiration of (without any pending drawing on) such Letter of Credit and the reimbursement of any amounts drawn thereunder and (z) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(7) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates, any Disqualified Institution or any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person)) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.07(7) shall, acting solely for United States federal income tax purposes as a non-fiduciary agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts of each participant’s participation interest with respect to the Revolving Loan (each, a “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant’s interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to the Revolving Loan for all purposes under this Agreement, notwithstanding any notice to the contrary.



(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Loan Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Borrower agrees that each participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (x) a participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from any change described in Section 3.01 that occurs after the participant acquired the applicable participation, and (y) a participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.04 unless Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower, to comply with Section 3.04 as though it were a Lender; provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.01 as though it were a Lender, provided such participant agrees to be subject to Section 3.01 as though it were a Lender.

(8) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.07 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Lender, as among Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(9) Disqualified Institution Provisions. Notwithstanding the foregoing, no assignment or participation shall be made to a Disqualified Institution without Borrower's consent in writing (which consent may be withheld in its sole discretion); provided that upon the request of any Lender to Administrative Agent, the list of Disqualified Institutions shall be made available by Administrative Agent to such Lender. Administrative Agent shall not be responsible for, nor have any liability in connection with maintaining, updating, monitoring or enforcing the list of Disqualified Institutions.

SECTION 10.08 [Reserved].

SECTION 10.09 Confidentiality. Each of the Agents, the Arrangers and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided, however*, that such Agent, Arrangers or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided, however*, that each Agent, each Arrangers and each Lender agrees to notify the Borrower promptly thereof to the extent it is legally permitted to do so, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; *provided* that such Agent, such Arrangers or such Lender, as applicable, agrees that it will (x) notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of a regulation examination) unless such notification is prohibited by law, rule or regulation and (y) seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be a Lender or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower, the Agents and the Arrangers, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents and the Arrangers or market standards for dissemination of such type of information which shall in any event require "click through" or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a "due diligence" defense, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arrangers, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate thereof or (z) is independently developed by the Agents, the Lenders, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09.

For purposes of this Section 10.09, "**Information**" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or

any Subsidiary thereof; it being understood that no information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the date hereof 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 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. Each Lender that is subject to the USA PATRIOT Act 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, 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. 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.

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 EEA 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 EEA 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 EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 EEA 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 Resolution Authority.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

**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:           /s/ David Stickler            
Name: David Stickler  
Title: Chief Executive Officer

**BRS INTERMEDIATE HOLDINGS LLC**, as  
Holdings

By:           /s/ David Stickler            
Name: David Stickler  
Title: Chief Executive Officer



**GOLDMAN SACHS BANK USA**, as  
Administrative Agent and Lender

By: /s/ Thomas M. Manning  
Name: Thomas M. Manning  
Title: Authorized Signatory

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**, as a Lender and Issuing Bank

By: /s/ Vivek Tayal  
Name: Vivek Tayal  
Title: Director

**BMO HARRIS BANK, N.A.**, as a Lender and  
Issuing Bank

By:           /s/ Quinn Heiden            
Name: Quinn Heiden  
Title: Director

**BANK OF AMERICA, N.A.**, as a Lender and  
Issuing Bank

By:           /s/ Andrew Finemore            
Name: Andrew Finemore  
Title: Assistant Vice President

SCHEDULES  
to  
ABL CREDIT AGREEMENT  
[Omitted.]

# **SUPPLEMENTAL AGREEMENT NO. 9**

**DATED 3 DECEMBER 2021**

**BETWEEN**

**U. S. STEEL KOŠICE, S.R.O.**

as the Company

**AND**

**ING BANK N.V., POBOČKA ZAHRANIČNEJ BANKY**

as Lender

**relating to**

**the agreement for the (originally) €10,000,000 committed credit facility**

**ALLEN & OVERY**

**Allen & Overy Bratislava, s.r.o.**

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**THIS SUPPLEMENTAL AGREEMENT** (the **Agreement**) is dated 3 December 2021 and 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 the borrower (the **Company**); and
- (2) **ING BANK N.V.**, with its registered seat at Bijlmerplein 888, 1102MG 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 **ING Bank N.V., pobočka zahraničnej banky**, Pribinova 10, Bratislava 811 09, Bratislava, 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 (the **Lender**).

## **BACKGROUND**

- (A) This Agreement is supplemental to and amends and restates the agreement for (originally) €10,000,000 committed credit facility dated 11 December 2009, between the Company and the Lender, as amended and restated by supplemental agreement no. 1 dated 17 December 2011, supplemental agreement no. 2 dated 22 June 2011, supplemental agreement no. 3 dated 4 May 2012, supplemental agreement no. 4 dated 23 October 2012, supplemental agreement no. 5 dated 11 December 2015, supplemental agreement no. 6 dated 7 December 2018, supplemental agreement no. 7 dated 7 February 2020 and supplemental agreement no. 8 dated 3 July 2020 (the **Credit Agreement**).
- (B) The Parties wish to further amend the Credit Agreement on the terms specified in this Agreement.
- (C) This Agreement provides for amendments required to the Credit Agreement to enable the transition from LIBOR, which is used to calculate interest and/or other amounts payable under the Credit Agreement, to a risk-free rate for USD, to adjust for certain differences between LIBOR and the replacement rates, and to reflect operational and mechanical changes to the calculation and notification of interest and other amounts.
- (D) In the opinion of the Lender and the Company, the Screen Rate, in relation to LIBOR, for USD and all tenors is no longer appropriate for the purposes of calculating interest under the Credit Agreement.

**IT IS AGREED** as follows:

### **1. INTERPRETATION**

#### **1.1 Definitions**

- (a) In this Agreement:



**Effective Date** means the date upon which the Lender issues the notification referred to in paragraph (b) of Clause 2 (Amendments).

**Restated Credit Agreement** means the Credit Agreement as amended and restated by this Agreement, as attached in Schedule 2 (Restated Credit Agreement).

**Syndicated Facility Agreement** means the EUR300,000,000 senior multicurrency revolving credit facility agreement dated 29 September 2021 (as amended from time to time) and entered into between (among others) the Company as a borrower and ING Bank N.V. as facility agent.

- (b) Capitalised terms defined in the Credit Agreement have, unless expressly defined in this Agreement, the same meaning in this Agreement.

## **1.2 Construction**

The principles of construction set out in the Credit Agreement will have effect as if set out in this Agreement, except that references therein to the Credit Agreement are to be construed as references to this Agreement.

## **2. AMENDMENTS**

- (a) Subject as set out below, the Credit Agreement will be amended from the Effective Date so that it reads as if it were restated in the form set out in Schedule 2 (Restated Credit Agreement).
- (b) The Credit Agreement will be amended by this Agreement with effect from the date on which the Lender notifies the Company that it has received all of the documents set out in Schedule 1 (Conditions Precedent Documents) in form and substance reasonably satisfactory to the Lender. The Lender must give this notification as soon as reasonably practicable, but in no event later than two Business Days after receipt of such documents.

## **3. REPRESENTATIONS AND WARRANTIES**

### **3.1 Representations and warranties**

The representations and warranties set out in this Clause are made by the Company to the Lender on the date of this Agreement and on the Effective Date.

### **3.2 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 this Agreement and the transactions contemplated by this Agreement.

### **3.3 Legal validity**

This Agreement:

- (a) constitutes its legal, valid and binding obligation enforceable in accordance with its terms; and
- (b) is in proper form for its enforcement in the Republic if accompanied by a certified Slovak translation,

save that enforcement of the Company's obligations under this Agreement may be affected by insolvency, bankruptcy and similar laws affecting the rights of creditors generally.

### **3.4 Non-conflict**

The execution, delivery and performance by it of this Agreement will not:

- (a) violate in any respect any provision of:
  - (i) 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 the Company;
  - (ii) the laws and documents incorporating and constituting the Company; or
  - (iii) any mortgage, agreement or other financial undertaking or instrument to which the Company is a party or which is binding upon any Assets of the Company; or
- (b) to the best of the Company's knowledge, result in the creation or imposition of any Security Interest on any Assets of the Company pursuant to the provisions of any mortgage, agreement or other undertaking or instrument to which the Company is a party or which is binding upon it.

### **3.5 Authorisations**

All authorisations and other requirements of governmental, judicial and public bodies and authorities required by any member of the Group or advisable in connection with the execution, delivery, performance, validity and enforceability of this Agreement have been obtained or effected and are in full force and effect.

### **3.6 No default**

No Default is outstanding.

### **3.7 Immunity**

- (a) The entry into by it of this Agreement constitutes, and the exercise by it of its rights and the performance of its obligations under, the Finance Documents will constitute, private and commercial acts performed for private and commercial purposes.
- (b) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to the Finance Documents.

### **3.8 Credit Agreement**

- (a) Subject to paragraph (b) below, the Company makes the representations and warranties set out in clause 19 (Representations and warranties) of the Credit Agreement and confirms to the Lender that these representations and warranties are true on the date of this Agreement and on the Effective Date, with reference to the facts and circumstances then existing.
- (b) The Company will not make a representation or warranty if such representation or warranty set out in clause 19 (Representations and warranties) of the Credit Agreement is expressed to be given at a specific date other than as a result of the operation of paragraph (a) of clause 19.21 (Times for making representations and warranties) of the Credit Agreement.

## **4. CONSENTS**

The Company agrees to the amendment and restatement of the Credit Agreement as contemplated by this Agreement.

## **5. NO REPRESENTATIONS OR ADVICE**

- (a) The Company confirms to the Lender that it has made (and shall continue to make) its own independent investigation and assessment of the merits and effect of the amendments contemplated by this Agreement, including, without limitation:
  - (i) the impact of those amendments on the payments to be made under the Restated Credit Agreement (and under any associated transaction, including any hedging or derivative transaction entered into or to be entered into in relation to the Restated Credit Agreement);
  - (ii) the administration of, submission of data to, or any other matter related to, any risk-free rate referred to in, or contemplated by, the Restated Credit Agreement;
  - (iii) the suitability of any rate referred to in, or contemplated by, the Restated Credit Agreement for the Company or any entity related to it; and
  - (iv) the composition or characteristics of any rate referred to in, or contemplated by, the Restated Credit Agreement, including whether it is similar to, produces the same value or economic equivalence to, or has the same volume or liquidity as, any rate which it replaces (in whole or in part).
- (b) The Lender makes no representation as to any matter referred to in paragraph (a) above. The Company agrees that it has not relied on any such representation, acknowledges that it is responsible for taking its own advice in relation to this Agreement and the matters referred to in paragraph (a) above and agrees that it has not received or relied upon any such advice from the Lender, and waives all rights and remedies in respect of those matters.

## **6. ARRANGEMENT FEE**

- (a) In consideration for entering into this Agreement, the Company must pay to the Lender a fee of €60,000.

- (b) The Company shall pay the fee pursuant to paragraph (a) above no later than ten days after the date of this Agreement.

## **7. EXPENSES**

The Company shall reimburse to the Lender within five Business Days from receipt of the relevant invoice from the Lender all fees and expenses reasonably incurred by the Lender in connection with the preparation, negotiation, and execution of this Agreement.

## **8. INCORPORATION**

- (a) Each of this Agreement and the Restated Credit Agreement is a Finance Document.
- (b) Subject to the terms of this Agreement, the Credit Agreement will remain in full force and effect.
- (c) From the Effective Date:
  - (i) the Credit Agreement and this Agreement will be read and construed as one document; and
  - (ii) unless the context requires otherwise, all references in all Finance Documents to the Credit Agreement will be read and construed as references to the Restated Credit Agreement.
- (d) Except as otherwise provided in this Agreement, the Finance Documents remain in full force and effect.
- (e) No waiver is given by this Agreement, and the Lender expressly reserve all its rights and remedies that it has or may at the date of this Agreement or subsequently in respect of any breach of, or other Default under, the Finance Documents.

## **9. COUNTERPARTS**

This Agreement may be signed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **10. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **11. ENFORCEMENT**

Clause 38 (Enforcement) of the Credit Agreement shall apply to this Agreement as though it was set out in full in this Agreement except that references therein to the Credit Agreement are to be construed as references to this Agreement.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.

## **Schedule 1**

### **CONDITIONS PRECEDENT DOCUMENTS**

1. A copy of the up-to-date constitutional documents of the Company being in full force and effect as at a date no earlier than the date of this Agreement or a confirmation of the Company that the constitutional documents of the Company submitted to the facility agent under the Syndicated Facility Agreement or the most recent supplemental agreement thereto are in full force and effect as at a date no earlier than the date of this Agreement.
2. A specimen of the signature of each person authorised to sign this Agreement on behalf of the Company and to sign and/or despatch all documents and notices to be signed and/or despatched by the Company under or in connection with this Agreement or a confirmation of the Company that each person authorised to sign the Syndicated Facility Agreement or the most recent supplemental agreement thereto is also authorised to sign this Agreement on behalf of the Company and to sign and/or despatch all documents and notices to be signed and/or despatched by the Company under or in connection with this Agreement.

**Schedule 2**

**RESTATED CREDIT AGREEMENT**

*[follows after this page]*

AMENDED AND RESTATED CONSOLIDATED VERSION

## **AGREEMENT**

**DATED 11 DECEMBER 2009**

**as amended and restated by  
supplemental agreement no. 1 dated 17 December 2010,  
supplemental agreement no. 2 dated 22 June 2011,  
supplemental agreement no. 3 dated 4 May 2012,  
supplemental agreement no. 4 dated 23 October 2012,  
supplemental agreement no. 5 dated 11 December 2015  
supplemental agreement no. 6 dated on or about 7 December 2018 and  
supplemental agreement no. 7 dated 7 February 2020  
supplemental agreement no. 8 dated 3 July 2020  
supplemental agreement no. 9 dated 3 December 2021**

**EUR20,000,000**

**COMMITTED CREDIT FACILITY**

**FOR**

**U. S. STEEL KOŠICE, S.R.O.**

**PROVIDED BY**

**ING BANK N.V., POBOČKA ZAHRANIČNEJ BANKY**

**ALLEN & OVERY**

**Allen & Overy Bratislava, s.r.o.**

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**THIS AGREEMENT** is dated 11 December 2009 as amended and restated by (i) supplemental agreement no. 1 on 17 December 2010, (ii) supplemental agreement no. 2 dated 22 June 2011, (iii) supplemental agreement no. 3 dated 4 May 2012, (iv) supplemental agreement no. 4 dated 23 October 2012, (v) supplemental agreement no. 5 dated 11 December 2015, (vi) supplemental agreement no. 6 dated on or about 7 December 2018, (vii) supplemental agreement no. 7 dated 7 February 2020, (viii) supplemental agreement no. 8 dated 3 July 2020 and (ix) supplemental agreement no. 9 dated 3 December 2021 (the **Agreement**) is made

**BETWEEN:**

- (3) **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 the borrower (the **Company**); and
- (4) **ING BANK N.V.**, with its registered seat at Bijlmerplein 888, 1102MG 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 **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 (the **Lender**)

**IT IS AGREED** as follows:

**12. INTERPRETATION**

**12.1 Definitions**

In this Agreement:

**Additional Business Day** means any day specified as such in the applicable Compounded Rate Terms.

**Backstop Rate Switch Date** means, in respect of USD, 30 June 2023 or any other date agreed as such between the Lender and the Company.

**Affiliate** means a Subsidiary or a Holding Company of a person or any other Subsidiary of that Holding Company.

**Assets** mean a person's present and future business, undertaking, properties, assets and revenues (including, without limitation, any uncalled capital).

**Availability Period** means the period from and including the date of this Agreement until (but excluding) the Final Maturity Date.

**Break Costs** means the amount (if any) that the Lender is entitled to receive under Clause 25.3 (Break Costs).

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

- (a) if on that day a payment in euro is to be made, that is also a TARGET Day; and
- (b) (in relation to:
  - (i) any date for payment or purchase of an amount relating to a Compounded Rate Loan; or
  - (ii) the determination of the first day or the last day of a Term for a Compounded Rate Loan, or otherwise in relation to the determination of the length of such a Term),

which is an Additional Business Day relating to that Loan.

**Central Bank** means the National Bank of Slovakia.

**Central Bank Rate** has the meaning given to that term in the applicable Compounded Rate Terms.

**Central Bank Rate Adjustment** has the meaning given to that term in the applicable Compounded Rate Terms.

**Compounded Rate Currency** means any Rate Switch Currency in respect of which the Rate Switch Date has occurred.

**Compounded Rate Interest Payment** means the aggregate amount of interest that:

- (a) is, or is scheduled to become, payable under any Finance Document; and
- (b) relates to a Compounded Rate Loan.

**Compounded Rate Loan** means any Loan in a Compounded Rate Currency which is, or becomes, a "Compounded Rate Loan" pursuant to Clause 11A (Rate Switch).

**Compounded Rate Supplement** means, in relation to any currency, a document which:

- (a) is agreed in writing by the Company and the Lender;
- (b) specifies for that currency the relevant terms which are expressed in this Agreement to be determined by reference to Compounded Rate Terms; and
- (c) has been made available to the Company and the Lender.

**Compounded Rate Terms** means in relation to:

- (a) a currency;
- (b) a Loan in that currency;

- (c) a Term for such a Loan (or other period for the accrual of commission or fees in a currency); or
- (d) any term of this Agreement relating to the determination of a rate of interest in relation to such a Loan,

the terms set out for that currency in Schedule 5 (Compounded Rate Terms) or in any Compounded Rate Supplement.

**Compounded Reference Rate** means, in relation to any RFR Banking Day during the Term of a Compounded Rate Loan, the percentage rate per annum which is the aggregate of:

- (a) the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day; and
- (b) other than in respect of a Compounded Rate Loan that is an Overdraft, the applicable Credit Adjustment Spread.

**Compounding Methodology Supplement** means, in relation to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate, a document which:

- (a) is agreed in writing by the Company and the Lender;
- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Company and the Lender.

**Credit Adjustment Spread** means, in respect of any Compounded Rate Loan, any rate which is either:

- (a) specified as such in the applicable Compounded Rate Terms; or
- (b) determined by the Lender in accordance with the methodology specified in the applicable Compounded Rate Terms.

**Cumulative Compounded RFR Rate** means, in relation to a Term for a Compounded Rate Loan, the percentage rate per annum determined by the Lender in accordance with the methodology set out in Schedule 7 (Cumulative Compounded RFR Rate) or in any relevant Compounding Methodology Supplement.

**Daily Non-Cumulative Compounded RFR Rate** means, in relation to any RFR Banking Day during a Term for a Compounded Rate Loan, the percentage rate per annum determined by the Lender in accordance with the methodology set out in Schedule 16 (Daily Non-Cumulative Compounded RFR Rate) or in any relevant Compounding Methodology Supplement.

**Daily Rate** means the rate specified as such in the applicable Compounded Rate Terms.

**Centre of Main Interests** means the "centre of main interests" of the Company for the purposes of the Council Regulation (EU) No 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the **Regulation**) as that term is used in Article 3(1) of the Regulation.

**Code** means the US Internal Revenue Code of 1986, as amended.

**Cost of Funds Rate** means the rate per annum determined by the Lender which represents the Lender's actual funding costs of the respective Loan.

**Credit** means a Loan or a Letter of Credit.

**Current Account** means:

- (a) current account No. 9000025647 (IBAN: SK3173000000009000025647) maintained by the Lender for the Company in CZK;
- (b) current account No. 9000017946 (IBAN: SK8773000000009000017946) maintained by the Lender for the Company in EUR;
- (c) current account No. 9000017962 (IBAN: SK4373000000009000017962) maintained by the Lender for the Company in USD; and
- (d) any other account agreed between the Parties after date of this Agreement in writing.

**CZK** mean the lawful currency for the time being of the Czech Republic.

**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.

**ERISA** means the US Employee Retirement Income Security Act of 1974.

**ERISA Affiliate** means any person treated as a single employer with the Company for the purpose of section 414 of the Code.

**ERISA Plan** means an employee benefit plan as defined in section 3(3) of ERISA:

- (a) maintained by the Company or any ERISA Affiliate; or
- (b) to which the Company or any ERISA Affiliate is required to make any payment or contribution.

**Establishment** means any "establishment" of the Company for the purposes of the Council Regulation (EU) No 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the **Regulation**) as that term is used in Article 2(10) of the Regulation.

**EURIBOR** means for a Term Rate Overdraft or a Term of any Term Rate Revolving Loan denominated in euro:

- (a) the applicable Screen Rate; or

- (b) only in relation to a Term Rate Revolving Loan, if no Screen Rate is available for the Term of that Term Rate Revolving Loan, the Interpolated Screen Rate for that Term Rate Revolving Loan,

as of the Specified Time on the Rate Fixing Day for the offering of deposits in euro for a period equal in length to:

- (i) the case of a Term Rate Overdraft, one month; and
- (ii) in the case of a Term Rate Revolving Loan, the Term of that Term Rate Revolving Loan,

and, in each case, if any such rate is below zero, EURIBOR will be deemed to be zero.

**euro** or **EUR** or **€** means the single currency of the Participating Member States and the lawful currency for the time being of the Slovak Republic.

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

**Facility** means the credit facility made available under this Agreement.

**Facility Office** means the office through which the Lender 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 of 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); or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

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

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

**Final Maturity Date** means the date falling three years after the date of the Ninth Supplemental Agreement.

**Finance Document** means:

- (a) this Agreement;

- (b) a Transfer Certificate;
- (c) any Compounded Rate Supplement;
- (d) any Compounding Methodology Supplement; or
- (e) any other document designated as such by the Lender and the Company.

**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) 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 mark-to market value shall be taken into account);
- (e) liabilities pursuant to any lease which are capitalised in accordance with USGAAP (other than operating lease obligations); or
- (f) liabilities under any guarantee, indemnity or other assurance against financial loss given in relation to any of the foregoing.

**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.

**General Terms and Conditions** means the Wholesale Banking Conditions of ING Bank N.V., pobočka zahraničnej banky.

**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, LIBOR or PRIBOR.

**Increased Cost** means:

- (a) an additional or increased cost;
- (b) a reduction in the rate of return from a Facility or on the Lender'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 the Lender or its Holding Company but only to the extent attributable to the Lender 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.

**Interest Payment Date** has the meaning in Clause 12.4 (Payment of interest).

**Interpolated Screen Rate** means, in relation to EURIBOR, LIBOR or PRIBOR for any Term Rate Revolving Loan, the rate which results from interpolating on a linear basis between:

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

**Latest Accounts** means the audited consolidated financial statements of the Group last delivered to the Lender under Clause 20.2 (Financial Information).

**Letter of Credit** means:

- (a) a letter of credit (*akreditív*); or
- (b) a bank guarantee (*banková záruka*) issued for the account of the Company or for the account of a third party identified by the Company in the Request,

in each case issued at the request of the Company for the benefit of a third party and in form and substance acceptable to the Lender and the Company.

**LIBOR** means for a Term Rate Overdraft or a Term of any Term Rate Revolving Loan denominated in USD:

- (a) the applicable Screen Rate; or
- (b) only in relation to a Term Rate Revolving Loan, if no Screen Rate is available for the Term of that Term Rate Revolving Loan, the Interpolated Screen Rate for that Term Rate Revolving Loan,



as of the Specified Time on the Rate Fixing Day for the offering of deposits in USD for a period equal in length to:

- (i) the case of an Term Rate Overdraft, one month; and
- (ii) in the case of a Term Rate Revolving Loan, the Term of that Term Rate Revolving Loan,

and, in each case, if any such 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.

**Lookback Period** means the number of days specified as such in the applicable Compounded Rate Terms.

**Margin** means:

- (a) in relation to a Loan (including any Overdraft), 1.70 per cent. per annum; and
- (b) in relation to a Letter of Credit, 0.80 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 Credit.

**Ninth Supplemental Agreement** means the supplemental agreement dated 3 December 2021 entered into between, among others, the Company and the Lender, in relation to this Agreement.

**Overdraft** means a Loan in the form of an overdraft.

**Participating Member State** means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

**Party** means a party to this Agreement.

**Permitted Debit Balance** means the aggregate debit balance on the Current Accounts up to the amount representing the difference between:

- (a) the Total Commitment; and
- (b) all of the then outstanding Letters of Credit and Revolving Loans.

**Permitted Disposal** means any of the following:

- (a) disposals of Assets in the ordinary course of trading at arms' length;

- (b) disposals on normal commercial terms of obsolete Assets or Assets no longer used or useful in the Company's business;
- (c) payment of cash as consideration for the acquisition of any Asset on normal commercial terms;
- (d) temporary application of funds not immediately required in the Company's business for the purchase of investments or the realisation of such investments;
- (e) 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;
- (f) disposals of Assets located outside the Republic;
- (g) any disposal that the Lender agrees in writing is a Permitted Disposal; and
- (h) any disposal approved in writing by the Lender.

**Permitted Merger means:**

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

**Permitted Security Interest means any of the following:**

- (a) Security Interests existing on the date of this Agreement and disclosed to the Lender in writing;
- (b) any Security Interests incurred in connection with the acquisition of any asset, the assumption of any Security Interest previously existing on such acquired asset or any Security Interest existing on any asset of any person when it becomes a Subsidiary of the Company in each case provided 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;

- (c) easements, rights-of-way, minor defects or irregularities in title and other similar encumbrances on real property having 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;
- (d) unexercised liens for taxes not being delinquent or contested in good faith by appropriate proceedings and for which reserves, adequate under USGAAP, are being maintained;
- (e) any Security Interest on equipment of the Company arising solely under leases 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;
- (f) purchase money Security Interests on equipment acquired by the Company after the Completion Date incurred simultaneously with or within 45 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;
- (g) liens arising solely by operation of law (or by an agreement evidencing the same) in the ordinary course of Company's business 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;
- (h) Security Interests arising out of title retention provisions in a supplier's standard conditions of supply of goods acquired by Company in the ordinary course of its business;
- (i) any Security Interest approved by the Lender;
- (j) any lien in favour of a financial institution arising from a documentary letter of credit in the ordinary course of business;
- (k) any renewal of or substitution for any Security Interest permitted under any preceding paragraph; and
- (l) liens arising in the ordinary course of business in connection with:
  - (i) the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature;
  - (ii) deposit accounts;
  - (iii) the issuance of documentary letters of credit by financial institutions; and
  - (iv) deposits made in the ordinary course of business to cash collateralized letters of credit, provided that the aggregate book value of Assets to which the liens described

in this paragraph (l) are attached does not exceed euro 50,000,000 or its equivalent at any time; provided, however, the maximum amount under this paragraph (l) 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, without limitation, any specific security interest providing a creditor with the treatment of a secured creditor with a right to separate satisfaction of its claim under the Slovak Act No. 7/2005 Coll., on bankruptcy and restructuring (as amended) or any similar right to separate satisfaction in case of bankruptcy or similar proceedings under any applicable laws.

**PRIBOR** means for an Overdraft or a Term of any Revolving Loan denominated in CZK:

- (a) the applicable Screen Rate; or
- (b) only in relation to a Revolving Loan, if no Screen Rate is available for the Term of that Revolving Loan, the Interpolated Screened Rate for that Revolving Loan, as of the Specified Time on the Rate Fixing Day for the offering of deposits in CZK for a period equal in length to:
  - (i) the case of an Overdraft, one month; and
  - (ii) in the case of a Revolving Loan, the Term of that Revolving Loan,

and, in each case, if any such rate is below zero, PRIBOR will be deemed to be zero.

**Quoted Tenor** means, in relation to the Screen Rate for a Term Reference Rate applicable to Loans in a currency, any period for which that Screen Rate is customarily displayed on the relevant page or screen of an information service other than the 1-week and 2-month USD LIBOR settings.

**Rate Switch Currency** means any currency for which there are Compounded Rate Terms.

**Rate Switch Date** means:

- (a) in relation to a Rate Switch Currency, the earlier of:
  - (i) the Backstop Rate Switch Date; and
  - (ii) any Rate Switch Trigger Event Date,for that Rate Switch Currency; or
- (b) in relation to a Rate Switch Currency which:
  - (i) becomes a Rate Switch Currency after the date of this Agreement; and
  - (ii) for which there is a date specified as the "Rate Switch Date" in the Compounded Rate Terms for that currency,

that date.

**Rate Switch Trigger Event** means:

- (a) in relation to any Rate Switch Currency and the Screen Rate for the Term Reference Rate applicable to Loans in that Rate Switch Currency:
  - (i)
    - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,  
  
**provided that**, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease to provide that Screen Rate for any Quoted Tenor permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate for that Quoted Tenor;
  - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or
  - (iv) the administrator of that Screen Rate or its supervisor publicly announces that that Screen Rate for any Quoted Tenor may no longer be used; and
- (b) in relation to any Rate Switch Currency and the Screen Rate for the LIBOR applicable to Loans in that Rate Switch Currency, the supervisor of the administrator of that Screen Rate publicly announces or publishes information stating that that Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor) .

**Rate Switch Trigger Event Date** means, in relation to a Rate Switch Currency:

- (a) in the case of an occurrence of a Rate Switch Trigger Event for that Rate Switch Currency described in paragraph (a)(i) of the definition of "Rate Switch Trigger Event", the date on which the relevant Screen Rate ceases to be published or otherwise becomes unavailable;
- (b) in the case of an occurrence of a Rate Switch Trigger Event for that Rate Switch Currency described in paragraphs (a)(ii), (a)(iii) or (a)(iv) of the definition of "Rate

Switch Trigger Event", the date on which the relevant Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and

- (c) in the case of an occurrence of a Rate Switch Trigger Event for that Rate Switch Currency described in paragraph (b) of the definition of "Rate Switch Trigger Event", the date on which the relevant Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

**Rate Fixing Day** means:

- (a) for a Revolving Loan, the second TARGET Day before the first day of a Term, or such other day as the Lender determines is generally treated as the rate fixing day by market practice in the relevant interbank market;
- (b) for an Overdraft in euro, each TARGET Day; or
- (c) for an overdue amount (including an Unauthorised Overdraft) or an Overdraft other than, in each case, euro, each Business Day.

**Relevant Taxes** means Taxes 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 Taxes imposed by the Republic which are so imposed as a direct consequence of the Lender 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 19.21 (Times for making representations and warranties).

**Reportable Event** means:

- (a) 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
- (b) a failure to meet the minimum funding standard under section 412 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.

**Reporting Day** means the day (if any) specified as such in the applicable Compounded Rate Terms.

**Reporting Time** means the relevant time (if any) specified as such in the applicable Compounded Rate Terms.

**RFR** means the rate specified as such in the applicable Compounded Rate Terms.

**RFR Banking Day** means any day specified as such in the applicable Compounded Rate Terms.

**Republic** means the Slovak Republic.

**Request** means:

- (a) a request for a Loan other than an Overdraft, substantially in the form of Schedule 2 (Form of Request - Loans);
- (b) a request for a Letter of Credit in the appropriate standard form of this kind of request approved by the Lender from time to time or in any other form acceptable to the Lender; and
- (c) for an Overdraft, a payment order from the Current Account in any form used by the Lender to make payments or a request for the withdrawal of money from the Current Account in any form used by the Lender (including, for the avoidance of doubt, funds transfer orders, collection transfer orders and other similar instructions).

**Revolving Loan** means a Loan in the form of a revolving loan.

**Rollover Loan** means one or more Revolving Loans:

- (a) to be made on the same day that:
  - (i) a maturing Revolving Loan is due to be repaid; or
  - (ii) the Company is obliged to pay to the Lender the amount of any claim under a Letter of Credit;
- (b) the aggregate amount of which is equal to or less than the maturing Revolving Loan;
- (c) in the same currency as the maturing Revolving Loan; and
- (d) to be made for the purpose of:
  - (i) refinancing a maturing Revolving Loan; or
  - (ii) satisfying the obligations of the Company to pay the amount of any claim under a Letter of Credit.

**Screen Rate** means:

- (a) for 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);
- (b) for 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);

- (c) for PRIBOR, the Prague Interbank Offered Rate administered by the Financial Markets Association of the Czech Republic (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 page PRIBOR01 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 the relevant page or the service ceases to be available, the Lender (after consultation with the Company) may specify another page or service displaying the appropriate rate.

**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 (without limitation) 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 Public Sector Partners Act** means Slovak Act No. 315/2016 Coll. on the registry of public sector partners, as amended.

**Specified Time** means:

- (a) for the purposes of determining EURIBOR, 11.00 a.m. on the Rate Fixing Date;
- (b) for the purposes of determining LIBOR, noon on the Rate Fixing Date; and
- (c) for the purposes of determining PRIBOR, 11.00 a.m. on the Rate Fixing Date.

**Syndicated Facility** means the credit facility made available under the Syndicated Facility Agreement.

**Syndicated Facility Agent** means ING Bank N.V. or any other person appointed as Facility Agent under the Syndicated Facility Agreement.

**Syndicated Facility Agreement** means the EUR300,000,000 unsecured sustainability linked revolving credit facility agreement dated 29 September 2021 (as amended from time to time) and entered into between (among others) the Company as a borrower and the Syndicated Facility Agent.

**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 Tax from a payment under a Finance Document, other than a FATCA Deduction.

**Term** means each period determined under this Agreement:

- (a) in relation to:
  - (i) Revolving Loan; and
  - (ii) an overdue amount which is not an Unauthorised Overdraft,by reference to which interest on a Revolving Loan or an overdue amount is calculated;
- (b) in relation to Overdraft or Unauthorised Overdraft, each day on which the Company utilises the Overdraft or there is an Unauthorised Overdraft; or
- (c) for which the Lender may be liable under a Letter of Credit.

**Term Rate Overdraft** means any Overdraft which is not a Compounded Rate Loan.

**Term Rate Revolving Loan** means any Revolving Loan which is not a Compounded Rate Loan.

**Term Reference Rate** means:

- (a) in relation to any Loan in USD, LIBOR;
- (b) in relation to any Loan in EUR, EURIBOR; or
- (c) in relation to any Loan in CZK, PRIBOR.

**Total Commitment** means EUR 20,000,000 to the extent not cancelled or reduced under this Agreement.

**Transfer Certificate** means a certificate, substantially in the form of Schedule 3 (Form of Transfer Certificate), with such amendments as the Lender may approve or reasonably require or any other form agreed between the Lender and the Company.

**Unauthorised Overdraft** means, at any time, the amount by which the debit balance on the Current Account exceeds the Permitted Debit Balance under this Agreement.

**US** means the United States of America.

**USD** means the lawful currency for the time being of the US.

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

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

## **12.2 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** mean assets as this term is 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) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money;
  - (vi) **know your customer requirements** are the identification checks that the Lender requests in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;
  - (vii) a **person** includes any individual, company, corporation, unincorporated association or body (including without limitation a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
  - (viii) 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;
  - (ix) a currency is a reference to the lawful currency for the time being of the relevant country;
  - (x) a Default being **outstanding** means that it has not been remedied or waived;
  - (xi) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;

- (xii) a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Agreement;
  - (xiii) a Party or any other person includes its successors in title, permitted assigns and permitted transferees;
  - (xiv) 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;
  - (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 year).
- (b) 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 sub-paragraph (i) of this Clause 1.2(b), 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.
- (c) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to a Finance Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any term of any Finance Document, no consent of any third party is required for any amendment (including, without limitation, any release or compromise of any liability) or termination of any Finance Document.
- (d) Unless the 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) Utilisation of Loan in the form of revolving loan means that the Loan may be utilised in several lump sums, which lump sums may be repaid and reused during the term of this Agreement until the end of the Availability Period.
- (f) Utilisation of Loan in the form of an overdraft means that the Loan may be utilised by giving a payment order or allowing withdrawal from the Current Account in any form provided for in the General Terms and Conditions even if there are not sufficient funds in the Current Account. The Loan may be repaid in full or in instalments at any time, but by no later than the Final Maturity Date.
- (g) The headings in this Agreement do not affect its interpretation.
- (h) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
- and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Lender after consultation with the Company.
- (i) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (j) Any Compounded Rate Supplement relating to a currency overrides anything relating to that currency in:
- (i) Schedule 5 (Compounded Rate Terms); or
  - (ii) any earlier Compounded Rate Supplement.
- (k) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
- (i) Schedule 6 (Daily Non-Cumulative Compounded RFR Rate) or Schedule 7 (Cumulative Compounded RFR Rate), as the case may be; or

- (ii) any earlier Compounding Methodology Supplement.

### 12.3 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** includes *privatívna novácia* and *kumulatívna novácia*;
- (b) a **Security Interest** includes *záložné právo*, *zádržné právo*, *zabezpečovací prevod práva*, and *zabezpečovacie postúpenie pohľadávky*;
- (c) a **bankruptcy, insolvency or administration** includes *konkurzné konanie*, *konkurz*, *reštrukturalizačné konanie*, *reštrukturalizácia*, and *nútená správa*;
- (d) being **bankrupt** or **insolvent** 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** includes *vyvlastnenie*, *exekúcia* and *výkon rozhodnutia*;
- (f) **winding up, administration or dissolution** includes *likvidácia*, *zrušenie s likvidáciou*, *zrušenie bez likvidácie bez právneho nástupcu*, *konkurzné konanie*, *konkurz*, *reštrukturalizačné konanie*, *reštrukturalizácia*, and *nútená správa*;
- (g) a **receiver, administrator, administrative receiver, compulsory manager or similar officer** includes *likvidátor*, *konkurzný správca* (including *predbežný správca*), *reštrukturalizačný správca*, *nútený správca*, and *súdny exekútor*;
- (h) a **moratorium** includes *reštrukturalizačné konanie*, *reštrukturalizácia* and *dočasná ochrana*; and
- (i) **constitutional documents** include *spoločenská zmluva*, *zakladateľská listina*, *zakladateľská zmluva*, *zriaďovacia listina*, *štatút*, and *stanovy*.

### 13. FACILITY

Subject to the terms of this Agreement, the Lender makes available to the Company a multicurrency revolving credit facility in an aggregate amount equal to the Total Commitment to be utilised:

- (a) by way of a revolving credit facility;
- (b) by way of overdraft facility; and
- (c) by way of Letter(s) of Credit issued by the Lender.

## **14. PURPOSE**

### **14.1 Credits**

Each Credit may be used for general corporate purposes.

### **14.2 No obligation to monitor**

The Lender is not bound to monitor or verify the utilisation of the Facility.

## **15. CONDITIONS PRECEDENT**

### **15.1 Conditions precedent documents**

A Request may not be given until the Lender has notified the Company that it has received all of the documents and evidence set out in Schedule 1 (Conditions precedent documents) in form and substance satisfactory to the Lender. The Lender must give this notification to the Company promptly upon being so satisfied.

### **15.2 Further conditions precedent**

The obligation of the Lender to provide any Credit is subject to the further conditions precedent that on both the date of the Request and the Utilisation Date for that Credit:

- (a) the Repeating Representations are correct in all material respects; and
- (b) no Default or, in the case of a Rollover Loan, no Event of Default is outstanding or would result from that Credit.

### **15.3 Drawstop**

No Request may be made if there is a Default continuing under, and as defined and construed in, the Syndicated Facility Agreement or if the lenders under the Syndicated Facility Agreement are not obliged to participate in any utilisation under the Syndicated Facility Agreement (a **Drawstop Event**). Following a Drawstop Event, no further Requests may be made until the Lender notifies the Company in writing that it may submit a Request. The Lender shall so notify the Company promptly after the Lender receives evidence reasonably satisfactory to it that such Drawstop Event (i) is no longer continuing; or (ii) has been waived in accordance with the Syndicated Facility Agreement; or (iii) a combination of (i) and (ii).

## **16. UTILISATION – REVOLVING LOANS**

### **16.1 Giving of Requests**

- (a) The Company may borrow a Revolving Loan by giving to the Lender a duly completed Request.
- (b) Unless the Lender otherwise agrees, the latest time for receipt by the Lender of a duly completed Request is 10.00 a.m. on the Rate Fixing Day for the proposed borrowing.

- (c) Each Request is irrevocable unless otherwise agreed by the Lender.

## **16.2 Completion of Requests**

A Request for a Loan 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 Revolving Loan requested is:
  - (i) a minimum of EUR250,000 and an integral multiple of EUR250,000;
  - (ii) the maximum undrawn amount available under the Facility on the proposed Utilisation Date; or
  - (iii) such other amount as the Lender may agree;
- (c) the proposed currency complies with this Agreement; and
- (d) the proposed Term complies with this Agreement.

Only one Revolving Loan may be requested in a Request.

## **16.3 Advance of Revolving Loan**

- (a) The Lender is not obliged to provide a Revolving Loan if, as a result the Credits would exceed the Total Commitment.
- (b) If the conditions set out in this Agreement have been met, the Lender must make the Revolving Loan available to the Company through its Facility Office on the Utilisation Date.

## **17. UTILISATION – OVERDRAFT**

### **17.1 Giving of Requests**

- (a) The Company may borrow an Overdraft by giving to the Lender a duly completed Request.
- (b) Each Request is irrevocable unless otherwise agreed by the Lender.

### **17.2 Completion of Requests**

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

- (a) the Utilisation Date is a day falling within the Availability Period;
- (b) the proposed currency complies with this Agreement and corresponds to the currency in which the relevant Current Account is maintained.

### **17.3 Advance of Overdraft**

- (a) The Lender is not obliged to provide an Overdraft if, as a result the Credits would exceed the Total Commitment.
- (b) If the conditions set out in this Agreement have been met, the Lender must make the Overdraft available to the Company through its Facility Office on the Utilisation Date by executing the payment orders for the domestic or cross-border fund transfers and withdrawals as instructed by the Company in the form set out mainly in the General Conditions or in the agreement between the Lender and the Company which governs the establishment and maintenance of the Current Account and by debiting the Current Account by the Amount of the relevant Overdraft.

## **18. UTILISATION – LETTERS OF CREDIT**

### **18.1 Giving of Requests**

- (a) The Company may request a Letter of Credit to be issued by giving to the Lender a duly completed Request.
- (b) Unless the Lender otherwise agrees, the latest time for receipt by the Lender of a duly completed Request is 11.00 a.m. seven Business Days before the proposed Utilisation Date.
- (c) Each Request is irrevocable unless otherwise agreed by the Lender.

### **18.2 Completion of Requests**

A Request for a Letter of Credit will not be regarded as being duly completed unless:

- (a) it specifies that it is for a Letter of Credit;
- (b) it is made using the appropriate standard form for of this kind of request approved by the Lender at the time of making of the Request or in any other form acceptable to the Lender;
- (c) the Utilisation Date is a Business Day falling within the Availability Period;
- (d) the face amount of the Letter of Credit requested is denominated in euro and is:
  - (i) not more than the maximum undrawn amount available under the Facility on the proposed Utilisation Date; or
  - (ii) such other amount as the Lender may agree; and
- (e) the form of the requested Letter of Credit is attached;
- (f) the proposed beneficiary is acceptable to the Lender (acting reasonably);



- (g) the expiry date of the requested Letter of Credit does not exceed the earlier of:
  - (i) the date falling 36 months after the proposed issue date of that Letter of Credit; and
  - (ii) the Final Maturity Date,provided, however, that the expiry date may be later than the Final Maturity Date if agreed between the Company and the Lender prior to submission of Request for such Letter of Credit; and
- (h) the delivery instructions for the requested Letter of Credit are specified.

Only one Letter of Credit may be requested in a Request.

### **18.3 Issue of Letter of Credit**

- (a) The Lender is not obliged to issue any Letter of Credit if as a result the Credits would exceed the Total Commitment.
- (b) The Lender is not obliged to issue any Letter of Credit if the content of the Letter of Credit as requested by the Company is not acceptable to the Lender (acting reasonably).
- (c) If the conditions set out in this Agreement have been met, the Lender must issue the Letter of Credit on the Utilisation Date.

## **19. LETTERS OF CREDIT**

### **19.1 General**

- (a) A Letter of Credit is **repaid** or **prepaid** to the extent that:
  - (i) the Company provides cash cover for that Letter of Credit;
  - (ii) the maximum amount payable under the Letter of Credit is reduced or cancelled in accordance with its terms; or
  - (iii) the Lender is reasonably satisfied that it has no further liability under that Letter of Credit.

The amount by which a Letter of Credit is repaid or prepaid under sub-paragraphs (i) and (ii) of this paragraph (a) is the amount of the relevant cash cover, reduction or cancellation.

- (b) When a Letter of Credit is repaid or prepaid, the Total Commitment will be available to the extent of the repayment or prepayment of that Letter of Credit, except when a Letter of Credit is prepaid by providing cash cover for that Letter of Credit in accordance with Clause 11.3 (Voluntary prepayment) at any time before the Lender is satisfied that it has no further liability under that Letter of Credit. In that case, the Total Commitment remains unavailable to the extent of the amount of that cash cover until the Lender is reasonably satisfied that it has no further liability under that Letter of Credit.

- (c) If a Letter of Credit or any amount outstanding under a Letter of Credit becomes immediately payable under this Agreement, the Company must repay or prepay that amount immediately.
- (d) **Cash cover** is provided for a Letter of Credit if the Company pays an amount in the currency of the Letter of Credit to an interest-bearing account with the Lender in the name of the Company and the following conditions are met:
  - (i) until no amount is or may be outstanding under that Letter of Credit, withdrawals from the account may only be made to pay the Lender under this Clause 8; and
  - (ii) the Company has executed and delivered a security document over that account, in form and substance reasonably satisfactory to the Lender, creating a first ranking Security Interest over that account.
- (e) The **outstanding** or **principal** amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the Company in respect of that Letter of Credit at that time.
- (f) When calculating the undrawn amount available under the Facility, the amount a Letter of Credit for which a cash cover has been provided, will still be considered to be an utilised amount of the Facility until the Lender is reasonably satisfied that it has no further liability under that Letter of Credit.

## 19.2 Illegality

- (a) The Lender must notify the Company promptly in writing if it becomes aware that it is unlawful in any jurisdiction for the Lender to have outstanding a Letter of Credit (each an **Unlawful Letter of Credit**).
- (b) After notification under paragraph (a) above:
  - (i) the Company must employ all commercially reasonable efforts to ensure the release of the liability of the Lender under each Unlawful Letter of Credit or, failing this, repay or prepay each Unlawful Letter of Credit on the date specified in paragraph (c) below; and
  - (ii) no further Letters of Credit will be issued in the affected jurisdiction.
- (c) The date for the release of the liability of the Lender under an Unlawful Letter of Credit or for the repayment or prepayment of an Unlawful Letter of Credit will be the last day of any applicable grace period allowed by law (which date shall be specified by the Lender in the notification it provides pursuant to paragraph (a) above).

## 19.3 Fees in respect of Letters of Credit

- (a) The Company must pay to the Lender a letter of credit fee computed at the rate of the Margin on the outstanding amount of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Maturity Date.

- (b) Accrued letter of credit fee is payable quarterly in arrears (or any shorter period that ends on the Maturity Date for that Letter of Credit). Accrued letter of credit fee is also payable to the Lender on the cancelled amount of the Total Commitment at the time the cancellation is effective if the Total Commitment is cancelled in full and the Letters of Credit are prepaid or repaid in full.
- (c) If the Company provides cash cover for any part of a Letter of Credit, then:
  - (i) the letter of credit fee payable for the account of the Lender in respect of any part of a Letter of Credit which is the subject of cash cover will continue to be payable until the expiry of that Letter of Credit; but
  - (ii) the Company will be entitled to withdraw the interest accrued on the amount of the cash cover.
- (d) The Company must pay to the Lender all fees applicable under the General Terms and Conditions in relation to each Letter of Credit.

#### **19.4 Claims under a Letter of Credit**

- (a) The Company irrevocably and unconditionally authorises the Lender to pay any claim made or purported to be made under a Letter of Credit requested by it and that appears on its face to be in order (a **claim**).
- (b) The Company must immediately on demand pay to the Lender an amount equal to the amount of any claim.
- (c) The Company acknowledges that the Lender:
  - (i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and
  - (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.
- (d) The obligations of the Company under this Clause 8.4 will not be affected by:
  - (i) the sufficiency, accuracy or genuineness of any claim or any other document; or
  - (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

#### **19.5 Indemnities**

- (a) The Company must immediately on demand indemnify the Lender against any loss or liability which the Lender incurs under or in connection with any Letter of Credit requested by it, except to the extent that the loss or liability is directly caused by: (i) the gross negligence or wilful misconduct of the Lender; or (ii) breach by the Lender of its obligations under this

Agreement, including, without limitation, its obligation under Clause 8.8 (Lender's Obligations).

- (b) The obligations of the Company under this Clause 8.5 are continuing obligations and will extend to the ultimate balance of all sums payable by the Company under or in connection with any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.

## **19.6 Rights of contribution**

The Company will not be entitled to any right of contribution or indemnity from the Lender in respect of any payment it may make under this Clause 8, save for where the loss is caused by the gross negligence or wilful misconduct of the Lender.

## **19.7 Rights of subrogation**

Until all amounts which are or may become payable by the Company under the Finance Documents have been irrevocably paid in full, the Company shall not, by virtue of any payment made by it under or in connection with or referable to this Clause 8 or otherwise, be subrogated to any rights, security or moneys held or received by the Lender or be entitled at any time to exercise, claim or have the benefit of any right of contribution or subrogation or similar right against of the Lender.

## **19.8 Lender's Obligations**

Before paying a claim, the Lender shall use its commercially reasonable efforts to determine whether documents presented to it under a Letter of Credit on their face comply with the terms of that Letter of Credit. The Lender shall not make payment upon presented documents that, in the Lender's opinion, do not on their face comply with the terms of the relevant Letter of Credit.

## **20. OPTIONAL CURRENCIES**

### **20.1 General**

In this Clause 9:

**Lender's Spot Rate of Exchange** means the exchange rate published by European Central Bank on its website on a particular day for the relevant currency.

**euro Amount** of a Credit or part of a Credit means:

- (a) if the Credit is denominated in euros, its amount;
- (b) if the Credit is a Letter of Credit denominated in an Optional Currency, its equivalent in euros calculated on the basis of the Lender's Spot Rate of Exchange one Business Day before the Utilisation Date for that Letter of Credit, and thereafter adjusted in the same manner at each Facility utilisation as described in Clause 9.6 (Credit in Optional Currency); or

- (c) if the Credit is a Loan denominated in an Optional Currency, its equivalent in euros calculated on the basis of the Lender's Spot Rate of Exchange one Business Day before the Rate Fixing Day for its Term.

**Optional Currency** means any currency (other than euros) in which a Credit may be denominated under this Agreement.

## **20.2 Selection**

- (a) The Company must select the currency of a Credit in its Request.
- (b) The amount of a Credit requested in an Optional Currency must be a minimum amount of the equivalent of EUR250,000 in the Optional Currency. However, no such minimums apply if the Credit is a Letter of Credit, or if Lender agrees to different amount upfront.
- (c) Unless the Lender otherwise agrees, the Credits may not be denominated at any one time in more than four currencies.

## **20.3 Conditions relating to Optional Currencies**

- (a) A Credit may be denominated in an Optional Currency for a Term if:
  - (i) that Optional Currency is readily available in the amount required and freely convertible into euros in the relevant interbank market on the Rate Fixing Day and the first day of that Term;
  - (ii) that Optional Currency is CZK or USD or has been previously approved by the Lender; and
  - (iii) with respect to an Overdraft, the Current Account is maintained for the Company in such currency by the Lender.
- (b) If the Lender has received a request from the Company for a currency (other than the Optional Currency specified paragraph (a)(ii) above) to be approved as an Optional Currency, the Lender must, within five Business Days, confirm to the Company:
  - (i) whether or not it approves the request; and
  - (ii) if approval has been given, the minimum amount (and, if required, integral multiples) for any Credit in that currency.

## **20.4 Revocation of currency**

- (a) Notwithstanding any other term of this Agreement, if before 9.30 a.m. on any Rate Fixing Day the Lender finds out that:
  - (i) the Optional Currency requested is not readily available to it in the relevant interbank market in the amount and for the period required; or

- (ii) making a Loan in the proposed Optional Currency contravenes or could reasonably be expected to contravene any law or regulation applicable to it,

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

- (b) In this event:

- (i) the Lender must make the Loan in euros; and
- (ii) the Loan 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 Subclause will not be taken into account for the purposes of any limit on the number of Loans or currencies outstanding at any one time.
- (d) A Revolving Loan will still be treated as a Rollover Loan if it is not denominated in the same currency as the maturing Revolving Loan by reason only of the operation of this Subclause.

## **20.5 Optional Currency equivalents**

The euro Amount of a Credit or part of a Credit in an Optional Currency shall be used for the purposes of calculating:

- (a) whether any limit under this Agreement has been exceeded;
- (b) the amount of a Credit;
- (c) the amount of any repayment or prepayment of a Credit; or
- (d) the undrawn amount of the Total Commitment.

## **20.6 Credit in Optional Currency**

- (a) If a Credit is denominated in an Optional Currency, the Lender will at each utilization of the Facility recalculate the euro Amount of that Credit by notionally converting the outstanding amount of that Credit into euro on the basis of the Lender's Spot Rate of Exchange on the date of calculation.
- (b) The Company must, if requested by the Lender within 10 Business Days of any calculation under paragraph (a) above, ensure that sufficient Credits are prepaid to prevent the euro Amount of the Credits under the Facility exceeding the Total Commitment following any adjustment to the euro Amount under paragraph (a) above.

## **20.7 Notification**

The Lender must notify the Company of the relevant euro Amount (and the applicable Lender's Spot Rate of Exchange) promptly after they are ascertained.

## **21. REPAYMENT**

### **21.1 Repayment of Revolving Loans**

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

### **21.2 Repayment of Overdraft**

- (a) The Company must repay each Overdraft by paying in full the debit balance on each Current Account on the Final Maturity Date at the latest; provided, however, that the Company may repay an Overdraft in full or in instalments at any earlier time.
- (b) If any funds are credited to the Current Account when the Overdraft is utilised, such payment shall represent an immediate repayment of the Overdraft and shall decrease the amount of the Overdraft by the amount of such credit.

### **21.3 Repayment of Unauthorised Overdraft**

The Company must repay any Unauthorised Overdraft immediately after its occurrence by ensuring that the debit balance on any of the Current Accounts does not exceed the Permitted Debit Balance.

### **21.4 Repayment of Letters of Credit**

- (a) The Company must repay each Letter of Credit in full on its Maturity Date.
- (b) Subject to the other terms of this Agreement, any amounts repaid under paragraph (a) above may be re-utilised.

## **22. PREPAYMENT AND CANCELLATION**

### **22.1 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 the Lender to enforce its rights under the Finance Documents; or

(B) by reason only of the execution, delivery and performance of this Agreement by the Lender,

that the Lender should be licensed, qualified or otherwise entitled to carry on business in the Republic;

(ii) the 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 Credit,

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

(A) the Lender must notify the Company accordingly; and

(B) the Company shall prepay the Credits on the date specified in paragraph (b) below, together with all other amounts payable by it to the Lender under the Finance Documents and the Total Commitment shall forthwith be reduced to zero,

except that subparagraphs (a)(i) and (ii) above do not apply to the 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 the Credit will be:

(i) the last day of the current Term of that Credit; or

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



## 22.2 Mandatory prepayment - change of control

- (a) The Company shall, within ten days after the occurrence of a Change of Control notify such to the Lender. Such notice shall describe in reasonable detail the facts and circumstances giving rise thereto and the date of such Change of Control and the Lender may, by notice to the Company given not later than fifty days after the date of such Change of Control, declare any amounts payable by the Company under the Finance Documents for its account to be, and such amounts shall become, due and payable, in each case on the sixtieth day after the date of such Change of Control (or if such day is not a Business Day, the succeeding day that is), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Company.
- (b) For purposes of paragraph (a) above, the following terms have the following meanings:

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

- (i) any **person** or **group** of persons shall have acquired **beneficial ownership** (within the meaning of Section 13(d) or 14(d) of the U.S. Securities Exchange Act of 1934, as amended, and the applicable rules and regulations thereunder), or shares of Voting Stock representing 35 per cent. or more of the Voting Power of United States Steel Corporation;
- (ii) any person or group of related persons shall acquire all or substantially all of the assets of United States Steel Corporation, unless United States Steel Corporation shall have merged or consolidated with or transferred all or substantially all of its assets to another corporation and the surviving or successor or transferee corporation is no more leveraged than was United States Steel Corporation immediately prior to such event. For the purposes of this definition, the term **leveraged** when used with respect to any corporation shall mean the percentage represented by the total assets of that corporation divided by its stockholders' equity, in each case determined and as would be shown in a consolidated balance sheet of such corporation prepared in accordance with USGAAP; or
- (iii) the entire commercial participation of the Company or any part thereof after the date of this Agreement ceases to be directly or indirectly beneficially owned by United States Steel Corporation, unless such cessation results from a Permitted Merger.

**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.

## 22.3 Voluntary prepayment

- (a) The Company may:

- (i) in respect of Term Rate Revolving Loan, by giving not less than 15 Business Days' prior notice to the Lender; or
- (ii) in the case of a Compounded Rate Loan, five RFR Banking Days' (or such shorter period as the Lender and the Company may agree) prior notice,

prepay any Credit at any time in whole or in part.

- (b) A prepayment of part of a Credit must be in a minimum amount of EUR250,000 and an integral multiple of EUR250,000 (or its equivalent in an Optional Currency).
- (c) A prepayment of all or part of a Credit must be on an Interest Payment Date.
- (d) For avoidance of doubt, repayment of an Overdraft under paragraph (b) of Clause 10.2 (Repayment of Overdraft) before the date of delivery of notice by the Lender requesting repayment of the debit balance on the Current Accounts or before the Final Maturity Date shall not be considered to be an event of voluntary prepayment.

#### **22.4 Automatic cancellation**

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

#### **22.5 Voluntary cancellation**

- (a) The Company may, by giving not less than five Business Days' prior notice to the Lender, cancel the unutilised amount of the Total Commitment in whole or in part.
- (b) Partial cancellation of the Total Commitment must be in a minimum amount of EUR250,000 and an integral multiple of EUR250,000.

#### **22.6 Additional right of repayment and cancellation**

- (a) If the Company is, or will be, required to pay to the Lender:
  - (i) a Tax Payment; or
  - (ii) an Increased Cost,

the Company may, while the requirement continues, give notice to the Lender requesting prepayment and cancellation.
- (b) After notification under paragraph (a) above:
  - (i) the Company must repay or prepay the Credit on the date specified in paragraph (c) below; and
  - (ii) the Total Commitment will be immediately cancelled.
- (c) The date for repayment or prepayment of the Credit will be:

- (i) the last day of the Term for that Credit or, in case of a Letter of Credit, 10 Business Days after the date of the notification; or
- (ii) if earlier, the date specified by the Company in its notification.

## **22.7 Mandatory prepayment and cancellation due to an Syndicated Facility Agreement Cancellation Event**

- (a) The Company shall notify the Lender of an Syndicated Facility Agreement Cancellation Event within three Business Days of its occurrence and shall include in that notice the total commitments under the Syndicated Facility Agreement immediately prior to the Syndicated Facility Agreement Cancellation Event, the amount of cancelled commitment(s) and the percentage of cancelled commitment(s) to the total commitments under, in each case, the Syndicated Facility Agreement (the **Cancellation Percentage**) and the date of that Syndicated Facility Agreement Cancellation Event.
- (b) The Total Commitment will be automatically cancelled on the date falling five Business Days following such Syndicated Facility Agreement Cancellation Event in a proportion equal to the Cancellation Percentage.
- (c) If the amount of any Loans outstanding would exceed the Total Commitment after the cancellation in paragraph (b) above, the Company shall, on the date falling no later than immediately prior to the cancellation of the Total Commitment in accordance with paragraph (a) above, prepay sufficient amounts outstanding under the Loans in order for the amount outstanding to not exceed the Total Commitment after the cancellation in paragraph (b) above.

In this Clause 11.7, **Syndicated Facility Agreement Cancellation Event** means any of the commitments being cancelled, in whole or in part, under the Syndicated Facility Agreement.

## **22.8 Re-borrowing of Credits**

Any voluntary prepayment of a Credit under Clause 11.3 (Voluntary prepayment) may be re-borrowed subject to the terms of this Agreement. Any mandatory or involuntary prepayment of a Credit may not be re-borrowed.

## **22.9 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 Credits, and, in case of cancellation, if any of the affected Credit is an Overdraft, how the Permitted Debit Balance on the relevant Current Account has been reduced.
- (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 Lender 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 Commitment cancelled under this Agreement may subsequently be reinstated.

## **11A. RATE SWITCH**

### **11A.1 Switch to Compounded Reference Rate**

Subject to Clause 11A.2 (Delayed switch for existing Term Rate Overdrafts and Term Rate Revolving Loans), on and from the Rate Switch Date for a Rate Switch Currency:

- (a) use of the Compounded Reference Rate will replace the use of the Term Reference Rate for the calculation of interest for Loans in that Rate Switch Currency; and
- (b) any Loan in that Rate Switch Currency shall be a "Compounded Rate Loan" and Clause 12.3 (Calculation of interest – Compounded Rate Loans) shall apply to each such Loan.

### **11A.2 Delayed switch for existing Term Rate Overdrafts and Term Rate Revolving Loans**

If the Rate Switch Date for a Rate Switch Currency falls before the last day of a Term for Term Rate Overdraft or Term Rate Revolving Loan in that currency:

- (c) that Loan or Overdraft shall continue to be a Term Rate Overdraft or Term Rate Revolving Loan for that Term and Clause 12.1 (Calculation of interest – Term Rate Revolving Loan) or Clause 12.2 (Calculation of interest – Term Rate Overdraft), as applicable, shall continue to apply to that Loan for that Term;
- (d) any provision of this Agreement which is expressed to relate to a Compounded Rate Currency shall not apply in relation to that Loan for that Term; and
- (e) on and from the first day of the next Term (if any) for that Loan:
  - (i) that Loan shall be a "Compounded Rate Loan"; and
  - (ii) Clause 12.3 (Calculation of interest – Compounded Rate Loans) shall apply to that Loan.

### **11A.3 Notifications by the Lender**

- (a) Subject to paragraph (c) below, following the occurrence of a Rate Switch Trigger Event for a Rate Switch Currency, the Lender shall:
  - (i) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Company of that occurrence; and
  - (ii) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Company of that date.

- (b) The Lender shall, promptly upon becoming aware of the occurrence of the Rate Switch Date for a Rate Switch Currency, notify the Company of that occurrence.
- (c) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event in relation to USD, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event in relation to USD will be 30 June 2023 and that the Lender is not under any obligation under paragraph (a) above to notify the Company of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (d) For the purposes of paragraph (c) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## **23. INTEREST**

### **23.1 Calculation of interest – Term Rate Revolving Loan**

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

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

### **23.2 Calculation of interest – Term Rate Overdraft**

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

- (a) Margin; and
- (b) the respective IBOR applicable for the relevant day for which the interest is calculated.

### **23.3 Calculation of interest – Compounded Rate Loans**

- (a) The rate of interest on each Compounded Rate Loan for any day during a Term is the percentage rate per annum which is the aggregate of the applicable:
  - (i) Margin; and
  - (ii) Compounded Reference Rate for that day.
- (b) If any day during a Term for a Compounded Rate Loan is not an RFR Banking Day, the rate of interest on that Compounded Rate Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

### 23.4 Payment of interest

Except where it is provided to the contrary in this Agreement, the Company must pay accrued interest:

- (a) on each Revolving Loan made to it on the last day of its Term; or
- (b) on each Overdraft on the first day of each calendar month, in respect of the immediately preceding calendar month;

(the **Interest Payment Date**) in any case in accordance with supporting documentation supplied to the Company by the Lender via email on monthly basis in a form agreed between the Parties.

### 23.5 Interest on overdue amounts

- (a) If the Company fails to pay any amount payable by it under the Finance Documents, it must immediately on demand by the Lender pay interest on the overdue amount from its due date up to the date of actual payment.
- (b) Interest on an overdue amount is payable at a percentage rate per annum equal to the aggregate of the applicable:
  - (i) Margin;
  - (ii) Cost of Funds Rate; and
  - (iii) two per cent. per annum.

For the purposes of this paragraph, the Lender may (acting reasonably) (except with respect to an Unauthorised Overdraft) in respect of a Term Rate Overdraft or Term Rate Revolving Loan:

- (A) select successive Terms of any duration of up to three months; and
- (B) determine the appropriate Rate Fixing Day for that Term.
- (c) Notwithstanding paragraph (b) above, if the overdue amount is a principal amount of a Term Rate Overdraft or Term Rate Revolving 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 two 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) above.

- (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.

### **23.6 Notification of rates of interest**

- (a) The Lender must promptly notify the Company of the determination of a rate of interest relating to a Term Rate Overdraft or a Term Rate Revolving Loan.
- (b) The Lender shall promptly upon a Compounded Rate Interest Payment being determinable notify:
  - (i) the Company of that Compounded Rate Interest Payment; and
  - (ii) the Company of each applicable rate of interest relating to the determination of that Compounded Rate Interest Payment.

This paragraph (b) shall not apply to any Compounded Rate Interest Payment in relation to a Loan to which the Cost of Funds Rate applies.

- (c) The Lender shall promptly notify the Company of the determination of a rate of interest relating to a Compounded Rate Loan to which the Cost of Funds Rate applies.
- (d) This Clause 12.5 shall not require the Lender to make any notification to the Company on a day which is not a Business Day.

### **23.7 Acknowledgement**

The Company acknowledges and confirms for the benefit of the Lender that it has been informed about the amount of the annual percentage rate of interest of each 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.

## **24. TERMS**

### **24.1 Selection**

- (a) Each Revolving Loan has one Term only.
- (b) The Company must select the Term for a Revolving Loan in the relevant Request.
- (c) Subject to the following provisions of this Clause 13, each Term for a Revolving Term Rate Loan will be one, two or three months.

### **24.2 No overrunning the Final Maturity Date**

If a Term would otherwise overrun the Final Maturity Date, it will be shortened (subject to paragraph (g) of Clause 7.2 (Completion of Requests) so that it ends on the Final Maturity Date. The Company will have no obligation to pay Break Costs or other costs arising from such shortening.

### **24.3 Notification**

The Lender must notify the Company of the duration of each Term promptly after ascertaining its duration.

## **25. MARKET DISRUPTION**

### **25.1 Market disruption – prior to Rate Switch Date**

- (a) In this Clause 14, a **market disruption event** occurs if:
  - (i) the Screen Rate is not available; and
  - (ii) in relation to a Term Rate Revolving Loan only, it is not possible to calculate an Interpolated Screen Rate for that Term Rate Revolving Loan.
- (b) The Lender must promptly notify the Company of a market disruption event.
- (c) After notification under paragraph (b) above, the rate of interest on the affected Loan for the relevant Term will be the aggregate of the applicable:
  - (i) Margin; and
  - (ii) Cost of Funds Rate.

### **25.2 Alternative basis of interest or funding**

- (a) If a market disruption event occurs and the Lender or the Company so requires, the Company and the Lender must enter into negotiations for a period of not more than 30 days with a view to agreeing an alternative basis for determining the rate of interest and/or funding for the affected Loan.
- (b) Any alternative basis agreed will be binding on all the Parties.

### **25.3 Interest calculation if no RFR or Central Bank Rate**

If:

- (a) there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during a Term for a Compounded Rate Loan; and
- (b) "Cost of funds will apply as a fallback" is specified in respect of that Loan in the Compounded Rate Terms for that Loan,

the Cost of Funds Rate shall apply to that Loan for that Term.



## **26. TAXES**

### **26.1 Gross-up**

All payments by the Company under the Finance Documents shall be made without any Tax Deduction, except to the extent that the Company 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 the Company, or paid or payable by the Lender under the Finance Documents, the Company shall, subject to Clause 15.4 (Exception to the gross-up), pay such additional amounts as may be necessary to ensure that the Lender receives a net amount equal to the full amount which it would have received had that payment not been made subject to any Relevant Tax.

### **26.2 Tax receipts**

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

### **26.3 Reimbursement of tax credit**

If the Company pays any additional amount (a **Tax Payment**) under Clause 15.1 (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 Tax, or credit against Tax, by reason of that Tax Payment (a **Tax Credit**), then the Lender shall reimburse to the Company 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, the 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 the Company, the Lender shall provide the Company 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. The Lender is not obliged to disclose any information regarding its Tax affairs or computations to any other person.

### **26.4 Exception to the gross-up**

The Company is not required to pay an additional amount for the account of a Lender under Clause 15.1 (Gross-up):

- (a) to the extent that the obligation to pay the additional amount would not have arisen but for the failure by the Lender to provide (within a reasonable period after being

requested to do so by the Company and at the cost of the Company) any form, certificate or other documentation:

- (i) the provision of which would have relieved (in whole or in part) the Company from the relevant withholding obligation; and
  - (ii) which it is fully within the power of the Lender to provide;
- (b) if the Lender has not complied with its obligations under paragraph (a) of Clause 15.5 (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 15.5 (Tax confirmation); or
- (c) if the confirmation provided by the Lender under paragraph (a) of Clause 15.5 (Tax confirmation) is incorrect when made.

#### **26.5 Tax confirmation**

- (a) The Lender confirms to the Company that on the date of this Agreement under the terms of a double taxation treaty between the jurisdiction in which the 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 on the date of this Agreement.
- (b) If a Lender becomes aware that it could not, on any particular day, give the confirmation referred to in paragraph (a) above, it shall promptly but in any event within 90 days, notify such to the Company.

#### **26.6 Stamp taxes**

The Company must pay and indemnify the Lender 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.

#### **26.7 Value added taxes**

- (a) Any amount (including costs, fees and expenses) payable under a Finance Document by the Company 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, the Company 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 the Company under paragraph (a) above will be reduced to the extent that the Lender is entitled to repayment or a credit in respect of the relevant value added tax or similar tax.

## **26.8 FATCA information**

- (a) Subject to paragraph (c) below, each Party must, 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 requests to enable that other Party to comply with FATCA.
- (b) If a Party confirms to another Party pursuant to subparagraph (a)(i) above 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 must notify that other Party reasonably promptly.
- (c) No Party is obliged to do anything under paragraphs (a) or (b) above which would reasonably be expected to constitute a breach of any of the following:
  - (i) applicable law or regulation;
  - (ii) its fiduciary duty to any third party; or
  - (iii) its duty of confidentiality to any third party.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information relating to its status under FATCA requested in accordance with paragraph (a) (including where paragraph (c) above applies), then that Party may be treated for the purposes of the Finance Documents (and payments made under them) as if it is not a FATCA Exempt Party until it provides the requested confirmation, forms, documentation or other information.

## **26.9 Other information**

- (a) Subject to paragraph (b) below, each Party must, within ten Business Days of a reasonable request by another Party, supply to that other Party such forms, documentation and other information relating to its status as that other Party requests to enable that other Party to comply with any regulations made under any applicable law or regulation implementing international arrangements for the exchange of Tax or financial information between jurisdictions.
- (b) No Party is obliged to do anything under paragraph (a) above which would reasonably be expected to constitute a breach of any of the following:
  - (i) applicable law or regulation;
  - (ii) its fiduciary duty to any third party; or

- (iii) its duty of confidentiality to any third party.

## **26.10 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 is 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 must, promptly on 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.

## **27. INCREASED COSTS**

### **27.1 Increased Costs**

Except as hereinafter provided in this Clause 16, the Company must pay to the Lender the amount of any Increased Cost incurred by the Lender or its Holding Company as a result of:

- (a) the introduction of, or any change in, or any change in the interpretation, or application of, any law or regulation; or
- (b) compliance with any law or regulation made after the date of this Agreement; or
- (c) the implementation or application of, or compliance with, Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

The Lender agrees to notify the Company promptly upon becoming aware that this Clause 16.1 applies.

### **27.2 Exceptions**

- (a) The Company need not make any payment for an Increased Cost to the extent that the Increased Cost is:
  - (i) compensated for under another Clause or would have been but for an exception to that Clause;
  - (ii) a tax on the overall net income of the Lender or its Holding Company;
  - (iii) attributable to a FATCA Deduction required to be made by a Party;
  - (iv) attributable to the Lender or its Holding Company wilfully failing to comply with any law or regulation;
  - (v) on failure of the Lender or its Holding Company to notify the Company of that increased cost within 45 days of becoming aware of it; or

- (vi) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III or CRD IV) (**Basel II**) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, the Lender or any of its Affiliates).

- (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; and
- (ii) any further guidance or standards published by the Basel Committee relating to "Basel III".

**Basel Committee** means the Basel Committee on Banking Supervision.

**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 amending Regulation (EU) No 648/2012; 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.

## **27.3 Claims**

- (a) The Lender intending to make a claim for an Increased Cost must notify the Company of the circumstances giving rise to and the amount of the claim.
- (b) The Lender must, as soon as practicable after a demand by the Company, provide a certificate confirming the amount of its Increased Cost.

## **28. MITIGATION**

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

- (a) any additional amounts becoming payable under Clause 15 (Taxes);
- (b) any amount becoming payable under Clause 16 (Increased Costs);

- (c) any prepayment or cancellation under Clause 11 (Prepayment and Cancellation); or
- (d) the Lender incurring any cost of complying with the minimum reserve requirements of its supervising and regulating entity,

then, without limiting the obligations of the Company under this Agreement and without prejudice to the terms of Clauses 15 (Taxes), 16 (Increased Costs) and 11 (Prepayment and Cancellation), the Lender shall, in consultation with the Company, take such reasonable steps as may be open to it to mitigate or remove the relevant circumstance, including (without limitation) 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.

## **29. PAYMENTS**

### **29.1 Place**

Unless a Finance Document specifies that payments under it are to be made in another manner, all payments by the Company under the Finance Documents must be made to the Lender to its account at such office or bank in the principal financial centre of a Participating Member State or London, as it may notify to the Company for this purpose by not less than ten Business Days' prior notice.

### **29.2 Funds**

Payments under the Finance Documents to the Lender must be made for value on the due date at such times and in such funds as the Lender 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.

### **29.3 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 18.3.
- (b) Interest is payable in the currency in which the relevant amount in respect of which it is payable is denominated.
- (c) A repayment or prepayment of any principal amount is payable in the currency in which that principal amount is denominated 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.

#### **29.4 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.

#### **29.5 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.

#### **29.6 Partial payments**

- (a) If the Lender receives a payment insufficient to discharge all the amounts then due and payable by the Company under the Finance Documents, the Lender 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 fees, costs and expenses of the Lender 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 Lender may vary the order set out in sub-paragraphs (a)(ii) to (iv) above.
- (c) This Subclause will override any appropriation made by the Company.

#### **29.7 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 Lender 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.

### **30. REPRESENTATIONS AND WARRANTIES**

#### **30.1 Representations and warranties**

The Company makes the representations and warranties set out in this Clause 19 (Representations and warranties) to the Lender.

### **30.2 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.

### **30.3 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.

### **30.4 Legal validity**

Each Finance Document to which it is a party:

- (a) constitutes, or when executed will constitute, its legal, valid and binding obligation enforceable in accordance with its terms; and
- (b) is in proper form for its enforcement in the Republic if accompanied by a certified Slovak translation,

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

### **30.5 Non-conflict**

The execution, delivery and performance of the Finance Documents to which it is or will be a party by it will not:

- (a) violate in any respect any provision of:
  - (i) 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 the Company;
  - (ii) the laws and documents incorporating and constituting the Company; or
  - (iii) any mortgage, agreement or other financial undertaking or instrument to which the Company is a party or which is binding upon any Assets of the Company; or
- (b) to the best of the Company's knowledge result in the creation or imposition of any Security Interest on any Assets of the Company pursuant to the provisions of any mortgage, agreement or other undertaking or instrument to which the Company is a party or which is binding upon it.



### **30.6 No default**

No Default is outstanding.

### **30.7 Authorisations**

All authorisations and other requirements of governmental, judicial and public bodies and authorities required by any member of the Group or advisable in connection with the execution, delivery, performance, validity and enforceability of the Finance Documents have been obtained or effected and are in full force and effect.

### **30.8 Litigation**

Except to the extent as disclosed in writing to the Lender:

- (a) there is no litigation, arbitration or administrative proceedings relating to any member of the Group that is material to the Company, the same are not current or pending or, to the knowledge of the Company, threatened; and
- (b) no litigation, arbitration or administrative proceedings are current or pending or, to the knowledge of the Company, threatened, which would reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations under the Finance Documents.

### **30.9 Title**

Except to the extent disclosed in writing to the Lender, it 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 Lender under Clause 20.2 (Financial Information), 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.

### **30.10 Borrowing limits**

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 board of directors whether imposed by the Company's Articles of Association or similar document or by statute, regulation, or agreement, to be exceeded.

### **30.11 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.

### **30.12 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.

### **30.13 Information**

- (a) All factual information provided in writing by an officer of any member of the Group, United States Steel Corporation or any Subsidiary of United States Steel Corporation to the Lender 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) Nothing was omitted from the information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.
- (c) Nothing has occurred since the date of the information referred to in paragraph (a) above which, if disclosed, would make that information untrue or mislead in any material respect.

### **30.14 No notarial deed**

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) in relation to any Financial Indebtedness.

### **30.15 Financial statements**

Its audited consolidated financial statements most recently delivered to the Lender (which, at the date of the Ninth Supplemental Agreement, are the Financial Statements dated 31 December 2020):

- (a) have been prepared in accordance with accounting principles and practices generally accepted in its jurisdiction of incorporation, consistently applied; and
- (b) fairly represent its 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.

### **30.16 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 the Lender.
- (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.

### **30.17 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.

### **30.18 ERISA**

Each ERISA Plan of the Company and of each ERISA Affiliate of the Company complies in all material respects with all applicable requirements of law and regulation. No Reportable Event has occurred with respect to any ERISA Plan, and no steps have been taken to terminate any ERISA Plan that would reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations under the Finance Documents. Neither the Company nor any of its ERISA Affiliates has had a complete or partial withdrawal from any Multiemployer Plan or initiated any steps to do so that would reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations under the Finance Documents.

### **30.19 Margin Regulations**

Neither the Company 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.

### **30.20 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.

### **30.21 Times for making representations and warranties**

- (a) The Company makes the representations and warranties set out in this Clause 19 on the date of this Agreement.
- (b) Unless a representation and warranty is expressed to be given at a specific date (other than as a result of the operation of paragraph (a) above), each representation and warranty is deemed to be repeated by the Company on the date of each Request and the first day of each Term except that the representations and warranties in Clauses 19.5(a)(iii) and 19.5(b) (Non-conflict), 19.8(a) (Litigation) and 19.18 (ERISA) shall not be repeated by the Company.
- (c) When the representation and warranty in Clause 19.6 (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) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## **31. INFORMATION COVENANTS**

### **31.1 Duration**

The undertakings in this Clause 20 (Information Covenants) remain in force from the date of this Agreement for so long as any amount is or may be outstanding under any Finance Document.

### **31.2 Financial Information**

The Company shall furnish to the Lender:

- (a) the annual audited unconsolidated 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 210 days from the financial year-end), such financial statements:
  - (i) to be prepared in accordance with the International Financial Reporting Standards 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 or Group (as applicable) 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 unaudited consolidated financial 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;
- (c) the quarterly unaudited consolidated financial statements of the Group to be prepared in accordance with USGAAP consistently applied, i.e. 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) financial statements 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) financial statements 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) financial statements 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;

- (d) together with the financial statements referred to in paragraph (a) above, a certificate of the Company signed by the chief financial officer (or equivalent) of the Company certifying:

- (i) that no Event of Default has occurred (or, if it has, specifying it and the steps being taken to remedy it); and

- (ii) the identity of its all Subsidiaries.

- (A) whose total assets (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 (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); and

- (e) together with the financial statements referred to in paragraph (c) above, a certificate of the Company signed by the chief financial officer (or equivalent) of the Company listing the following information:

- (i) the average production capacity (in percentage) which the Company used in the quarter for which such certificate is furnished to the Lender;

- (ii) the average selling prices of steel which the Company realised in the quarter for which such certificate is furnished to the Lender.

### **31.3 Information - miscellaneous**

- (a) The Company shall furnish to the Lender from time to time with reasonable promptness, such further information regarding the business and financial condition of the Company as the Lender may reasonably request.
- (b) The Company shall promptly notify the Lender of any material business or financial event, including without limitation, 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.

- (c) Subject to paragraph (d) below, the Company must promptly on the request of Lender supply to the Lender any documentation or other evidence that is reasonably requested by the Lender (whether for itself or any prospective new Lender) to enable the Lender or prospective new Lender to carry out and be satisfied with the results of all applicable know your customer requirements.
- (d) The Company is only required to supply any information under paragraph (c) above, if the necessary information is not already available to the Lender 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 Company or any change in the composition of shareholders of the Company 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.

#### **31.4 Notification of Default**

The Company must notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

#### **31.5 Slovak banking regulations**

- (a) Subject to paragraph (b) below, in case of any change to: (i) the amount of the Company's registered capital; or (ii) the participation interest(s) in the Company; or (iii) the voting rights attached to any and all participation interest(s) in the Company, the Company must supply to the Lender 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) The Company is not obliged to supply the list of participants under paragraph (a) above if any such change concerns a participant (*spoločník*) holding: (i) a participation interest not exceeding 10 per cent. of the registered capital of the Company; or (ii) voting rights not exceeding 10 per cent. of all voting rights in the Company.
- (c) For the purposes of this Clause 20.5, 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 the Company; or (ii) voting rights exceeding 10 per cent. of all voting rights in the Company, containing:
  - (i) 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

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

## **32. GENERAL COVENANTS**

### **32.1 Authorisations**

The Company 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.

### **32.2 Slovak Public Sector Partners Act**

The Company 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.

### **32.3 Corporate existence**

- (a) The Company 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 the Company's ability to perform its obligations under the Finance Documents.
- (b) The Company shall not:
  - (i) change its name; or
  - (ii) change its financial year end from 31 December.

### **32.4 Insurance**

The Company shall effect and maintain such insurance over and in respect of its Assets and business covering such risks and in such amounts as United States Steel Corporation maintains from time to time with respect to other similar steel-making facilities owned by United States Steel Corporation, subject to such deductibles and other forms of self-insurance as from time to time are generally applicable to such other steel-making facilities provided such coverage is available to the Company on similar or better terms.

### **32.5 Pari passu**

The Company 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.

### **32.6 Negative pledge**

The Company shall not without the prior consent of the Lender in writing, 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.

### **32.7 Disposals**

- (a) Except with the prior consent of the Lender in writing or as provided in paragraph (b) below, the Company shall not 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 other than Permitted Disposals.
- (b) Notwithstanding paragraph (a) above, in any financial year of the Company, Fixed Assets having an aggregate book value in, or included for the purposes of, the Latest Accounts, not exceeding the aggregate of 30 per cent. of all Fixed Assets (as shown in or included for the purposes of the Latest Accounts) may be disposed of where the disposal is on arm's length commercial terms; provided, however, that in no case shall the Company be permitted to dispose of more than 50 per cent of all Fixed Assets (as shown in or included for purpose of the consolidated financial statement of the Company for the six-month period ended 30 June 2021).

### **32.8 Mergers**

The Company shall not, without the prior consent of the Lender in writing, enter into any merger or other arrangement of a similar nature other than a Permitted Merger.

### **32.9 Change of business**

Except with the prior consent of the Lender in writing, the Company shall not make or threaten to make any substantial change in its business as conducted on the date of this Agreement.

### **32.10 Environmental compliance**

Except to the extent disclosed in writing to the Lender, the Company 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 the Company to perform its obligations under the Finance Documents. For this purpose, **Environmental Law** means:

- (a) all environmental authorisations applicable to the Company; 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, without limitation, hazardous, toxic, radioactive or dangerous waste.

### **32.11 Lending and Borrowing**

- (a) Subject to paragraph (b) below, the Company shall not, and the Company shall procure that no member of the Group shall incur any Financial Indebtedness other than:
- (i) Financial Indebtedness not exceeding EUR600,000,000 (or its equivalent) in aggregate (including amounts borrowed under the Finance Documents);
  - (ii) Financial Indebtedness upon terms approved by the Lender;
  - (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 subordination agreements acceptable to the Lender; and
  - (vii) any refinancing of any of the foregoing up to the same principal amount.
- (b) The obligation under paragraph (a) above shall apply only until the Company delivers to the Facility Agent under, and as defined in, the Syndicated Facility Agreement the first Compliance Certificate (as defined in the Syndicated Facility Agreement) in accordance with clause 17.4 (Compliance Certificate) of the Syndicated Facility Agreement which confirms that the Company complies with its obligations under clause 18 (Financial covenants) of the Syndicated Facility Agreement.

### **32.12 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.

### **32.13 No Margin Stock**

The Company may not:

- (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.

### **32.14 Centre of Main Interests**

The Company must not 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.

## **33. DEFAULT**

### **33.1 Events of Default**

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

### **33.2 Non-payment**

The Company 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) it is not remedied within five Business Days of its due date.

### **33.3 Breach of other obligations**

The Company fails to comply with any of its obligations under the Finance Documents (other than those referred to in Clause 22.2 (Non-payment)) and the failure to comply (if it is capable of remedy) remains unremedied for 30 days after the earlier of:

- (a) the day when the Lender gives the Company notice of the failure to comply; and
- (b) the day when the Company became aware of the failure to comply.

### **33.4 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 the Company 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 the Company to perform its obligations under the Finance Documents.

### **33.5 Insolvency/enforcement**

- (a) Any action is taken by the Company or one of its Affiliates for the dissolution or termination of existence or liquidation of the Company;
- (b) an application by the Company for bankruptcy (*konkurz*), restructuring (*reštrukturalizácia*) or moratorium, or an arrangement with creditors of the Company is entered into, or any other proceeding or arrangement by which the Assets of the Company are submitted to the control of its creditors occurs or is entered into;

- (c) the Company is adjudged bankrupt pursuant to a final non-appealable order;
- (d) there is appointed a liquidator, trustee, administrator, receiver or similar officer of the Company or a receiver of all or substantially all of the Assets of the Company;
- (e) all or substantially all of the Assets of the Company 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 remains in effect and is not discharged within thirty days;
- (f) the Company 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 the Company; or
- (h) the Company becomes a “company in crisis” for the purposes of section 67a of the Slovak Commercial Code (Act No. 513/1991 Coll., as amended).

### **33.6 Cessation of business**

The Company 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).

### **33.7 Revocation of authorisation**

- (a) Any authorisation or other requirement of any governmental, judicial or public body or authority necessary to enable the Company 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 is modified, revoked, withdrawn or withheld in any material respect or fails to remain in full force and effect for more than 30 days.
- (b) The Company fails to comply with any authorisation or other requirement set out in paragraph (a) above.

### **33.8 Expropriation**

All or any substantial part of the Assets of the Company is seized or expropriated by any authority.

### **33.9 Unlawfulness**

At any time it is unlawful for the Company to perform such of its obligations under the Finance Document as are, in the reasonable opinion of the Lender, material.

### **33.10 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 this Clause 22.10 if the aggregate amount of Financial Indebtedness for Financial Indebtedness falling within paragraph (a) above is less than EUR50,000,000 (or its equivalent in any other currency or currencies).

### **33.11 Acceleration**

If an Event of Default is outstanding, the Lender may by notice to the Company:

- (a) cancel all or any part of the Total Commitments; and/or
- (b) declare that all or part of any amounts outstanding under the Finance Documents are:
  - (i) immediately due and payable; and/or
  - (ii) payable on demand by the Lender; and/or
- (c) declare that full cash cover in respect of each Letter of Credit is immediately due and payable.

Any such notice will take effect in accordance with its terms.

## **34. EVIDENCE AND CALCULATIONS**

### **34.1 Accounts**

Accounts maintained by the Lender 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.

### **34.2 Certificates and determinations**

Any certification or determination by the Lender 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.

### **34.3 Calculations**

- (a) Any interest or fee accruing under this Agreement accrues from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days or otherwise, depending on what the Lender determines is market practice; and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by the Company under a Finance Document shall be rounded to two decimal places.

## **35. FEES**

### **35.1 Commitment fee**

- (a) The Company must pay to the Lender a commitment fee at the rate of 0.70 per cent. per annum on the unutilised, uncanceled amount of the Total Commitment.
- (b) Accrued commitment fee is payable quarterly in arrears. Accrued commitment fee is also payable to the Lender on the date the Total Commitment is cancelled in full.

## **36. INDEMNITIES AND BREAK COSTS**

### **36.1 Currency indemnity**

- (a) If the Lender receives an amount in respect of the Company's liability under the Finance Documents or if that liability is converted into a claim, proof, judgement 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) the Company shall indemnify the Lender against any loss or liability arising out of or as a result of the conversion;
  - (ii) if the amount received by the Lender, 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 Company shall pay to the Lender an amount in the contractual currency equal to the deficit; and
  - (iii) the Company shall pay to the Lender concerned any exchange costs and taxes payable in connection with any such conversion.
- (b) The Company 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.

### **36.2 Other indemnities**

- (a) The Company must indemnify the Lender against any loss or liability which the Lender incurs as a consequence of:
  - (i) the occurrence of any Event of Default;
  - (ii) Clause 22.11 (Acceleration);
  - (iii) any failure by the Company to pay any amount due under a Finance Document on its due date;
  - (iv) (other than by reason of negligence or default by the Lender) a Credit not being made after a Request has been delivered for that Credit; or
  - (v) a Credit (or part of a Credit) not being prepaid in accordance with this Agreement.

The Company'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 Credit.

- (b) The Company must indemnify the Lender against any loss or liability incurred by the Lender as a result of:
  - (i) investigating any event which the Lender reasonably believes to be a Default; or
  - (ii) acting or relying on any notice that the Lender reasonably believes to be genuine, correct and appropriately authorised.

### **36.3 Break Costs**

- (a) Subject to paragraph (b) below, the Company must pay to the Lender its Break Costs as compensation if any part of a Loan is prepaid.
- (b) Paragraph (a) above shall apply in respect of a Compounded Rate Loan if an amount is specified as Break Costs in the applicable Compounded Rate Terms.
- (c) Break Costs are:
  - (i) in respect of any Term Rate Revolving Loan or Term Rate Overdraft, the amount (if any) reasonably determined by the relevant Lender by which:
    - (A) the interest which the Lender would have received for the period from the date of receipt of any part of that Loan in that currency 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
    - (B) the amount which the 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; or
  - (ii) in respect of any Compounded Rate Loan, any amount specified as such in the applicable Compounded Rate Terms.
- (d) The Lender must promptly supply to the Company details of the amount of any Break Costs claimed by it under this Clause 25.3.

## **37. EXPENSES**

### **37.1 Subsequent costs**

The Company must pay to or reimburse on demand the Lender the amount of all costs and expenses (including documented 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.

### **37.2 Enforcement costs**

The Company must pay to or reimburse on demand the Lender the amount of all costs and expenses (including documented legal fees) reasonably incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

## **38. AMENDMENTS AND WAIVERS**

Any term of the Finance Documents may be amended or waived with the agreement of the Company and the Lender.

### **38.1 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 Lender (acting reasonably and after consultation with the Company) determines is necessary to reflect the change.

### **38.2 Waivers and remedies cumulative**

The rights of the Lender 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.

### **38.3 Changes to reference rates**

- (a) Any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate; and
  - (ii) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
    - (A) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);

- (B) implementing market conventions applicable to that Replacement Reference Rate;
- (C) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
- (D) 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 Reference Rate (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 Lender and the Company.

- (b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Compounded Rate Loan in any currency under this Agreement to any recommendation of a Relevant Nominating Body which:
  - (i) relates to the use of a risk-free reference rate on a compounded basis in the international or any relevant domestic syndicated loan markets; and
  - (ii) is issued on or after the date of this Agreement,

may be made with the consent of the Company and the Lender.

- (c) For the purposes of this Clause:

**Published Rate** means:

- (i) an RFR; or
- (ii) the Screen Rate for any Quoted Tenor.

**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 Reference Rate** means a reference rate which is:

- (iii) formally designated, nominated or recommended as the replacement for a Published Rate by:
  - (A) the administrator of that Published Rate (provided that the market or economic reality that such reference rate measures is the same as that measured by that Published 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 Reference Rate" will be the replacement under paragraph (B) above;

- (ii) in the opinion of the Lender and the Company, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Published Rate; or
- (iii) in the opinion of the Lender and the Company, an appropriate successor to a Published Rate.

### **39. CHANGES TO THE PARTIES**

#### **39.1 Assignments and transfers by the Company**

The Company may not assign or transfer any of its rights and obligations under the Finance Documents without the prior consent of the Lender.

#### **39.2 Assignments and transfers by Lender**

- (a) Subject to paragraph (b) below, 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 this Agreement to another bank or financial institution (the **New Lender**).
- (b) No consent shall be required from the Company if:
  - (i) the proposed New Lender is an Affiliate of the Existing Lender; or
  - (ii) if an Event of Default is outstanding on the date of the assignment/transfer.
- (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 28; or
  - (ii) the New Lender confirms to the Company in form and substance satisfactory to the Lender that it is bound by the terms of this Agreement as a Lender. On the transfer becoming effective in this manner the Existing Lender will be released from its obligations under this Agreement to the extent that they are transferred to the New Lender.
- (d) Any reference in this Agreement to the Lender includes a New Lender but excludes the Lender if no amount is or may be owed to or by it under this Agreement.

#### **39.3 Procedure for transfer by way of novations**

- (a) In this Subclause:

**Transfer Date** means, for a Transfer Certificate, the Transfer Date specified in that Transfer Certificate.

- (b) A novation is effected if the Existing Lender and the New Lender duly complete the Transfer Certificate. The New Lender must send a copy of that Transfer Certificate to the Company.
- (c) The Company irrevocably authorises the Lender 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.

#### **39.4 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 the Company; 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 the Company of its obligations under any Finance Document or other documents,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender 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, without limitation, the financial condition and affairs of the Company 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 28; or
- (ii) support any losses incurred by the New Lender by reason of the non-performance by the Company of its obligations under any Finance Document or otherwise.

### **39.5 Costs resulting from change of Lender or Facility Office**

If:

- (a) the 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, the Company would be obliged to pay a Tax Payment or an Increased Cost,

then, unless the assignment, transfer or change is made by the 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, the Company 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.

### **39.6 Security over Lender's rights**

- (a) In addition to the other rights provided to the Lender under this Clause 28 and subject to paragraph (b) below, the 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 the Lender including, without limitation:
  - (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 the Lender as security for those obligations or securities,

except that no such charge, assignment or Security Interest shall:

- (A) release the 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 the Company 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) The Lender may proceed pursuant to paragraph (a) above:

- (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 I. 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 subparagraph (b)(i) above.

#### **40. DISCLOSURE OF INFORMATION**

- (a) The Lender must keep confidential any information supplied to it by or on behalf of the Company in connection with the Finance Documents. However, the Lender is entitled to disclose information:
  - (i) which is publicly available, other than as a result of a breach by the Lender of this Clause 29;
  - (ii) in connection with any legal or arbitration proceedings;
  - (iii) if required to do so under any law or regulation;
  - (iv) to a governmental, banking, taxation or other regulatory authority;
  - (v) to its professional advisers;
  - (vi) to any person to whom or for whose benefit the Lender charges, assigns or otherwise creates Security Interest (or may do so) pursuant to Clause 28.6 (Security over Lender's rights)
  - (vii) to the extent allowed under paragraph (b) below; or
  - (viii) with the agreement of the Company.
- (b) Lender may disclose to an Affiliate or any person with whom it may enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement (a **participant**):
  - (i) a copy of any Finance Document; and
  - (ii) any information that the Lender has acquired under or in connection with any Finance Document.

However, before a participant may receive any confidential information, it must agree with the Lender to keep that information confidential on the terms of paragraph (a) above.

- (c) This Clause 29 supersedes any previous confidentiality undertaking given by the Lender in connection with this Agreement prior to it becoming a Party.

#### **41. SET-OFF**

- (a) Lender may set off any matured obligation owed to it by the Company under the Finance Documents (to the extent beneficially owned by the Lender) against any obligation (whether or not matured) owed by the Lender to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender 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 Lender may set off in an amount estimated by it in good faith to be the amount of that obligation.
- (b) The Company 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. The Lender agrees to exercise such rights only after the Company's failure to pay following proper demand and to promptly notify the Company 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.

#### **42. 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.

#### **43. 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.

#### **44. NOTICES**

##### **44.1 Giving of notices**

All notices or other communications under or in connection with this Agreement shall be given in writing and, unless otherwise stated, may be made by letter or facsimile. Any such notice will be deemed to be given as follows:

- (a) if by letter, when delivered personally or on actual receipt; and

(b) if by facsimile, when received in legible form.

However, a notice given in accordance with this Clause 33.1 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.

#### **44.2 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  
04454 Košice,  
The 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  
Attention: Treasurer and Chief Risk Officer  
Fax +1 412 433 1167

or such other as the Company may notify to the Lender by not less than five Business Days' notice.

(b) The address and facsimile number of the Lender are:

ING BANK N.V., pobočka zahraničnej banky  
Pribinova 10  
811 09 Bratislava  
Slovakia  
Attention: Peter Kover  
Tel. No.: +421 907 789 180  
E-mail: peter.kover@ing.com

or such other as the Lender may notify to the other Parties by not less than five Business Days' notice.

#### **45. 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 Lender 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.

#### **46. GENERAL TERMS AND CONDITIONS**

- (a) The General Terms and Conditions apply to this Agreement only to the extent to which the General Terms and Conditions do not contravene the terms and conditions of this Agreement.
- (b) In case there is a discrepancy between the provisions of this Agreement and the General Terms and Conditions, the provisions of this Agreement shall apply.

#### **47. CONTRACTUAL RECOGNITION OF BAIL-IN**

- (a) 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 the other 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:
  - (i) any Bail-In Action in relation to any such liability, including (without limitation):
    - (A) 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;
    - (B) 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
    - (C) a cancellation of any such liability; and
  - (ii) 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.
- (b) In this Clause:

**Article 55 BRRD** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**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 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (ii) in relation to the United Kingdom, the UK Bail-In Legislation; and

- (iii) in relation to any state other than such an EEA Member Country and the United Kingdom, 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.

**UK Bail-In Legislation** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**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;
- (ii) in relation to the UK Bail-In Legislation, any powers under that UK 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 UK Bail-In Legislation that are related to or ancillary to any of those powers; and
- (iii) 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.

#### **48. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

#### **49. ENFORCEMENT**

##### **49.1 Jurisdiction**

- (a) The English courts have jurisdiction to settle any dispute in connection with any Finance Document.
- (b) References in this Clause 38.1 to a **dispute** in connection with a Finance Document include any dispute as to the existence, validity or termination of that Finance Document.

##### **49.2 Service of process**

Without prejudice to any other mode of service, the Company:

- (a) irrevocably appoints The London Law Agency Limited 69 Southampton Row, London WC1B 4ET, 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 the Company 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 33.2 (Addresses for notices); and
- (e) agrees that if the appointment of any person mentioned in paragraph (a) of this Clause 38.2 ceases to be effective, the Company 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 Lender is entitled to appoint such a person by notice to the Company.

##### **49.3 Forum convenience and enforcement abroad**

The Company:

- (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 judgement 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.

#### **49.4 Non-exclusivity**

Nothing in this Clause 38 limits the right of the Lender to bring proceedings against the Company in connection with any Finance Document:

- (a) in any other court of competent jurisdiction; or
- (b) concurrently in more than one jurisdiction.

#### **49.5 Waiver of immunity**

The Company irrevocably and unconditionally:-

- (a) agrees not to claim any immunity from proceedings brought by the Lender against the Company 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.

#### **49.6 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.

#### **49.7 Alternative forms of dispute resolution**

The Lender in accordance with section 93b of the Slovak Banking Act hereby informs the Company that:

- (a) if the Lender and the Company enter into an arbitration agreement, any disputes between the 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 the Lender and the Company enter into an agreement to resolve disputes in mediation, any disputes between the 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.

**Schedule 3**

**CONDITIONS PRECEDENT DOCUMENTS**

[OMITTED FROM THE AMENDED AND RESTATED FORM OF THIS AGREEMENT]

## Schedule 4

### FORM OF REQUEST - LOANS

To: ING Bank, N.V., pobočka zahraničnej banky as the Lender

From: [ ]

Date: [ ]

#### **U. S. Steel Košice, s.r.o.- EUR20,000,000 committed credit facility agreement (the Agreement)**

1. We refer to the Agreement. This is a Request.
2. We wish to borrow a Loan on the following terms:
  - (a) Utilisation Date: [ ]
  - (b) Amount/currency: [ ]/ [\*\*\*]
  - (c) Term: [ ].
3. Our [payment/delivery]<sup>1</sup> instructions are: [ ].
4. We confirm that each condition precedent under the Agreement that must be satisfied on the date of this Request is so satisfied.
5. This Request is irrevocable.
6. With reference to Clause 20.5 (Slovak banking regulations), we [confirm that no change referred to in Clause 20.5 (Slovak banking regulations) has occurred since [the date of the Agreement/the date of our preceding Request]<sup>2</sup>/attach the up-to-date list of participants of the Company].<sup>3</sup>

By:

[ ]

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<sup>1</sup> Delete as applicable.  
<sup>2</sup> Delete as applicable.  
<sup>3</sup> Delete as applicable.

## **Schedule 5**

### **FORM OF TRANSFER CERTIFICATE**

To: U. S. Steel Košice, s.r.o.

From: [THE EXISTING LENDER] (the **Existing Lender**) and [THE NEW LENDER] (the **New Lender**)

Date: [       ]

**U. S. Steel Košice, s.r.o.- EUR20,000,000 committed credit facility agreement  
(the Agreement)**

We refer to the Agreement. This is a Transfer Certificate.

1. The Existing Lender transfers by novation to the New Lender the Existing Lender's rights and obligations referred to in the attached Schedule in accordance with the terms of the Agreement.
2. The proposed Transfer Date is [    ].
3. The administrative details of the New Lender for the purposes of the Agreement are set out in the Schedule.
4. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations in respect of this Transfer Certificate contained in the Agreement.
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterpart were on a single copy of the Transfer Certificate.
6. This Transfer Certificate is governed by English law.

## **THE SCHEDULE**

### **Rights and obligations to be transferred by novation**

[insert relevant details, including applicable Commitment (or part)]

### **Administrative details of the New Lender**

[insert details of Facility Office, address for notices and payment details etc.]

**[EXISTING LENDER]**

**[NEW LENDER]**

By:

By:

Accepted:

U. S. Steel Košice, s.r.o.

By:\_\_\_\_\_

By:\_\_\_\_\_

## Schedule 6

### FORM OF LEGAL OPINION OF LEGAL ADVISER TO THE COMPANY

Pittsburgh, [date]

ING Bank, N.V., pobočka zahraničnej banky as the Lender  
Jesenského 4/C  
811 02 Bratislava  
Slovak Republic

Ladies and Gentlemen:

Re: EUR10,000,000 Committed Credit Facility Agreement dated 11 December 2009 (the "Agreement") with U. S. Steel Košice, s.r.o. as the borrower

I am currently a General Attorney International of United States Steel Corporation (the "**Corporation**") and have been educated and practice in the Slovak Republic. My most recent position was Assistant General Counsel of U. S. Steel Košice, s.r.o., a company organized and existing under the laws of the Slovak Republic (the "**Company**"). This opinion is being delivered in connection with the execution and delivery of the Agreement.

Capitalized terms that are used in this opinion letter that are not defined have the same meanings given to them in the Agreement.

In giving this opinion I have examined the following documents:

1. an executed copy of the Agreement; and
2. the following corporate documents of the Company:
  - (a) an extract of the Company Register of the District Court Košice 1, Section Sro, No. 11711/V of 9 December 2009 in respect of the Company;
  - (b) a copy of the foundation agreement of the Company dated 7th June, 2000; and
  - (c) a copy of the Memorandum of Association of the Company in full writing dated 28 November 2008.

I or persons under my supervision have examined originals or copies of all such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as they and I have deemed necessary or advisable for purposes of this opinion.

In rendering this opinion I made the following assumptions:

1. that the Agreement has been duly authorised, executed and delivered by or on behalf of the Lender;

2. the genuineness of all signatures on all documents, the authenticity and completeness of all documents submitted to me as originals and the completeness and conformity to the original documents of all documents submitted to me as copies; and
3. that the Agreement constitutes a legal, valid, binding and enforceable obligation of the Company in accordance with its terms under English law, and is binding on the Parties in accordance with English law.

This opinion is limited to the substantive laws of the Slovak Republic currently in force and I have made no investigation and no opinion is expressed or implied as to the laws of any other jurisdiction. I express no opinion as to matters of fact. This opinion is given subject to matters not disclosed to me and about which I have no knowledge. I assume that there are no facts that would affect the conclusions in this opinion.

Based on the foregoing and subject to the foregoing assumptions and the following qualifications, I am of the opinion that, so far as the laws of the Slovak Republic are concerned at the date of this opinion:

1. **Status.** The Company is a limited liability company organised under the laws of the Slovak Republic.
2. **Powers and authority.** The Company has the corporate power and authority to enter into and perform the obligations expressed to be assumed by it under the Agreement and to borrow thereunder and, subject to a duly passed resolution of the executives of the Company approving the terms of, and the transactions contemplated by the Agreement and authorising the relevant members of the Company's statutory body to execute the Agreement on behalf of the Company, has taken all necessary corporate action to authorise the execution and performance of the Agreement. According to Section 13(4) and 133(3) of the Slovak Commercial Code (Act No. 513/1991 Coll., as amended), any restriction of the authority of a company's statutory body to act for the company shall be ineffective *vis-à-vis* third parties (any disclosure of that restriction notwithstanding).
3. **Execution.** The Agreement has been duly executed and delivered by the Company.
4. **Legal validity.** The Agreement constitutes a legal, valid, binding and enforceable obligation of the Company in accordance with its terms and (subject to the preparation of the official translation into the Slovak language) is in the proper form for its enforcement in the courts of the Slovak Republic.
5. **Non-conflict.** The execution by the Company of the Agreement does not, and its performance of the Agreement will not, violate: (i) any mandatory provision of any Slovak law or regulation or the Constitution of the Slovak Republic; (ii) the constitutional documents of the Company; or (iii) any other agreement, document or obligation that is binding upon the Company or any of its Assets.
6. **Consents.** No authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations or other requirements of governmental, judicial or public bodies and authorities of the Slovak Republic are required in connection with the Company's entry into or performance of the Agreement, or for its validity or enforceability against the Company.



7. **Signatories.** [●] and [●] have the right and power to execute the Agreement and to give any notices to the Lender under the Agreement.
8. **Pari passu ranking.** The obligations of the Company under the Agreement rank at least *pari passu* with all its other present or future unsecured and unsubordinated obligations, save as provided under mandatory provisions of Slovak law.
9. **Borrowing limits.** The borrowing of the full amount available under the Agreement will not cause any limit on the Company's borrowing or other powers or on the exercise of such powers by its executives, whether imposed by the Company's Articles of Association or similar document or by statute, regulation, or agreement, to be exceeded.
10. **Stamp duties.** Except for court fees and sworn translators' fees payable in connection with proceedings to enforce the Agreement and for any applicable notarial charges, there are no stamp, transfer or registration fees or similar taxes, charges or duties payable in the Slovak Republic in connection with the execution or enforcement of the Agreement.
11. **No immunity.**
  - (a) The Company is subject to civil and commercial law with respect to its obligations under the Agreement, and its entry into and performance of the Agreement constitutes private and commercial acts; and
  - (b) neither the Company nor any of its assets located in the Slovak Republic enjoys any right of immunity from suit, attachment prior to judgement or other legal process in respect of its obligations under the Agreement.
12. **Bankruptcy.** The Company has not been declared bankrupt and no step has been or is being taken by the Company nor am I aware of any other step being taken in respect of the Company, for bankruptcy or any similar proceedings in relation to the Company or any of its Assets.
13. **Application of governing law.** The choice of English law as the governing law of the Agreement would be upheld as a valid choice of law by the courts of the Slovak Republic.
14. **Jurisdiction.** The submission by the Company to the jurisdiction of the English courts under Clause 37 of the Agreement is a valid and binding submission to jurisdiction in respect of the Agreement and is not subject to revocation.
15. **Enforcement of foreign judgements.** A judgement duly obtained in the English courts shall be recognised and enforced in the Slovak Republic unless:
  - (a) the matter is one within the exclusive jurisdiction of the courts of a Member State of the European Union other than the courts of England pursuant to the Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended; or
  - (b) the decision is not final or enforceable in the state where it has been issued; or

- (c) the party against whom such judgment is sought to be enforced has been deprived of an opportunity to participate in the foreign proceedings, especially if the summons or notice of the commencement of the foreign proceedings has not been duly served on the party; this exception does not apply if the party has not filed an appeal against the foreign judgement which has been duly served on it or if the party has waived the applicability of this exception; or
- (d) a final decision in the same matter has previously been reached by a court of the Slovak Republic or by a foreign authority if that foreign authority's decision has been, or would be, enforced in the Slovak Republic; or
- (e) recognition of the foreign judgement would be contrary to public policy (*ordre public*) of the Slovak Republic.

This opinion is subject to the following qualifications:

1. The validity, enforceability and effectiveness of the Agreement against the Company are limited by all bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.
2. References in this opinion to the term "enforceable" mean that each obligation or document is of a type and form that the Slovak courts would enforce. It is not certain, however, that each obligation or document will be enforced in accordance with its terms in every circumstance, enforcement being subject to *inter alia* the nature of the remedies available in the Slovak courts, the acceptance by such courts of jurisdiction, the power of such courts to stay proceedings, the provisions of other principles of law of general application (such as e.g. the concept of fair business conduct) and all limitations resulting from the laws of bankruptcy, insolvency, liquidation, forced administration, any statutes of limitation and lapse of time or other laws affecting generally the enforcement of creditors' rights.
3. Any subsidies or other funds obtained by the Company from the state budget or from the budget of the European Union or any assets purchased from funds originated from the state budget are immune from attachment and from execution and would not be available to creditors in any enforcement proceedings.
4. Under the Foreign Exchange Act No. 202/1995 Coll., as amended, if the Government of the Slovak Republic declares a foreign exchange emergency, payments in foreign currency or abroad generally may be suspended for the duration of such emergency (not to exceed three months at any one time).
5. The effectiveness of terms exculpating a party from a liability or duty otherwise owed is limited by law.
6. Slovak courts may not give effect to any indemnity for legal costs incurred by a litigant in proceedings before Slovak courts.
7. There could be circumstances in which a Slovak court would not treat as conclusive those certificates and determinations which the Agreement states to be so treated.

8. Slovak court may declare that it does not have jurisdiction if the civil proceedings concerning the same or a similar matter have already been commenced by a foreign court or an arbitration tribunal.
9. Under the provisions of the Act on Private and Procedural International Law No. 97/1963 Coll., as amended, a foreign law may not be applied as the governing law of the Agreement, or enforced, if such application or enforcement would create a result that would be, contrary to the basic principles of Slovak law including, but not limited to, public order (*verejný poriadok*).
10. Under the provisions of the Convention on the Law applicable to Contractual Obligations opened for signature in Rome on 19 June 1980, as amended (the “**Rome Convention**”), application or enforcement of foreign law as the governing law of the Finance Documents agreed to be governed by a foreign law may be refused by the courts of the Slovak Republic, if such application would be manifestly incompatible with the public policy (*verejný poriadok*) of the Slovak Republic.
11. Pursuant to Article 3(3) of the Rome Convention, the fact that the parties to a contract have chosen a foreign law to govern their contract, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law of that country, which cannot be derogated from by contract.

This opinion expresses Slovak legal concepts in English. Such concepts are not always capable of precise expression in English without an extensive comparative law analysis that would not be appropriate for an opinion of this kind.

This opinion is given exclusively in connection with the Agreement and for no other purpose. It is strictly limited to the matters set forth herein and no opinion may be inferred or implied beyond that expressly stated herein.

This opinion is given solely to the Lender as of the date of the Agreement and may not be given to or relied upon, by any other person.

Yours faithfully,

JUDr. Martin Husár

Head of Group Commercial Law – Sales, U. S. Steel Košice, s.r.o.

## Schedule 7

### COMPOUNDED RATE TERMS

**CURRENCY:** USD.

***Cost of funds as a fallback***

Cost of funds will apply as a fallback.

***Definitions***

**Additional Business Days:** An RFR Banking Day.

**Break Costs:** Any cost or amount which is incurred or suffered by the Lender (as reasonably determined by the Lender) to the extent that it is attributable to a payment by the Company to the Lender of any amount of principal or interest due or which would have become due under the this Agreement prior to the date upon which such amount should have been repaid in accordance with the terms and conditions of this Agreement.

**Business Day Conventions (definition of "month"):** (a) If any period is expressed to accrue by reference to a month or any number of months then, in respect of the last month of that period:

- (i) subject to paragraph (iii) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (i) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (i) if a Term begins on the last Business Day of a calendar month, that Term shall end on the last Business Day in the calendar month in which that Term is to

- (b) If a Term would otherwise end on a day which is not a Business Day, that Term will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

**Central Bank Rate:**

- (a) The short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

**Central Bank Rate Adjustment:**

In relation to the Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20% trimmed arithmetic mean (calculated by the Lender) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the RFR was available.

**Credit Adjustment Spread:**

1 Month – 0.11448%

2 Months – 0.18456%

3 Months – 0.26161%

If an Interest Period is not 1, 2 or 3 Months (a **Standard Duration**), the Credit Adjustment Spread shall be the rate for the Interest Period with the next longest Standard Duration.

**Daily Rate:**

The "**Daily Rate**" for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day;

- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:
  - (i) the most recent Central Bank Rate for a day which is no more than five RFR Banking Days before that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to four decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

<b>Lookback Period:</b>	Five RFR Banking Days.
<b>Relevant Market:</b>	The market for overnight cash borrowing collateralised by US Government securities.
<b>Reporting Day:</b>	The Business Day which follows the day which is the Lookback Period prior to the last day of the Term.
<b>RFR:</b>	The secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).
<b>RFR Banking Day:</b>	Any day other than:

### ***Terms***

Length of Term in absence of selection Three months  
(paragraph (b) of Clause 13.1  
(Selection)):

Periods capable of selection as Terms One, two or three months  
(paragraph (c) of Clause 13.1  
(Selection)):

## Schedule 8

### DAILY NON-CUMULATIVE COMPOUNDED RFR RATE

The "**Daily Non-Cumulative Compounded RFR Rate**" for any RFR Banking Day "**i**" during a Term for a Compounded Rate Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Lender, taking into account the capabilities of any software used for that purpose) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

"**UCCDR<sub>i</sub>**" means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day "**i**";

"**UCCDR<sub>i-1</sub>**" means, in relation to that RFR Banking Day "**i**", the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Term;

"**dcc**" means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;

"**n<sub>i</sub>**" means the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day; and

the "**Unannualised Cumulative Compounded Daily Rate**" for any RFR Banking Day (the "**Cumulated RFR Banking Day**") during that Term is the result of the below calculation (without rounding, to the extent reasonably practicable for the Lender, taking into account the capabilities of any software used for that purpose):

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

"**ACCDR**" means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

"**tn<sub>i</sub>**" means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

"**Cumulation Period**" means the period from, and including, the first RFR Banking Day of that Term to, and including, that Cumulated RFR Banking Day;

"**dcc**" has the meaning given to that term above; and



the "**Annualised Cumulative Compounded Daily Rate**" for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to five decimal places) calculated as set out below:

$$\left[ \prod_{i=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{tn_i}$$

where:

"**d<sub>0</sub>**" means the number of RFR Banking Days in the Cumulation Period;

"**Cumulation Period**" has the meaning given to that term above;

"**i**" means a series of whole numbers from one to d<sub>0</sub>, each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

"**DailyRate<sub>i-LP</sub>**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day "**i**";

"**ni**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;

"**dcc**" has the meaning given to that term above; and

"**tn<sub>i</sub>**" has the meaning given to that term above.

## Schedule 9

### CUMULATIVE COMPOUNDED RFR RATE

The "**Cumulative Compounded RFR Rate**" for any Term for a Compounded Rate Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of "**Annualised Cumulative Compounded Daily Rate**" in Schedule 6 (Daily Non-Cumulative Compounded RFR Rate) calculated as set out below:

$$\left[ \prod_{i=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{dcc} \right) - 1 \right] \times \frac{dcc}{d}$$

where:

"**d<sub>0</sub>**" means the number of RFR Banking Days during the Term;

"**i**" means a series of whole numbers from one to d<sub>0</sub>, each representing the relevant RFR Banking Day in chronological order during the Term;

"**DailyRate<sub>i-LP</sub>**" means for any RFR Banking Day "**i**" during the Term, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day "**i**";

"**n<sub>i</sub>**" means, for any RFR Banking Day "**i**", the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;

"**dcc**" means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number; and

"**d**" means the number of calendar days during that Term.

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**END OF AMENDED AND RESTATED AGREEMENT**

## SIGNATORIES

Company

**U. S. STEEL KOŠICE, S.R.O.**

By: Silvia Gaálová

Name: Ing. Silvia Gaálová, FCCA

Title: Company Executive

By: Elena Petrášková

Name: JUDr. Elena Petrášková, LL.M

Title: Company Executive

Lender

**ING BANK N.V., POBOČKA ZAHRANIČNEJ BANKY**

By: Marian Tatár

Name: Marian Tatár

Title: Country Manager

By: Martin Borodovčák

Name: Martin Borodovčák

Title: Head of Clients

## **United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement**

United States Steel Corporation, a Delaware Corporation (herein called the "Corporation"), grants to the employee of the employing company identified below (the "Participant") a Performance Share Award representing the right to receive a specified number of shares of the common stock of the Corporation ("Shares") set forth below, which right, if payable, shall be paid in Shares:

**Name of Participant:**

**Name of Employing Company: (The company recognized by the Corporation on Date of Grant as employing the Participant.)**

**Target Number of Shares  
Subject to Award: SHARES**

**Maximum Number of Shares  
Subject to Award: Two times the Number of Shares Subject to the Award**

**Performance Period: January 1, 2022 through December 31, 2025**

**Performance Goals: See Exhibit A, attached**

**Date of Grant: GRANT DATE**

By accepting this Award in any manner and within the time period prescribed by the Corporation, the Participant agrees that (1) this Performance Share Award is granted under and governed by the terms and conditions of the Corporation's 2016 Omnibus Incentive Compensation Plan, as amended from time to time (the "Plan"), and the Terms and Conditions contained herein including the Performance Goals set forth in Exhibit A attached hereto and the special provisions for the Participant's country of residence, if any, attached hereto as Exhibit B (collectively, the "Agreement"), (2) he or she has reviewed the Plan and the Agreement in their entirety, and (3) he or she has had an opportunity to obtain the advice of counsel prior to accepting this Award and fully understands all provisions of the Plan and the Agreement.

United States Steel Corporation

By: \_\_\_\_\_  
Authorized Officer

## Terms and Conditions

(1) Grant of Performance Share Award: The Performance Period for purposes of determining whether the Performance Goals have been met shall be the four-year Performance Period specified herein. The Performance Goals for purposes of determining whether, and the extent to which, the Performance Share Award is earned and payable are set forth in Exhibit A to this Agreement. Subject to the provisions of this Agreement, the Performance Share Award shall become payable, if vested, following the Committee's determination and certification after the end of the Performance Period, as to whether and the extent to which the Performance Goals have been achieved; provided that the Committee retains no discretion to reduce or increase Performance Share Awards that become payable as a result of performance measured against the Performance Goals.

(2) Payment of Award: If and to the extent the Performance Share Award is vested, earned and payable, the Corporation shall cause a stock certificate to be issued in the Participant's name, for no cash consideration, for the number of shares of common stock of the Corporation determined by the Committee to be payable pursuant to paragraph 1 hereof. Payment shall be made following the end of the Performance Period and certification by the Committee, and in no event more than two and one-half months following the end of the calendar year in which the Performance Period ends, except as otherwise provided in Section 11. No dividends or dividend equivalents shall be payable with respect to the Performance Share Award before the Performance Goal has been achieved and the Performance Share Award has been determined to be earned.

(3) Transferability: The Participant shall not sell, transfer, assign, pledge or otherwise encumber or dispose of any portion of the Performance Share Award and the right to receive Shares, and any attempt to sell, transfer, assign, pledge or encumber any portion of the Shares prior to the payment, if at all, of a stock certificate in the name of the Participant shall have no effect, regardless of whether voluntary, involuntary, by operation of law or otherwise.

(4) Change in Control: Notwithstanding anything to the contrary stated herein, in the case of a Change in Control of the Corporation, (a) the Performance Period shall automatically end on the business day immediately preceding the closing date of the Change in Control, and (b) the actual performance for the abbreviated Performance Period as calculated below shall be measured against the established Performance Goals, the performance criteria shall be deemed satisfied at the greater of the actual performance level or the target performance level with respect to each Performance Goal (the "Achieved Performance Share Award"), and the balance of the Performance Share Award, if any, shall be forfeited. The Corporation's actual performance level for the abbreviated Performance Period shall be calculated as follows: completed measurement periods shall be measured against the established Performance Goals and the performance criteria shall be deemed satisfied only to the extent the actual performance was achieved; and incomplete measurement periods shall be deemed achieved at the established target Performance Goal.

(5) Vesting: To vest in this Performance Share Award, the Participant must continue as an active employee of an Employing Company during the Performance Period and through the date on which the Committee certifies whether the Performance Goal relating to the Performance Period has been achieved, subject to the following:

- (a) Unless otherwise determined by the Committee, in the event of a Termination of the Participant's employment due to death or becoming

Disabled, following the attainment of Normal Retirement Age, or following the attainment of Early Retirement Age, or under circumstances which would qualify the Participant for benefits under a severance plan of the Corporation (including, as applicable, the execution, without revocation, of a waiver and release of claims) the Performance Share Award vests based upon the number of complete months worked by the Participant during the Performance Period in relation to the number of whole months in the Performance Period and the remainder shall be forfeited. Unless otherwise determined by the Committee, in the event of a Termination with Consent, the Participant shall remain entitled to vest in the total number of Shares issuable under the Performance Share Award, subject to the determinations with respect to achievement of the Performance Goals.

- (b) The Performance Share Award will be forfeited automatically upon any other Termination of employment (including but not limited to any voluntary termination by the Participant or any Termination by the Corporation or the Employing Company for Cause or without Cause) prior to the date on which the Committee certifies whether the Performance Goal relating to the Performance Period has been achieved, such forfeiture being without consideration or without further action required of the Corporation or Employing Company.

(6) Termination of Employment: Notwithstanding any other terms or conditions of this Plan or this Agreement to the contrary, in the event of the Participant's Termination of employment, regardless of the reason for such Termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any, the Participant's rights under this Agreement will terminate effective as of the date that the Participant is no longer actively employed by an Employing Company and will not be extended by any notice period. For purposes of the Performance Share Award, active employment does not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any. The Committee shall have the exclusive discretion to determine when the Participant is no longer actively employed for purposes of the Performance Share Award.

(7) Adjustments and Recoupment: The Target and Maximum number of Shares are subject to adjustment as provided in Section 8 of the Plan. The Participant shall be notified of such adjustment and such adjustment shall be binding upon the Corporation and the Participant. Consistent with Section 8 of this Agreement, this Award shall be administered in accordance with, and is subject to, any recoupment policies and provisions prescribed by the Plan at the time of such Award; notwithstanding the foregoing, this Award shall be subject to all recoupment provisions required by law from time to time. In its sole discretion, the Committee shall have the authority to amend, waive or apply the terms of any recoupment policies or provisions not required by law, in whole or in part, to the extent necessary or advisable to comply with applicable local laws, as determined by the Committee.

(8) Interpretation and Amendments: This Award and the issuance, vesting and delivery of Shares are subject to, and shall be administered in accordance with, the provisions of the Plan. No amendment of this Agreement or the Plan may, without the consent of the Participant, affect the rights of the Participant under this Award in a materially adverse manner. For purposes of the foregoing sentence, an amendment that

affects the tax treatment of the Performance Share Award or that is necessary to comply with securities or other laws applicable to the issuance of Shares shall not be considered as affecting the Participant's rights in a materially adverse manner. In the event of a conflict between the Plan and this Agreement, unless this Agreement specifies otherwise, the Plan shall control. All capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Plan.

(9) Compliance with Laws: The obligations of the Corporation and the rights of the Participant are subject to all applicable laws, rules and regulations including, without limitation, the U.S. Securities Exchange Act of 1934, as amended; the U.S. Securities Act of 1933, as amended; the U.S. Internal Revenue Code of 1986, as amended; and any other applicable laws, whether U.S. origin or otherwise. No Shares will be issued or delivered to the Participant under the Plan unless and until there has been compliance with such applicable laws.

(10) Acceptance of Award: The Award shall not be payable unless it is accepted by the Participant and notice of such acceptance is received by the Corporation.

(11) Taxes/Section 409A: The Participant acknowledges that, regardless of any action taken by the Corporation or the Employing Company, the ultimate liability for any or all income tax, social security, payroll tax, payment on account or other tax-related withholding or liability in connection with any aspect of the Performance Share Award, including the grant, vesting, or settlement of the Performance Share Award or the subsequent sale of Shares ("Tax-Related Items") is and remains his or her responsibility and may exceed the amount withheld by the Corporation or the Employing Company. Furthermore, the Participant acknowledges that the Corporation and/or the Employing Company (a) make no representations or undertakings regarding the treatment of any Tax-Related Items; and (b) do not commit to and are under no obligation to structure the terms of the grant of the Performance Share Award or any aspect of the Participant's participation in the Plan to reduce or eliminate his or her liability for Tax-Related Items or to achieve any particular tax result. Further, if the Participant has become subject to Tax-Related Items in more than one jurisdiction between the Date of Grant and the date of any relevant taxable event, the Participant acknowledges that the Corporation and/or the Employing Company (or former Employing Company, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction. Prior to the relevant taxable event, the Participant shall pay or make adequate arrangements satisfactory to the Corporation and/or the Employing Company to satisfy all Tax-Related Items of the Corporation and/or the Employing Company. In this regard, the Participant shall pay any Tax-Related Items directly to the Corporation or the Employing Company in cash upon request. In addition, the Participant authorizes the Corporation and/or the Employing Company, or their respective agents, at their discretion, to satisfy the obligations with regard to all applicable Tax-Related Items by one or a combination of the following methods: (1) withholding from Participant's wages or other cash compensation paid to Participant by the Corporation and/or the Employing Company; (2) withholding from proceeds of the sale of Shares issued upon payment of the Performance Share Award either through a voluntary sale or through a mandatory sale arranged by the Corporation (on the Participant's behalf pursuant to this authorization) through such means as the Corporation may determine in its sole discretion (whether through a broker or otherwise); or (3) withholding in Shares to be issued upon payment of the Performance Share Award. If the Corporation gives the Participant the power to choose the withholding method, and the Participant does not make a choice, then the Corporation will at its discretion withhold in Shares as stated in alternative (3) herein.



To avoid negative accounting treatment, the Corporation may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates. If the Corporation withholds at a rate other than the minimum statutory rate, such as the maximum withholding rate, then the refund of any over-withheld amount shall be paid in cash and the Participant will have no entitlement to the Common Stock equivalent. If the Tax-Related Items are satisfied by withholding in Shares issuable upon vesting of the Performance Share Award, for tax purposes, the Participant is deemed to have been issued the full number of Shares subject to the Performance Share Award, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items. Finally, the Participant shall pay to the Corporation or the Employing Company any amount of Tax-Related Items due as a result of any aspect of the Participant's participation in the Plan. The Participant understands that no Shares or proceeds from the sale of Shares shall be delivered to Participant, notwithstanding the vesting of the Performance Share Award, unless and until the Participant shall have satisfied any obligation for Tax-Related Items with respect thereto.

Notwithstanding anything in this Section 11 to the contrary, if the Performance Share Award is considered nonqualified deferred compensation, the fair market value of the shares withheld together with the amount of cash withheld may not exceed the liability for Tax-Related Items.

It is the intent that the vesting or the payments of this Performance Share Award shall either qualify for exemption from or comply with the requirements of Section 409A of the Code ("Section 409A"), and any ambiguities herein will be interpreted to so comply. The Corporation reserves the right, to the extent the Corporation deems necessary or advisable in its sole discretion, to unilaterally amend or modify this Agreement as may be necessary to ensure that all vesting or settlements provided under this Agreement are made in a manner that qualifies for exemption from or complies with Section 409A; provided, however, that the Corporation makes no representation that the vesting or settlement of the Performance Share Award provided under this Agreement will be exempt from Section 409A and makes no undertaking to preclude Section 409A from applying to the vesting or settlement of Performance Share Awards provided under this Agreement. In the event that any payment to a U.S. taxpayer or Participant otherwise subject to U.S. taxation, with respect to a Performance Share Award is considered to be based upon separation from service, and not compensation the Participant could receive without separating from service, then such amounts may not be paid until the first business day of the seventh month following the date of the Participant's termination if the Participant is a "specified employee" under Section 409A of the Code upon his separation from service.

(12) Nature of the Award: Nothing herein shall be construed as giving Participant any right to be retained in the employ of an Employing Company or affect any right that the Employing Company may have to terminate the employment of such Participant. Further, by accepting this Performance Share Award, the Participant acknowledges that:

- (a) the Plan is established voluntarily by the Corporation, it is discretionary in nature and may be modified, amended, suspended or terminated by the Corporation at any time, to the extent permitted by its terms;
- (b) the grant of the Performance Share Award is voluntary and occasional and does not create any contractual or other right to receive future Performance Awards, or benefits in lieu of Performance Awards, even if Performance Awards have been granted in the past;

- (c) all decisions with respect to future Performance Award grants, if any, will be at the sole discretion of the Committee;
- (d) the Participant is voluntarily participating in the Plan;
- (e) the Performance Share Award and the Shares subject to the Performance Share Award are extraordinary items which do not constitute compensation of any kind for services of any kind rendered to the Corporation or to the Employing Company, and which are outside the scope of the Participant's employment contract, if any;
- (f) the Performance Share Award and the Shares subject to the Performance Share Award are not part of normal or expected compensation or salary for purposes of calculating any severance, resignation, termination, dismissal, redundancy, end-of-service payments, bonuses, long-service awards, pension or retirement benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Corporation or the Employing Company or any Subsidiary or affiliate of the Corporation;
- (g) the Performance Share Award and the Shares subject to the Performance Share Award are not intended to replace any pension rights or compensation;
- (h) the grant of the Performance Share Award will not be interpreted to form an employment contract or relationship with the Corporation, the Employing Company or any Subsidiary or affiliate of the Corporation;
- (i) the future value of the Shares underlying the Performance Share Award is unknown, indeterminable and cannot be predicted with certainty;
- (j) no claim or entitlement to compensation or damages arises from forfeiture of the Performance Share Award resulting from termination of the Participant's employment by the Corporation or the Employing Company (for any reason whether or not in breach of applicable labor laws or the terms of the Participant's employment agreement, if any), and in consideration of the grant of the Performance Share Award to which the Participant is not otherwise entitled, the Participant irrevocably agrees never to institute any claim against the Corporation or the Employing Company, waives his or her ability, if any, to bring any such claim, and releases the Corporation and the Employing Company from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, the Participant shall be deemed irrevocably to have agreed not to pursue such claim and agreed to execute any and all documents necessary to request dismissal or withdrawal of such claim;
- (k) it is the Participant's sole responsibility to investigate and comply with any applicable exchange control laws in connection with the issuance and delivery of Shares pursuant to the vesting of the Performance Share Award;
- (l) the Corporation and the Employing Company are not providing any tax, legal or financial advice, nor are the Corporation or the Employing

Company making any recommendations regarding the Participant's participation in the Plan or the Participant's acquisition or sale of the Shares underlying the Performance Share Award;

- (m) the Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan;
- (n) unless otherwise provided in the Plan or by the Corporation in its discretion, the Performance Share Award and the benefits evidenced by this Agreement do not create any entitlement to have the Performance Share Award or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the Shares of the Corporation; and
- (o) the following provisions apply only if the Participant is providing services outside the United States:
  - (i) the Performance Share Award and Shares underlying the Performance Share Award are not part of normal or expected compensation for any purpose; and
  - (ii) the Participant acknowledges and agrees that neither the Corporation nor the Employing Company shall be liable for any foreign exchange rate fluctuation between the local currency and the United States Dollar that may affect the value of the Performance Share Award or of any amounts due to the Participant pursuant to the settlement of the Performance Share Award or the subsequent sale of any Shares acquired upon settlement.

(13) Data Privacy:

- (a) The Participant hereby explicitly, unambiguously and voluntarily consents to the collection, use, disclosure and transfer, in electronic or other form, of his or her personal data as described in this Agreement and any other Performance Share Award materials ("Data") by and among, as applicable, any Employing Company and the Corporation for the exclusive purpose of implementing, administering, and managing his or her participation in the Plan.
- (b) The Participant understands that any Employing Company and the Corporation may collect, maintain, process and disclose certain personal information about him or her, including, but not limited to, his or her name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any Shares or directorships held in the Corporation, details of all equity awards or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in his or her favor, for the exclusive purpose of implementing, administering, and managing the Plan.
- (c) The Participant acknowledges that Data will be transferred to any broker as designated by the Corporation and/or one or more stock plan service provider(s) selected by the Corporation, which may assist the Corporation with the implementation, administration and management of the Plan. The

Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country (e.g., the United States) may have different, including less stringent, data privacy laws and protections than his or her country. The Participant understands that if he or she resides outside the United States, he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. The Participant authorizes the Corporation and any other possible recipients that may assist the Corporation (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing his or her participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Participant may elect to deposit any Shares acquired upon vesting of the Performance Share Awards.

- (d) The Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan, including to maintain records regarding participation. The Participant understands that if he or she resides in certain jurisdictions, to the extent required by applicable laws, he or she may, at any time, request access to Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents given by accepting these Performance Share Awards, in any case without cost, by contacting in writing his or her local human resources representative. Further, the Participant understands that he or she is providing these consents on a purely voluntary basis. If the Participant does not consent or if he or she later seeks to revoke his or her consent, his or her engagement as a service provider with any Employing Company and the Corporation will not be adversely affected; the only consequence of refusing or withdrawing his or her consent is that the Corporation will not be able to grant him or her Performance Share Awards under the Plan or administer or maintain Performance Share Awards. Therefore, the Participant understands that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan (including the right to retain these Performance Share Awards). The Participant understands that he or she may contact his or her local human resources representative for more information on the consequences of his or her refusal to consent or withdrawal of consent.

(14) Electronic Delivery: The Corporation may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means or request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through any on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Corporation intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Corporation. The Participant consents to the electronic delivery of the Plan documents and the Agreement. The Participant acknowledges that he or she may receive from the Corporation a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Corporation by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy

of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Corporation or any designated third-party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents or may change the electronic mail address to which such documents are to be delivered (if the Participant has provided an electronic mail address) at any time by notifying the Corporation of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents.

(15) Severability: In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

(16) Language: If the Participant has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

(17) Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of laws thereof. For purposes of litigating any dispute that arises under this grant or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the Commonwealth of Pennsylvania, and agree that such litigation shall be conducted in the courts of Allegheny County, Pennsylvania, or the federal courts for the United States for the Western District of Pennsylvania, where this grant is made and/or to be performed.

(18) Exhibit B: Notwithstanding any provisions in this Agreement, the Performance Share Award shall be subject to any special terms and conditions set forth in Exhibit B to this Agreement for the Participant's country. Moreover, if the Participant relocates to one of the countries included in Exhibit B, the special terms and conditions for such country will apply to the Participant, to the extent the Corporation determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan.

(19) Insider Trading Restrictions/Market Abuse Laws: The Participant acknowledges that, depending on the Participant's country of residence, the Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect the Participant's ability to acquire or sell Shares or rights to Shares (e.g., Performance Share Awards) under the Plan during such times as the Participant is considered to have "inside information" regarding the Corporation (as defined by any applicable laws in the Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable insider trading policy maintained by the Corporation. The Participant acknowledges that it is the Participant's responsibility to comply with any applicable restrictions, and the Participant is advised to speak to his or her personal advisor on this matter.

(20) Imposition of Other Requirements: The Corporation reserves the right to impose other requirements on the Participant's participation in the Plan, on the Performance Share Award and on any Shares acquired under the Plan, to the extent the Corporation determines it is necessary or advisable in order to comply with local law, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

(21) Headings: Headings of paragraphs and sections used in this Agreement are for convenience only and are not part of this Agreement, and must not be used in construing it.

(22) Waiver: The Participant acknowledges that a waiver by the Corporation of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Participant.

(23) Definitions: In addition to the capitalized terms defined in the Plan, the following terms as used herein shall have the following meanings when used with initial capital letters:

- (a) "Early Retirement Age" shall mean the Participant's (1) attainment of age 55 and completion of ten (10) years of service with the Corporation or an Employing Company, or (2) completion of thirty (30) years of service with the Corporation or an Employing Company.
- (b) "Normal Retirement Age" shall mean, with respect only to a Participant who is a U.S. employee and is not a participant in the United States Steel Corporation Supplemental Pension Program, the later of (1) six (6) months following the Date of Grant, or (2) the earlier of (i) attainment of age 65, or (ii) attainment or age 60 and completion of five (5) years of service with the Corporation or an Employing Company.
- (c) "Termination" shall mean the applicable employee's termination of employment. For purposes of this Agreement, (i) for U.S. taxpayers, Termination and words of similar effect shall be construed consistent with a "separation from service" under Section 409A of the Code to the extent required by Section 409A of the Code, and (ii) for non-U.S. taxpayers, Termination and words of similar effect shall mean that the Participant is no longer actively employed by an Employing Company, without regard to any notice period (i.e., active employment would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any)
- (d) "Termination with Consent" shall mean Termination with the express written consent of the Corporation expressly referencing an entitlement to vesting of the Performance Share Award.

## **EXHIBIT A**

### **Performance Goals for the Performance Period**

[Omitted.]

## **EXHIBIT B**

### **Additional Terms and Conditions of the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement**

#### **TERMS AND CONDITIONS**

This Exhibit B includes additional terms and conditions that govern the Performance Share Award granted to the Participant under the Plan if he or she works or resides in one of the countries listed below. If the Participant is a citizen or resident of a country other than that in which the Participant is currently working or transfers employment to another country after the Performance Share Award is granted, the Corporation shall, in its discretion, determine to what extent the terms and conditions contained herein shall be applicable to the Participant. Certain capitalized terms used but not defined in this Exhibit B have the meanings set forth in the Plan and/or the Agreement.

#### **NOTIFICATIONS**

This Exhibit B also includes information regarding exchange controls and certain other issues of which the Participant should be aware with respect to participation in the Plan. The information is based on the laws in effect in the applicable countries as of February 2018. Such laws are often complex and change frequently. As a result, the Corporation strongly recommends that the Participant not rely on the information in this Exhibit B as the only source of information relating to the consequences of his or her participation in the Plan because the information may be out of date at the time that the Participant vests in the Performance Share Award or sells Shares acquired under the Plan.

In addition, the information contained herein is general in nature and may not apply to the Participant's particular situation, and the Corporation is not in a position to assure the Participant of a particular result. Accordingly, the Participant is advised to seek appropriate professional advice as to how the relevant laws in his or her country may apply to the Participant's situation.

Finally, if the Participant is a citizen or resident of a country other than that in which the Participant is currently working or transfers employment to another country after the Performance Share Award is granted, the information contained herein may not be applicable.

#### **CANADA**

##### **TERMS AND CONDITIONS**

**Performance Share Award Payable Only in Shares.** Notwithstanding any discretion in the Plan or anything to the contrary in the Agreement, the grant of the Performance Share Award does not provide any right for the Participant to receive a cash payment in settlement of the Performance Share Award and the Performance Share Award is payable in Shares only.

**Securities Law Commitment on Sale of Shares.** As a condition of the grant of the Performance Share Award and the issuance of any Shares upon vesting of the Performance Share Award, the Participant undertakes to only sell, trade or otherwise dispose of any Shares issued to the Participant under the Plan in accordance with applicable Canadian securities laws. Under current laws, this means that the Participant will need to sell any Shares issued under the Plan using the services of a broker or dealer that is registered under Canadian provincial or territorial securities legislation. The Participant will not be permitted to sell, trade or otherwise dispose of his or her Shares through the Corporation's designated U.S. plan broker, Fidelity Investments, unless such



sale, trade or disposal can be executed in accordance with applicable securities laws. As legal requirements may be subject to change, Participants are encouraged to seek specific advice about their individual situation before taking any action with respect to Shares issued to them under the Plan.

By accepting this Performance Share Award, the Participant expressly agrees that he or she will consult with a personal legal advisor to address any questions that may arise regarding compliance with this requirement. The Participant understands and agrees that he or she will be liable for any failure to comply with the foregoing provision.

**The following provisions will apply if the Participant is a resident of Quebec:**

**Language Consent.** The parties acknowledge that it is their express wish that the Agreement, this Exhibit B and all documents, notices, and legal proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English.

***Consentement relatif à la langue Maisie:** Les parties reconnaissent avoir exigé la rédaction en anglais de l'accord, cette pièce B, y ainsi que de tous documents, avis, décisions et procédures judiciaires, exécutées, données ou intentées en vertu de, ou liées directement ou indirectement aux présentes.*

**Data Privacy.** This provision supplements Section 13 of the Agreement:

The Participant hereby authorizes the Corporation and the Employing Company and their respective representatives to discuss with and obtain all relevant information from all personnel, professional or not, involved in the administration and operation of the Plan. The Participant further authorizes the Corporation and any Subsidiary or affiliate and the Committee to disclose and discuss the Plan with their respective advisors. The Participant further authorizes the Corporation and any Subsidiary or affiliate to record such information and to keep such information in the Participant's employee file.

## **NOTIFICATIONS**

**Foreign Asset/Account Reporting Information.** Canadian residents are required to report any foreign property (e.g., Shares acquired under the Plan and possibly Performance Share Awards) on form T1135 (Foreign Income Verification Statement) if the total cost of their foreign property exceeds C\$100,000 at any time in the year. It is Participant's responsibility to comply with these reporting obligations, and Participant is encouraged to consult his or own personal tax advisor in this regard.

## **SLOVAK REPUBLIC**

## **NOTIFICATIONS**

**Foreign Assets Reporting Information.** If the Participant permanently resides in the Slovak Republic and, apart from being employed, carries on business activities as an independent entrepreneur (in Slovakian, podnikateľ), the Participant will be obligated to report his or her foreign assets (including any foreign securities such as Shares acquired under the Plan) to the National Bank of Slovakia if the value of the foreign assets exceeds E2,000,000. These reports must be submitted on a monthly basis by the 15th day of the respective calendar month, as well as on a quarterly basis by the 15th day of the calendar month following the respective calendar quarter, using notification form DEV (NBS) 1-12, which may be found at the National Bank of Slovakia's website at [www.nbs.sk](http://www.nbs.sk).

Furthermore, if the above preconditions are met (i.e. permanent residence in the Slovak Republic and entrepreneurial activities in addition to the employment), the Participant will be obliged to report certain additional information under Section 34b of Act No. 566/1992 Coll. on National Bank of Slovakia as amended. This information is mostly of general nature and contains personal identification data of the Participant - place and date of birth, birth certificate number, academic degree, etc., as well as telephone and fax number and e-mail address of the Participant, if any.

**Securities Disclaimer.** The grant of the Performance Share Award is exempt from the requirement to publish a prospectus under the current securities rules applicable in the Slovak Republic.

## **UNITED KINGDOM**

### **NOTIFICATIONS**

**Securities Disclosure.** This Agreement is not an approved prospectus for the purposes of section 85(1) of the Financial Services and Markets Act 2000 ("FSMA") and no offer of transferable securities to the public (for the purposes of section 102B of FSMA) is being made in connection with the Plan. The Plan and the Performance Share Award are exclusively available in the UK to bona fide employees and former employees and any other UK subsidiary of the Corporation.

**Taxation.** The Performance Share Award is not intended to be qualified for purposes of taxation or National Insurance Contributions applicable in the United Kingdom.

## **EUROPEAN UNION AND EUROPEAN ECONOMIC AREA**

For Participants who reside in the European Union or the European Economic Area, the following provisions replace the Data Privacy provisions in Section 13 of the Agreement.

- (a) **Data Collected and Purposes of Collection.** The Participant understands that the Corporation, acting as controller, as well as the Employing Company, may collect, to the extent permissible under applicable law, certain personal information about the Participant, including name, home address and telephone number, information necessary to process the Performance Share Awards (e.g., mailing address for a check payment or bank account wire transfer information), date of birth, social insurance number or other identification number, salary, nationality, job title, employment location, any Shares or directorships held in the Corporation (but only where needed for legal or tax compliance), any other information necessary to process mandatory tax withholding and reporting, details of all Performance Share Awards granted, canceled, vested, unvested or outstanding in the Participant's favor, and where applicable service termination date and reason for termination (all such personal information is referred to as "Data"). The Data is collected from the Participant, any Employing Company and the Corporation, for the exclusive purpose of implementing, administering and managing the Plan pursuant to the terms of this Agreement. The legal basis (that is, the legal justification) for processing the Data is to perform this Agreement. The Data must be provided in order for the Participant to participate in the Plan and for the parties to this Agreement to perform their respective obligations thereunder. If the Participant does not provide Data, he or she will not be able to participate in the Plan and become a party to this Agreement.

- (b) **Transfers and Retention of Data.** The Participant acknowledges and understands that the Employing Company will transfer Data to the Corporation for purposes of plan administration. The Employing Company and the Corporation may also transfer the Participant's Data to other service providers (such as accounting firms, payroll processing firms or tax firms), as may be selected by the Corporation in the future, to assist the Corporation with the implementation, administration and management of this Agreement. The Participant understands that the recipients of the Data may be located in the United States, a country that does not benefit from an adequacy decision issued by the European Commission and is not listed by the Swiss supervisory authority as a country with adequate data protection legislation. Where a recipient is located in a country that does not benefit from an adequacy decision or adequacy listing, the transfer of the Data to that recipient will be made pursuant to European Commission-approved standard contractual clauses when required by applicable law, a copy of which may be obtained by contacting [dataprotectionask.uss.com](http://dataprotectionask.uss.com) or [complianceofficerauss.com](http://complianceofficerauss.com). The Participant understands that Data will be held only as long as is necessary to implement, administer and manage the Participant's rights and obligations under this Agreement, and for the duration of the relevant statutes of limitations, which may be longer than the term of this Agreement.
- (c) **The Participant's Rights in Respect of Data.** The Corporation will take steps in accordance with applicable legislation to keep Data accurate, complete and up-to-date. The Participant is entitled to have any inadequate, incomplete or incorrect Data corrected (that is, rectified). The Participant also has the right to request access to his or her Data as well as additional information about the processing of that Data. Further, the Participant is entitled to object to the processing of Data or have the Participant's Data erased, under certain circumstances. As from May 25, 2018, and subject to conditions set forth in applicable law, the Participant also is entitled to (i) restrict the processing of his or her Data so that it is stored but not actively processed (e.g., while the Corporation assesses whether the Participant is entitled to have Data erased) and (ii) receive a copy of the Data provided pursuant to this Agreement or generated by the Participant, in a common machine-readable format. To exercise his or her rights, the Participant may contact the local human resources representative. The Participant may also contact the relevant data protection supervisory authority, as he or she has the right to lodge a complaint. The data protection officer may be contacted at [dataprotectionAsk.com](http://dataprotectionAsk.com).

## **United States Steel Corporation 2016 Omnibus Incentive Compensation Plan Performance Share Award Grant Agreement**

United States Steel Corporation, a Delaware Corporation (herein called the "Corporation"), grants to the employee of the employing company identified below (the "Participant") a Performance Share Award representing the right to receive a specified number of shares of the common stock of the Corporation ("Shares") set forth below, which right, if payable, shall be paid in Shares:

### **Name of Participant:**

**Name of Employing Company: United States Steel Corporation**

**Target Number of Shares**

**Subject to Award: SHARES**

**Maximum Number of Shares**

**Subject to Award: Two times the Target Number of Shares Subject to the Award**

**Performance Period: January 1, 2022 through December 31, 2025**

**Performance Goals: See Exhibit A, attached**

**Date of Grant: GRANT DATE**

By accepting this Award in any manner and within the time period prescribed by the Corporation, the Participant agrees that (1) this Performance Share Award is granted under and governed by the terms and conditions of the Corporation's 2016 Omnibus Incentive Compensation Plan, as amended from time to time (the "Plan"), and the provisions of this Performance Share Award Grant Agreement, including the Terms and Conditions contained herein and the Performance Goals set forth in Exhibit A attached hereto (collectively, the "Agreement"), (2) he or she has reviewed the Plan and the Agreement in their entirety, and (3) he or she has had an opportunity to obtain the advice of counsel prior to accepting this Award and fully understands all provisions of the Plan and the Agreement.

United States Steel Corporation

By: \_\_\_\_\_  
Authorized Officer

## Terms and Conditions

(1) Grant of Performance Share Award: The Performance Period for purposes of determining whether the Performance Goals have been met shall be the four-year Performance Period specified herein. The Performance Goals for purposes of determining whether, and the extent to which, the Performance Share Award is earned and payable are set forth in Exhibit A to this Agreement. Subject to the provisions of this Agreement, the Performance Share Award shall become payable, if vested, following the Committee's determination and certification after the end of the Performance Period, as to whether and the extent to which the Performance Goals have been achieved. Notwithstanding the foregoing, the Committee in its sole discretion may reduce or eliminate any portion of the Performance Share Award or the number of Shares to be issued as a result of performance measured against the Performance Goals.

(2) Payment of Award: If and to the extent the Performance Share Award is vested, earned and payable, the Corporation shall cause a stock certificate to be issued in the Participant's name, for no cash consideration, for the number of shares of common stock of the Corporation determined by the Committee to be payable pursuant to paragraph 1 hereof. Payment shall be made following the end of the Performance Period and certification by the Committee, and in no event more than two and one-half months following the end of the calendar year in which the Performance Period ends, except as otherwise provided in Section 11. No dividends or dividend equivalents shall be payable with respect to the Performance Share Award before the Performance Goal has been achieved and the Performance Share Award has been determined to be earned.

(3) Transferability: The Participant shall not sell, transfer, assign, pledge or otherwise encumber or dispose of any portion of the Performance Share Award and the right to receive Shares, and any attempt to sell, transfer, assign, pledge or encumber any portion of the Shares prior to the payment, if at all, of a stock certificate in the name of the Participant shall have no effect, regardless of whether voluntary, involuntary, by operation of law or otherwise.

(4) Change in Control: Notwithstanding anything to the contrary stated herein, in the event of a Change in Control of the Corporation, the Performance Share Award shall immediately vest at the target performance level with respect to each Performance Goal.

(5) Vesting: To vest in this Performance Share Award, the Participant must continue as an active employee of an Employing Company during the Performance Period and through the date on which the Committee certifies whether the Performance Goal relating to the Performance Period has been achieved, subject to the following:

- (a) Unless otherwise determined by the Committee, in the event of a Termination of the Participant's employment due to death or becoming Disabled, following the attainment of Normal Retirement Age, or under circumstances which would qualify the Participant for benefits under a severance plan of the Corporation (including, as applicable, the execution, without revocation, of a waiver and release of claims) the Performance Share Award vests based upon the number of complete months worked by the Participant during the Performance Period in relation to the number of whole months in the Performance Period and the remainder shall be forfeited. Unless otherwise determined by the Committee, in the event of a Termination with Consent, the Participant shall remain entitled to vest in the total number of Shares issuable under the Performance Share Award,

subject to the determinations with respect to achievement of the Performance Goals.

- (b) The Performance Share Award will be forfeited automatically upon any other Termination of employment (including but not limited to any voluntary termination by the Participant or any Termination by the Corporation or the Employing Company for Cause or without Cause) prior to the date on which the Committee certifies whether the Performance Goal relating to the Performance Period has been achieved, such forfeiture being without consideration or without further action required of the Corporation or Employing Company.

(6) Termination of Employment: Notwithstanding any other terms or conditions of this Plan or this Agreement to the contrary, in the event of the Participant's Termination of employment, regardless of the reason for such Termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any, the Participant's rights under this Agreement will terminate effective as of the date that the Participant is no longer actively employed by an Employing Company and will not be extended by any notice period. For purposes of the Performance Share Award, active employment does not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any. The Committee shall have the exclusive discretion to determine when the Participant is no longer actively employed for purposes of the Performance Share Award.

(7) Adjustments and Recoupment: The Target and Maximum number of Shares are subject to adjustment as provided in Section 8 of the Plan. The Participant shall be notified of such adjustment and such adjustment shall be binding upon the Corporation and the Participant. Consistent with Section 8 of this Agreement, this Award shall be administered in accordance with, and is subject to, any recoupment policies and provisions prescribed by the Plan at the time of such Award; notwithstanding the foregoing, this Award shall be subject to all recoupment provisions required by law from time to time. In its sole discretion, the Committee shall have the authority to amend, waive or apply the terms of any recoupment policies or provisions not required by law, in whole or in part, to the extent necessary or advisable to comply with applicable local laws, as determined by the Committee.

(8) Interpretation and Amendments: This Award and the issuance, vesting and delivery of Shares are subject to, and shall be administered in accordance with, the provisions of the Plan. No amendment of this Agreement or the Plan may, without the consent of the Participant, affect the rights of the Participant under this Award in a materially adverse manner. For purposes of the foregoing sentence, an amendment that affects the tax treatment of the Performance Share Award or that is necessary to comply with securities or other laws applicable to the issuance of Shares shall not be considered as affecting the Participant's rights in a materially adverse manner. In the event of a conflict between the Plan and this Agreement, unless this Agreement specifies otherwise, the Plan shall control. All capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Plan.

(9) Compliance with Laws: The obligations of the Corporation and the rights of the Participant are subject to all applicable laws, rules and regulations including, without limitation, the U.S. Securities Exchange Act of 1934, as amended; the U.S. Securities Act of 1933, as amended; the U.S. Internal Revenue Code of 1986, as amended; and any

other applicable laws, whether U.S. origin or otherwise. No Shares will be issued or delivered to the Participant under the Plan unless and until there has been compliance with such applicable laws.

(10) Acceptance of Award: The Award shall not be payable unless it is accepted by the Participant and notice of such acceptance is received by the Corporation.

(11) Taxes/Section 409A: The Participant acknowledges that, regardless of any action taken by the Corporation or the Employing Company, the ultimate liability for any or all income tax, social security, payroll tax, payment on account or other tax-related withholding or liability in connection with any aspect of the Performance Share Award, including the grant, vesting, or settlement of the Performance Share Award or the subsequent sale of Shares ("Tax-Related Items") is and remains his or her responsibility and may exceed the amount withheld by the Corporation or the Employing Company. Furthermore, the Participant acknowledges that the Corporation and/or the Employing Company (a) make no representations or undertakings regarding the treatment of any Tax-Related Items; and (b) do not commit to and are under no obligation to structure the terms of the grant of the Performance Share Award or any aspect of the Participant's participation in the Plan to reduce or eliminate his or her liability for Tax-Related Items or to achieve any particular tax result. Further, if the Participant has become subject to Tax-Related Items in more than one jurisdiction between the Date of Grant and the date of any relevant taxable event, the Participant acknowledges that the Corporation and/or the Employing Company (or former Employing Company, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction. Prior to the relevant taxable event, the Participant shall pay or make adequate arrangements satisfactory to the Corporation and/or the Employing Company to satisfy all Tax-Related Items of the Corporation and/or the Employing Company. In this regard, the Participant shall pay any Tax-Related Items directly to the Corporation or the Employing Company in cash upon request. In addition, the Participant authorizes the Corporation and/or the Employing Company, or their respective agents, at their discretion, to satisfy the obligations with regard to all applicable Tax-Related Items by one or a combination of the following methods: (1) withholding from Participant's wages or other cash compensation paid to Participant by the Corporation and/or the Employing Company; (2) withholding from proceeds of the sale of Shares issued upon payment of the Performance Share Award either through a voluntary sale or through a mandatory sale arranged by the Corporation (on the Participant's behalf pursuant to this authorization) through such means as the Corporation may determine in its sole discretion (whether through a broker or otherwise); or (3) withholding in Shares to be issued upon payment of the Performance Share Award. If the Corporation gives the Participant the power to choose the withholding method, and the Participant does not make a choice, then the Corporation will at its discretion withhold in Shares as stated in alternative (3) herein.

To avoid negative accounting treatment, the Corporation may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates. If the Corporation withholds at a rate other than the minimum statutory rate, such as the maximum withholding rate, then the refund of any over-withheld amount shall be paid in cash and the Participant will have no entitlement to the Common Stock equivalent. If the Tax-Related Items are satisfied by withholding in Shares issuable upon vesting of the Performance Share Award, for tax purposes, the Participant is deemed to have been issued the full number of Shares subject to the Performance Share Award, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items. Finally, the Participant shall pay to the Corporation or the Employing Company any amount of Tax-Related Items due as a result of any aspect of the Participant's participation in the Plan. The Participant

understands that no Shares or proceeds from the sale of Shares shall be delivered to Participant, notwithstanding the vesting of the Performance Share Award, unless and until the Participant shall have satisfied any obligation for Tax-Related Items with respect thereto.

Notwithstanding anything in this Section 11 to the contrary, if the Performance Share Award is considered nonqualified deferred compensation, the fair market value of the shares withheld together with the amount of cash withheld may not exceed the liability for Tax-Related Items.

It is the intent that the vesting or the payments of this Performance Share Award shall either qualify for exemption from or comply with the requirements of Section 409A of the Code ("Section 409A"), and any ambiguities herein will be interpreted to so comply. The Corporation reserves the right, to the extent the Corporation deems necessary or advisable in its sole discretion, to unilaterally amend or modify this Agreement as may be necessary to ensure that all vesting or settlements provided under this Agreement are made in a manner that qualifies for exemption from or complies with Section 409A; provided, however, that the Corporation makes no representation that the vesting or settlement of the Performance Share Award provided under this Agreement will be exempt from Section 409A and makes no undertaking to preclude Section 409A from applying to the vesting or settlement of Performance Share Awards provided under this Agreement. In the event that any payment to a U.S. taxpayer or Participant otherwise subject to U.S. taxation, with respect to a Performance Share Award is considered to be based upon separation from service, and not compensation the Participant could receive without separating from service, then such amounts may not be paid until the first business day of the seventh month following the date of the Participant's termination if the Participant is a "specified employee" under Section 409A of the Code upon his separation from service.

(12) Nature of the Award: Nothing herein shall be construed as giving Participant any right to be retained in the employ of an Employing Company or affect any right that the Employing Company may have to terminate the employment of such Participant. Further, by accepting this Performance Share Award, the Participant acknowledges that:

- (a) the Plan is established voluntarily by the Corporation, it is discretionary in nature and may be modified, amended, suspended or terminated by the Corporation at any time, to the extent permitted by its terms;
- (b) the grant of the Performance Share Award is voluntary and occasional and does not create any contractual or other right to receive future Performance Awards, or benefits in lieu of Performance Awards, even if Performance Awards have been granted in the past;
- (c) all decisions with respect to future Performance Award grants, if any, will be at the sole discretion of the Committee;
- (d) the Participant is voluntarily participating in the Plan;
- (e) the Performance Share Award and the Shares subject to the Performance Share Award are extraordinary items which do not constitute compensation of any kind for services of any kind rendered to the Corporation or to the Employing Company, and which are outside the scope of the Participant's employment contract, if any;



- (f) the Performance Share Award and the Shares subject to the Performance Share Award are not part of normal or expected compensation or salary for purposes of calculating any severance, resignation, termination, dismissal, redundancy, end-of-service payments, bonuses, long-service awards, pension or retirement benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Corporation or the Employing Company or any Subsidiary or affiliate of the Corporation;
- (g) the Performance Share Award and the Shares subject to the Performance Share Award are not intended to replace any pension rights or compensation;
- (h) the grant of the Performance Share Award will not be interpreted to form an employment contract or relationship with the Corporation, the Employing Company or any Subsidiary or affiliate of the Corporation;
- (i) the future value of the Shares underlying the Performance Share Award is unknown, indeterminable and cannot be predicted with certainty;
- (j) no claim or entitlement to compensation or damages arises from forfeiture of the Performance Share Award resulting from termination of the Participant's employment by the Corporation or the Employing Company (for any reason whether or not in breach of applicable labor laws or the terms of the Participant's employment agreement, if any), and in consideration of the grant of the Performance Share Award to which the Participant is not otherwise entitled, the Participant irrevocably agrees never to institute any claim against the Corporation or the Employing Company, waives his or her ability, if any, to bring any such claim, and releases the Corporation and the Employing Company from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, the Participant shall be deemed irrevocably to have agreed not to pursue such claim and agreed to execute any and all documents necessary to request dismissal or withdrawal of such claim;
- (k) it is the Participant's sole responsibility to investigate and comply with any applicable exchange control laws in connection with the issuance and delivery of Shares pursuant to the vesting of the Performance Share Award;
- (l) the Corporation and the Employing Company are not providing any tax, legal or financial advice, nor are the Corporation or the Employing Company making any recommendations regarding the Participant's participation in the Plan or the Participant's acquisition or sale of the Shares underlying the Performance Share Award;
- (m) the Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan;
- (n) unless otherwise provided in the Plan or by the Corporation in its discretion, the Performance Share Award and the benefits evidenced by this Agreement do not create any entitlement to have the Performance

Share Award or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the Shares of the Corporation; and

- (o) the following provisions apply only if the Participant is providing services outside the United States:
  - (i) the Performance Share Award and Shares underlying the Performance Share Award are not part of normal or expected compensation for any purpose; and
  - (ii) the Participant acknowledges and agrees that neither the Corporation nor the Employing Company shall be liable for any foreign exchange rate fluctuation between the local currency and the United States Dollar that may affect the value of the Performance Share Award or of any amounts due to the Participant pursuant to the settlement of the Performance Share Award or the subsequent sale of any Shares acquired upon settlement.

(13) Data Privacy:

- (a) The Participant hereby explicitly, unambiguously and voluntarily consents to the collection, use, disclosure and transfer, in electronic or other form, of his or her personal data as described in this Agreement and any other Performance Share Award materials ("Data") by and among, as applicable, any Employing Company and the Corporation for the exclusive purpose of implementing, administering, and managing his or her participation in the Plan.
- (b) The Participant understands that any Employing Company and the Corporation may collect, maintain, process and disclose certain personal information about him or her, including, but not limited to, his or her name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any Shares or directorships held in the Corporation, details of all equity awards or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in his or her favor, for the exclusive purpose of implementing, administering, and managing the Plan.
- (c) The Participant acknowledges that Data will be transferred to any broker as designated by the Corporation and/or one or more stock plan service provider(s) selected by the Corporation, which may assist the Corporation with the implementation, administration and management of the Plan. The Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country (e.g., the United States) may have different, including less stringent, data privacy laws and protections than his or her country. The Participant understands that if he or she resides outside the United States, he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. The Participant authorizes the Corporation and any other possible recipients that may assist the Corporation (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of

implementing, administering and managing his or her participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Participant may elect to deposit any Shares acquired upon vesting of the Performance Share Awards.

- (d) The Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan, including to maintain records regarding participation. The Participant understands that if he or she resides in certain jurisdictions, to the extent required by applicable laws, he or she may, at any time, request access to Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents given by accepting these Performance Share Awards, in any case without cost, by contacting in writing his or her local human resources representative. Further, the Participant understands that he or she is providing these consents on a purely voluntary basis. If the Participant does not consent or if he or she later seeks to revoke his or her consent, his or her engagement as a service provider with any Employing Company and the Corporation will not be adversely affected; the only consequence of refusing or withdrawing his or her consent is that the Corporation will not be able to grant him or her Performance Share Awards under the Plan or administer or maintain Performance Share Awards. Therefore, the Participant understands that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan (including the right to retain these Performance Share Awards). The Participant understands that he or she may contact his or her local human resources representative for more information on the consequences of his or her refusal to consent or withdrawal of consent.

(14) Electronic Delivery: The Corporation may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means or request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through any on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Corporation intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Corporation. The Participant consents to the electronic delivery of the Plan documents and the Agreement. The Participant acknowledges that he or she may receive from the Corporation a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Corporation by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Corporation or any designated third-party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents or may change the electronic mail address to which such documents are to be delivered (if the Participant has provided an electronic mail address) at any time by notifying the Corporation of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents.

(15) Severability: In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

(16) Language: If the Participant has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

(17) Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of laws thereof. For purposes of litigating any dispute that arises under this grant or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the Commonwealth of Pennsylvania, and agree that such litigation shall be conducted in the courts of Allegheny County, Pennsylvania, or the federal courts for the United States for the Western District of Pennsylvania, where this grant is made and/or to be performed.

(18) Insider Trading Restrictions/Market Abuse Laws: The Participant acknowledges that, depending on the Participant's country of residence, the Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect the Participant's ability to acquire or sell Shares or rights to Shares (e.g., Performance Share Awards) under the Plan during such times as the Participant is considered to have "inside information" regarding the Corporation (as defined by any applicable laws in the Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable insider trading policy maintained by the Corporation. The Participant acknowledges that it is the Participant's responsibility to comply with any applicable restrictions, and the Participant is advised to speak to his or her personal advisor on this matter.

(19) Imposition of Other Requirements: The Corporation reserves the right to impose other requirements on the Participant's participation in the Plan, on the Performance Share Award and on any Shares acquired under the Plan, to the extent the Corporation determines it is necessary or advisable in order to comply with local law, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

(20) Headings: Headings of paragraphs and sections used in this Agreement are for convenience only and are not part of this Agreement, and must not be used in construing it.

(21) Waiver: The Participant acknowledges that a waiver by the Corporation of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Participant.

(22) Definitions: In addition to the capitalized terms defined in the Plan, the following terms as used herein shall have the following meanings when used with initial capital letters:

- (a) "Normal Retirement Age" shall mean the later of (1) six (6) months following the Date of Grant, or (2) attainment of age 65.
- (b) "Termination" shall mean the applicable employee's termination of employment. For purposes of this Agreement, (i) for U.S. taxpayers,

Termination and words of similar effect shall be construed consistent with a "separation from service" under Section 409A of the Code to the extent required by Section 409A of the Code, and (ii) for non-U.S. taxpayers, Termination and words of similar effect shall mean that the Participant is no longer actively employed by an Employing Company, without regard to any notice period (i.e., active employment would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any).

- (c) "Termination with Consent" shall mean Termination with the express written consent of the Corporation expressly referencing an entitlement to vesting of the Performance Share Award.

## **EXHIBIT A**

### **Performance Goals for the Performance Period**

[Omitted.]

**United States Steel Corporation 2016 Omnibus Incentive Compensation Plan  
Performance Non-Qualified Stock Option Grant Agreement**

United States Steel Corporation, a Delaware Corporation (herein called the "Corporation"), grants to the employee of the employing company identified below (the "Participant") a Performance Non-Qualified Stock Option ("Option") as set forth below:

<b>Name of Participant:</b>	<b>PARTICIPANT NAME</b>
<b>Name of Employing Company</b> <b>Number of Shares</b>	<b>United States Steel Corporation</b>
<b>Subject to the Option:</b>	<b># SHARES</b>
<b>Per-Share Exercise Price:</b>	<b>USS GRANT PRICE</b>
<b>Date of Grant:</b>	<b>December 30, 2021</b>
<b>Performance Period</b>	<b>January 1, 2022 through December 31, 2028</b>

By accepting this Award in any manner and within the time period prescribed by the Corporation, the Participant agrees that (1) this Option is granted under and governed by the terms and conditions of the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, as the same may be amended from time to time (the "Plan"), and the provisions of this Performance Non-Qualified Stock Option Grant Agreement, including the Terms and Conditions contained herein and the Performance Goals set forth on Exhibit A attached hereto (collectively, the "Agreement"), (2) he or she has reviewed the Plan and the Agreement in their entirety, and (3) he or she has had an opportunity to obtain the advice of counsel prior to accepting this Award and fully understands all provisions of the Plan and the Agreement. The Option may not be exercised unless it is accepted by the Participant in the manner and within the time period prescribed by the Corporation.

United States Steel Corporation

By: \_\_\_\_\_  
Authorized Officer

**Terms and Conditions**

1. **Award:** Subject to the terms and conditions of the Plan and this Agreement, the Corporation hereby grants to the Participant an Option to purchase up to the Number of Shares Subject to the Option for the Per-Share Exercise Price for each such Share, as set forth in the Agreement.

2. **Continuous Employment Requirement:** Subject to Sections 3 and 5, in order to vest in the Option, Participant agrees that Participant must continue as an active employee of the Corporation, its Subsidiaries or affiliates (each an "Employing Company") through the vesting dates set forth in Section 3, subject to the Employing Company's right to terminate the Participant's employment at any time.

3. **Vesting and Exercisability of Option:** The Performance Period for the Option shall be the seven year period following the Date of Grant. The Option shall vest based upon the achievement of the Performance Goals set forth on Exhibit A provided the Participant remains employed by an Employing Company on the applicable vesting date, subject to adjustments as set forth herein. Achievement of the Performance Goals shall be determined in accordance with Exhibit A. The Performance Period shall end and final performance shall be determined upon the earliest of the following dates: (1) the date of the Participant's death during employment, (2) the date of the Participant's Termination of employment due to becoming Disabled, (3) the date of the Participant's Termination of employment on or after attainment of Normal Retirement Age, (4) the date of the Participant's Termination under circumstances which would qualify the Participant for benefits under a severance plan of the Corporation, or (5) upon a Change in Control, and in each case any unvested Shares subject to the Option shall be forfeited immediately on such Termination date. Unless otherwise determined by the Committee, in the event of a Termination with Consent, the Participant shall remain entitled to vest in the Total Number of Shares Subject to the Option, subject to the determinations with respect to achievement of the Performance Goals. Except as provided in this Section 3, any remaining unvested Options shall be forfeited immediately upon any Termination of the Participant's employment (including but not limited to any voluntary termination by the Participant or any Termination by the Employing Company for Cause or without Cause), such forfeiture being without consideration or without further action required of the Employing Company.

Except as provided above, and notwithstanding any terms or conditions of the Plan or this Agreement to the contrary, in the event of the Termination of Participant's employment, regardless of the reason for such Termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any, the Participant's right to vest in the Option, if any, will terminate effective as of the date that the Participant is no longer actively employed by an Employing Company and will not be extended by any notice period (i.e., active employment would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any - collectively referred to herein as any "notice period"). The Committee shall have the exclusive discretion to determine when the Participant is no longer actively employed for purposes of the Option.

4. **Option Period:** Any portion of the Option that is vested and exercisable may be exercised in whole or in part from time to time during the Option Period. In the event of the exercise of the Option in whole or in part, the portion of the Option so exercised shall terminate. The Option Period shall begin on the date the Option first becomes vested and exercisable and shall end on the first to occur of: (a) seven years after the Date of Grant, or (b) immediately following Termination for Cause.

5. **Payment of Exercise Price:** The exercise price shall be paid at the election of the Participant, in cash, by delivering Shares owned by the Participant, by withholding of Shares to be acquired upon exercise of the Option, or by broker-assisted cashless exercise subject to the establishment of procedures with respect thereto by the Committee or its delegate as provided in Section 3.02 of the Plan; provided however that, if the Participant is subject to taxation on the benefit received from the Option in a jurisdiction outside the United States, the Participant may not pay the exercise price by surrendering shares of Common Stock that he or she already owns or attesting to the ownership of shares of Common Stock. The Corporation reserves the right to restrict the methods of payment of the exercise price if necessary to comply with applicable local law, as determined by the Corporation in its sole discretion. If the Fair Market Value of shares delivered or withheld in payment of the purchase price exceeds the purchase price, a certificate, or its equivalent, representing the whole number of excess Shares together with a check, or its equivalent, representing the Fair Market Value of any excess partial Share shall be delivered to the Participant. If at the time of exercise the Participant is subject to Section 16 of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), any portion of the exercise price representing a fraction of a Share shall be paid by the Participant in cash or property other than Shares. If the Fair Market Value of Shares delivered or withheld in payment of the purchase price is less than the purchase price, the difference shall be delivered by the Participant in cash immediately upon notification of such difference.

6. Required Holding Period for Shares: The Participant agrees that, subject to Section 5, the Shares delivered to the Participant upon the exercise of the Option shall not be transferable until the earlier of (a) one year from the vesting date of the delivered Shares, or (b) the date of the Participant's Termination.

7. Transferability: During the Participant's lifetime, to the extent the Option is exercisable; the Option may be exercised only by the Participant or by the Participant's guardian or legal representative. Upon the Participant's death, the Option may be transferred by will or by the laws governing the descent and distribution of the Participant's estate. Otherwise, the Option may not be transferred, pledged or encumbered and, in the event of an attempt to transfer, pledge or encumber it, the Committee may cancel it.

8. Adjustments and Recoupment: The number of Shares subject to the Option and the Option exercise price per share shall be subject to adjustment as provided in Section 8 of the Plan. The Participant shall be notified of such adjustment and such adjustment shall be binding upon the Corporation and the Participant. This Award shall be administered in accordance with, and is subject to, any recoupment policies and provisions prescribed by the Plan; including but not limited to Section 7.07 thereof and all clawback and recoupment policies or provisions required by law from time to time. In its sole discretion, the Committee shall have the authority to amend, waive or apply the terms of any clawback or recoupment policies or provisions, to the extent necessary or advisable to comply with applicable laws, as determined by the Committee.

9. Compliance with Laws: The obligations of the Corporation and the rights of the Participant are subject to all applicable laws, rules and regulations including, without limitation, the Exchange Act, the U.S. Securities Act of 1933, as amended, the U.S. Internal Revenue Code of 1986, as amended, and any other applicable U.S. and foreign laws. No Shares of Common Stock will be issued or delivered to the Participant under the Plan unless and until there has been compliance with such applicable laws.

10. Acceptance of Award: This Award is contingent on the Participant's acceptance of the Award in the manner and within the time period established by the Corporation. The Award shall be forfeited without further action by the Corporation and shall not be payable if it is not accepted by the Participant in the manner and within the time period established by the Corporation.

11. Interpretation and Amendments: The Option shall be administered and exercised in accordance with the terms of the Plan, as the same may be amended by the Committee from time to time, provided that no amendment may, without the consent of the Participant, affect the rights of the Participant under this Option in a materially adverse manner. For purposes of the foregoing sentence, an amendment that affects the tax treatment of the Option or that is necessary to comply with securities or other laws applicable to the issuance of shares of Common Stock shall not be considered as affecting the Participant's rights in a materially adverse manner. All capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Plan. In the event of a conflict between the Plan and this Agreement, unless this Agreement specifies otherwise, the Plan shall control.

12. Nature of the Award: Neither the grant of the Option nor anything else contained in this Agreement shall be deemed to limit or restrict the right of the Employing Company to terminate the Participant's employment at any time, for any reason, with or without cause. Further, by accepting this Option, the Participant acknowledges that:

- (a) the Plan is established voluntarily by the Corporation, it is discretionary in nature and may be modified, amended, suspended or terminated by the Corporation at any time, to the extent permitted by its terms;
- (b) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted in the past;
- (c) all decisions with respect to future option grants, if any, will be at the sole discretion of the Committee or its delegatee, as applicable;
- (d) the Participant is voluntarily participating in the Plan;
- (e) the Option and the Shares of Common Stock subject to the Option are extraordinary items which do not constitute compensation of any kind for services of any kind rendered to the Corporation or to the Employing Company, and which are outside the scope of the Participant's employment contract, if any;
- (f) the Option and the Shares of Common Stock subject to the Option are not part of normal or expected compensation for purposes of calculating any severance, resignation, termination, dismissal, redundancy, end-of-service payments, bonuses, long-service awards, pension or retirement benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Corporation or the Employing Company or any Subsidiary or affiliate of the Corporation;
- (g) the Option and the Shares of Common Stock subject to the Option are not intended to replace any pension rights or compensation;
- (h) the grant of the Option will not be interpreted to form an employment contract or relationship with the Corporation, the Employing Company or any Subsidiary or affiliate of the Corporation;
- (i) the future value of the Shares of Common Stock underlying the Option is unknown, indeterminable and cannot be predicted with certainty; if the underlying Shares do not increase in value, the Option will have no value. If Participant exercises the Option and obtains Shares of Common Stock, the value of the Shares acquired upon exercise may increase or decrease in value, even below the exercise price;
- (j) no claim or entitlement to compensation or damages arises from forfeiture of the Option resulting from any Termination of the Participant's employment by the Corporation or the Employing Company (for any reason whether or not in breach of applicable labor laws or the terms of the Participant's employment agreement, if any), and in consideration of the grant of the Option to which the Participant is not otherwise entitled, the Participant irrevocably agrees never to institute any claim against the Corporation or the Employing Company, waives his or her ability, if any, to bring any such claim, and releases the Corporation and the Employing Company from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, the Participant shall be deemed irrevocably to have agreed not to pursue such claim and agreed to execute any and all documents necessary to request dismissal or withdrawal of such claim;
- (k) it is the Participant's sole responsibility to investigate and comply with any applicable exchange control laws in connection with the issuance and delivery of Shares of Common Stock pursuant to the exercise of the Option;
- (l) the Corporation and the Employing Company are not providing any tax, legal or financial advice, nor are the Corporation or the Employing Company making any recommendations regarding the Participant's participation in the Plan or the Participant's purchase or sale of the Shares of Common Stock underlying the Option;
- (m) the Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan;
- (n) unless otherwise provided in the Plan or by the Corporation in its discretion, the Option and the benefits evidenced by this Agreement do not create any entitlement to have the Option or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares of the Corporation; and
- (o) the following provisions apply only if the Participant is providing services outside the United States:
  - (i) the Option and the Shares of Common Stock subject to the Option are not part of normal or expected compensation or salary for any purpose; and
  - (ii) the Participant acknowledges and agrees that neither the Corporation nor the Employing Company shall be liable for any foreign exchange rate fluctuation between the local currency and the United States Dollar that may affect the value of the Option or of any amounts due to the Participant pursuant to the exercise of the Option or the subsequent sale of any Shares of Common Stock acquired upon exercise.

13. Withholding Taxes: The Participant acknowledges that, regardless of any action taken by the Corporation or the Employing Company, the ultimate liability for any or all income tax, social security, payroll tax, payment on account or other tax-related withholding or liability in connection with any aspect of the Option, including the grant, vesting, or exercise of the Option or the subsequent sale of Shares of Common Stock or receipt of dividends



("Tax-Related Items") is and remains his or her responsibility and may exceed the amount withheld by the Corporation or the Employing Company. Furthermore, the Participant acknowledges that the Corporation and/or the Employing Company (a) make no representations or undertakings regarding the treatment of any Tax-Related Items; and (b) do not commit to and are under no obligation to structure the terms of the grant of the Option or any aspect of the Participant's participation in the Plan to reduce or eliminate his or her liability for Tax-Related Items or to achieve any particular tax result. Further, if the Participant has become subject to Tax-Related Items in more than one jurisdiction between the grant date and the date of any relevant taxable event, the Participant acknowledges that the Corporation and/or the Employing Company (or former Employing Company, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the relevant taxable event, the Participant shall pay or make adequate arrangements satisfactory to the Corporation and/or the Employing Company to satisfy all Tax-Related Items. In this regard, the Corporation may notify the Participant of the amount of Tax-Related Items, if any, required under U.S. federal and, where applicable, state and local or non-U.S. law, and in which case, the Participant shall, forthwith upon the receipt of such notice, remit the required amount to the Corporation in cash or in accordance with such regulations as the Committee may prescribe. Alternatively, the Participant authorizes the Corporation and/or the Employing Company, or their respective agents, at their discretion, to satisfy the obligations with regard to all applicable Tax-Related Items by one or a combination of the following methods: (1) withholding from Participant's wages or other cash compensation paid to Participant by the Corporation and/or the Employing Company; (2) withholding from proceeds of the sale of Shares issued upon exercise of the Option either through a voluntary sale or through a mandatory sale arranged by the Corporation (on Participant's behalf pursuant to this authorization) through such means as the Corporation may determine in its sole discretion (whether through a broker or otherwise); or (3) withholding in Shares to be issued upon exercise of the Option. If the Corporation gives the Participant the power to choose the withholding method, and the Participant does not make a choice, then the Corporation will at its discretion withhold from the proceeds of the sale of Shares issued upon exercise of the Option, which is alternative (2) herein.

To avoid negative accounting treatment, the Corporation may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates. If the Corporation withholds at a rate other than the minimum statutory rate, such as the maximum withholding rate, then the refund of any over-withheld amount shall be paid in cash and the Participant will have no entitlement to the Common Stock equivalent. If the Tax-Related Items are satisfied by withholding in Shares issuable upon exercise of the Option, for tax purposes, the Participant is deemed to have been issued the full number of Shares of Common Stock subject to the exercised Option, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items. Finally, the Participant shall pay to the Corporation or the Employing Company any amount of Tax-Related Items that the Corporation or the Employing Company may be required to withhold as a result of Participant's participation in the Plan or Participant's purchase of Shares that cannot be satisfied by the means previously described. The Participant understands that no Shares of Common Stock or proceeds from the sale of Shares of Common Stock shall be delivered to Participant, notwithstanding the exercise thereof, unless and until the Participant shall have satisfied any obligation for Tax-Related Items with respect thereto.

14. Data Privacy: The Participant hereby explicitly, unambiguously and voluntarily consents to the collection, use, disclosure and transfer, in electronic or other form, of his or her personal data as described in this Agreement and any other Option materials ("Data") by and among, as applicable, any Employing Company and the Corporation for the exclusive purpose of implementing, administering, and managing his or her participation in the Plan.

The Participant understands that any Employing Company and the Corporation may collect, maintain, process and disclose certain personal information about him or her, including, but not limited to, his or her name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any Shares or directorships held in the Corporation, details of all equity awards or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in his or her favor, for the exclusive purpose of implementing, administering and managing the Plan. The Participant acknowledges that Data will be transferred to any broker as designated by the Corporation and/or one or more stock plan service provider(s) selected by the Corporation, which may assist the Corporation with the implementation, administration and management of the Plan. The Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient's country (e.g., the United States) may have different, including less stringent, data privacy laws and protections than his or her country. The Participant authorizes the Corporation and any other possible recipients that may assist the Corporation (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purposes of implementing, administering and managing his or her participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Participant may elect to deposit any Shares acquired upon vesting of the Options.

The Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan, including to maintain records regarding participation. The Participant understands that if he or she resides in certain jurisdictions, to the extent required by applicable laws, he or she may, at any time, request access to Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents given by accepting these Options, in any case without cost, by contacting in writing his or her local human resources representative. Further, the Participant understands that he or she is providing these consents on a purely voluntary basis. If the Participant does not consent or if he or she later seeks to revoke his or her consent, his or her engagement as a service provider with any Employing Company and the Corporation will not be adversely affected. The Participant understands that refusing or withdrawing his or her consent may affect his or her ability to realize benefits from the Option or otherwise participate in the Plan. For more information on the consequences of his or her refusal to consent or withdrawal of consent, the Participant understands that he or she may contact his or her local human resources representative.

15. Electronic Delivery: The Corporation may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means or request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through any on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Corporation intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Corporation. The Participant consents to the electronic delivery of the Plan documents and the Agreement. The Participant acknowledges that he or she may receive from the Corporation a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Corporation by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Corporation or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents or may change the electronic mail address to which such documents are to be delivered (if the Participant has provided an electronic mail address) at any time by notifying the Corporation of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. The Participant agrees that the foregoing online or electronic participation in the Plan shall have the same force and effect as documentation executed in hardcopy written form. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents.

16. Severability: In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

17. Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of laws thereof. For purposes of litigating any dispute that arises under this grant or this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the Commonwealth of Pennsylvania, and agree that such litigation shall be conducted in the courts of Allegheny County, Pennsylvania, or the federal courts for the United States for the Western District of Pennsylvania, where this grant is made and/or to be performed.

18. Section 409A: Notwithstanding any other provision of the Plan or this Agreement, the Plan and this Agreement shall be interpreted in accordance with, and incorporate the terms and conditions required by, Section 409A of the U.S. Internal Revenue Code of 1986, as amended (together with any

Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, "Section 409A"). The Corporation reserves the right, to the extent the Corporation deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan or this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate to ensure that this Option qualifies for exemption from, or complies with the requirements of, Section 409A; provided, however, that the Corporation makes no representation that the Option will be exempt from, or will comply with, Section 409A, and makes no undertakings to preclude Section 409A of the Code from applying to the Option or to ensure that it complies with Section 409A.

19. Insider Trading Restrictions/Market Abuse Laws: The Participant acknowledges that the Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect the Participant's ability to acquire or sell shares of Common Stock or rights to shares of Common Stock (e.g., Options) under the Plan during such times as the Participant is considered to have "inside information" regarding the Corporation (as defined by any applicable laws in the Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable insider trading policy maintained by the Corporation. The Participant acknowledges that it is the Participant's responsibility to comply with any applicable restrictions, and the Participant is advised to speak to his or her personal advisor on this matter.

20. Imposition of Other Requirements: The Corporation reserves the right to impose other requirements on the Participant's participation in the Plan, on the Option and on any shares of Common Stock acquired under the Plan, to the extent the Corporation determines it is necessary or advisable in order to comply with local law, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

21. Headings: Headings of paragraphs and sections used in this Agreement are for convenience only and are not part of this Agreement, and must not be used in construing it.

22. Waiver: The Participant acknowledges that a waiver by the Corporation of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Participant.

23. Definitions: In addition to the capitalized terms defined in the Plan, the following terms as used herein shall have the following meanings when used with initial capital letters:

- (a) "Normal Retirement Age" shall mean the later of (1) six (6) months following the Date of Grant, or (2) attainment of age 65.
- (b) "Performance Goals" shall have the meaning set forth on Exhibit A.
- (c) "Performance Period" shall mean the seven year period commencing January 1, 2022 and ending December 31<sup>st</sup> 2028, unless earlier terminated in accordance with the terms of the Option.
- (d) "Termination" shall mean the applicable employee's termination of employment. For purposes of this Agreement, (i) for U.S. taxpayers, Termination and words of similar effect shall be construed consistent with a "separation from service" under Section 409A of the Code to the extent required by Section 409A of the Code, and (ii) for non-U.S. taxpayers, Termination and words of similar effect shall mean that the Participant is no longer actively employed by an Employing Company, without regard to any notice period (i.e., active employment would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Participant is employed or the terms of the Participant's employment agreement, if any).
- (e) "Termination with Consent" shall mean Termination with the express written consent of the Corporation expressly referencing an entitlement to vesting of the Option.

**EXHIBIT A**  
**Performance Non-Qualified Stock Option Grant Agreement**  
**2021 Performance Goals**

[Omitted.]

**UNITED STATES STEEL CORPORATION  
DEFERRED COMPENSATION PROGRAM  
FOR NON-EMPLOYEE DIRECTORS  
(Adopted as of December 14, 2021)**

1. **Purpose.** The United States Steel Corporation Deferred Compensation Program for Non-Employee Directors, a program under the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan, is intended to enable the Corporation to attract and retain non-employee Directors and to enhance the long-term mutuality of interest between such Directors and shareholders of the Corporation.
2. **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Plan. The following definitions apply to this Program and to the Election Form:
  - (a) **Base Retainer** means the means that portion of a Participant's compensation that is fixed and paid without regard to his/her attendance at meetings, as such amount is established for or during the Program Year, exclusive of fees paid to chairs of committees or the Board.
  - (b) **Beneficiary** or **Beneficiaries** means a person or persons or other entity designated on a Beneficiary Designation Form by a Participant as allowed in Section 5(c) of this Program to receive Deferred Stock Unit Benefit payments. If there is no valid designation by the Participant, or if the designated Beneficiary or Beneficiaries fail to survive the Participant or otherwise fail to take the Deferred Stock Unit Benefit, the Participant's Beneficiary is the Participant's surviving spouse or, if there is no surviving spouse, the Participant's estate.
  - (c) **Beneficiary Designation Form** means that portion of the Election Form that is used by a Participant according to this Program to name his/her Beneficiary or Beneficiaries.
  - (d) **Board** means the board of directors of United States Steel Corporation.
  - (e) **Committee** means the Corporate Governance & Sustainability Committee of the Board.
  - (f) **Common Stock** means the common stock of the Corporation, par value \$1.00 per share.
  - (g) **Corporation** means United States Steel Corporation, or its successors.
  - (h) **Deferred Stock Unit** shall have the meaning assigned to it in Section 4(a).
  - (i) **Deferred Stock Unit Account** means that bookkeeping record established for each Participant to reflect the status of his/her Deferred Stock Unit Benefits under this Program. A Deferred Stock Unit Account is established only for purposes of measuring a Deferred Stock Unit Benefit and not to segregate assets or to identify assets that may or must be used to satisfy a Deferred Stock Unit Benefit. A Deferred Stock Unit Account will be credited with that portion of the Participant's Retainer Fee deferred as Deferred Stock Units according to an Election Form and according to Section 4 of this Program. A Deferred Stock Unit Account will also be adjusted periodically with amounts specified under subsections 4(a)(ii) through 4(a)(iii) of this Program.

- (j) **Deferred Stock Unit Benefit** means the benefit that results in distributions governed by Sections 4 and 5.
- (k) **Directors** means those duly named members of the Board.
- (l) **Election Date** means the date established by this Program as the date before which a Participant must submit a valid Election Form to the Committee. For the Program Year during which an individual first becomes a Participant, the Election Date is the earlier of (i) 30 days following the date on which the individual becomes a Participant and (ii) December 31 of such Program Year. For each subsequent Program Year, the Election Date is December 31 of the preceding calendar year. Despite the two preceding sentences, the Committee may set an earlier date as the Election Date for any Program Year.
- (m) **Election Form** means a document governed by the provisions of Section 3 of this Program by which a Participant elects the portion of his or her Retainer Fee to be deferred as Deferred Stock Units and designates a Beneficiary.
- (n) **Participant** means a Director who is not simultaneously an employee of the Corporation.
- (o) **Plan** means the United States Steel Corporation 2016 Omnibus Incentive Compensation Plan (as it has been or may be amended and/or restated from time to time), or any successor plan.
- (p) **Program** means this United States Steel Corporation Deferred Compensation Program for Non-Employee Directors under the Plan.
- (q) **Program Year** means the calendar year, commencing with the 2022 calendar year.
- (r) **Retainer Fee** means the Base Retainer together with any additional amounts paid to chairs of the committees of the Board or the chairman of the Board.
- (s) **Terminate, Terminating, or Termination**, with respect to a Participant, means cessation of his/her relationship with the Corporation as a Director whether by resignation, retirement, death, disability or severance for any other reason. The terms "Terminate," "Terminating," and "Termination," when used in the context of a condition to, or timing of, payment hereunder, shall be interpreted to mean a "separation from service" as that term is used in Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**").

**3. Election.** A deferral election is valid when an Election Form is completed, signed by the Participant, and received by the Committee or its designee. Deferral elections are governed by the provisions of this section.

- (a) A Participant may elect a Deferred Stock Unit Benefit for any Program Year, subject to the Election Date requirements, if he/she is a Participant at the beginning of that Program Year or becomes a Participant during the Program Year.
- (b) Before each Program Year's Election Date, each Participant will be provided with an Election Form. A Participant may elect on or before the Election Date to defer the receipt of all or part of his/her Retainer Fee for the Program Year in the form of a Deferred Stock Unit Benefit under the Program; provided, however, that no

deferral election shall be effective for any portion of a Retainer Fee earned prior to the completion of the deferral election.

- (c) A Participant may not revoke or amend an Election Form after the Program Year begins with respect to such Program Year, and no re-allocation between fixed and variable compensation (if any) otherwise payable during the Program Year shall be permitted to indirectly amend such Election Form or the amount of Retainer Fees subject thereto. Any revocation before the beginning of the Program Year is the same as a failure to submit an Election Form. Any writing signed by a Participant expressing an intention to revoke his/her Election Form and delivered to the Committee or its designee before the close of business on the relevant Election Date is a revocation.

#### 4. **Deferred Stock Unit Benefits.**

- (a) Deferred Stock Unit Benefits will consist of Deferred Stock Units and will be recorded in a Deferred Stock Unit Account for each Participant. A “**Deferred Stock Unit**” shall mean a book-entry unit equal in value to one share of Common Stock on the date specified below. Each Deferred Stock Unit will increase or decrease in value by the same amount and with the same frequency as the fair market value of a share of Common Stock. Each Deferred Stock Unit Account will be credited or adjusted as follows:
  - (i) Crediting. The Participant’s Deferred Stock Unit Account will be credited with a quantity of Deferred Stock Units, including fractional units, as of the date the award of Deferred Stock Units would have otherwise vested.
  - (ii) Cash Dividends. Each Deferred Stock Unit Account will be credited each calendar quarter, on the date on which cash dividends are reinvested under the Corporation’s dividend reinvestment and stock purchase plans (the “**Investment Date**”), with a quantity of additional Deferred Stock Units, including fractional units, determined by dividing (A) the Dividend Payment Amount by (B) the Stock Purchase Price. “**Dividend Payment Amount**” means the product of the number of Deferred Stock Units in the Deferred Stock Unit Account on the dividend payment date times the amount of the cash dividend payable on a share of Common Stock. “**Stock Purchase Price**” means the closing price of a share of Common Stock on the NYSE on the most recent trading day preceding the Investment Date.
  - (iii) Stock Dividends, Stock Splits and Reverse Stock Splits. In the event of a stock dividend, stock split, reverse stock split or similar event affecting the Common Stock, the number of Deferred Stock Units in the Deferred Stock Unit Account shall be adjusted in an equitable and proportional manner to reflect such event in order to prevent the dilution or enlargement of Participant’s rights.
- (b) If a trust is established under Section 6(b), an electing Participant may advise the trustee under the governing trust agreement as to the voting of shares of the Common Stock allocated to that Participant’s separate account under the trust according to this subsection and provisions of the governing trust agreement. Before each annual or special meeting of the Corporation’s shareholders, the trustee under the governing trust agreement must furnish each Participant with a copy of the proxy solicitation and other relevant material for the meeting as furnished to the trustee by the Corporation, and a form addressed to the trustee

requesting the Participant's confidential advice as to the voting of shares of the Common Stock allocated to his/her account as of the valuation date established under the governing trust agreement preceding the record date.

## 5. Distributions.

- (a) Except as set forth in Section 5(d), a Deferred Stock Unit Benefit will be distributed in shares of Common Stock equal to the number of, the whole, Deferred Stock Units credited to the Participant's Deferred Stock Unit Account; provided, however, cash will be paid in lieu of fractional shares of the Common Stock otherwise distributable, calculated on the basis of the closing price of a share of Common Stock on the NYSE on the date of Termination (or if such date is not a trading day on the immediately preceding trading day).
- (b) Delivery of Common Stock and any cash payable in lieu of fractional shares will be made on the first business day of the seventh month following the Participant's Termination.
- (c) Deferred Stock Unit Benefits may not be assigned by a Participant or Beneficiary. A Participant may use a Beneficiary Designation Form to designate one or more Beneficiaries for all of his/her Deferred Stock Unit Benefits; such designations are revocable. Each Beneficiary will receive his/her portion of the Participant's otherwise unpaid Deferred Stock Unit Account on the scheduled payment date as set forth in Section 5(b).
- (d) Upon the occurrence of a Change in Control resulting in a Participant's Termination as of or within the one-year period following such Change in Control, the Corporation shall pay such Participant, on or before the fifth business day following such Termination, cash in an aggregate amount equal to the value of such Participant's Deferred Stock Unit Account on the date of the Change in Control, as determined using the higher of the closing price of the Common Stock on the NYSE on such date or the highest per-share price actually paid in connection with the consummation of such Change in Control. For purposes of this Program, "***Change in Control***" shall mean a change in control of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), whether or not the Corporation is then subject to such reporting requirement; provided, that, without limitation, such a change in control shall be deemed to have occurred if:
  - (i) any person (as defined in Sections 13(d) and 14(d) of the Exchange Act) (a "***Person***") is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing twenty percent (20%) or more of the combined voting power of the Corporation's then outstanding voting securities; provided, however, that for purposes of this Program the term "Person" shall not include (i) the Corporation or any of its subsidiaries, (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation or any of its subsidiaries, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, or (iv) a corporation owned, directly or indirectly, by the stockholders of the Corporation in substantially the same proportions as their ownership of stock of the Corporation; or

- (ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the date hereof, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest including but not limited to a consent solicitation, relating to the election of directors of the Corporation) whose appointment or election by the Board or nomination for election by the Corporation's stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for election was previously so approved; or
- (iii) there is consummated a merger or consolidation of the Corporation or a subsidiary thereof with any other corporation, other than a merger or consolidation which would result in the holders of the voting securities of the Corporation outstanding immediately prior thereto holding securities which represent immediately after such merger or consolidation at least 50% of the combined voting power of the voting securities of the entity surviving the merger or consolidation (or the parent of such surviving entity) or the shareholders of the Corporation approve a plan of complete liquidation of the Corporation, or there is consummated the sale or other disposition of all or substantially all of the Corporation's assets.

Notwithstanding anything to the contrary herein, in no event will a Change in Control be deemed to have occurred for purposes of this Section 5(d) if the transaction is not also a "change in the ownership or effective control of" the Corporation or "a change in the ownership of a substantial portion of the assets of" the Corporation as determined under Treasury Regulation Section 1.409A-3(i)(5).

#### **6. Corporation's Obligation.**

- (a) The Program is unfunded. A Deferred Stock Unit Benefit is at all times solely a contractual obligation of the Corporation. A Participant and his/her Beneficiaries have no right, title or interest in the Deferred Stock Unit Benefits or any claim against them. Except according to Section 6(b), the Corporation will not segregate any funds or assets for Deferred Stock Unit Benefits nor issue any notes or security for the payment of any Deferred Stock Unit Benefit.
- (b) The Corporation may establish a grantor trust and transfer to that trust shares of Common Stock or other assets. The governing trust agreement must require a separate account to be established for each electing Participant. The governing trust agreement must also require that all Corporation assets held in trust remain at all times subject to the Corporation's judgment creditors.

#### **7. No Control by Participant.** A Participant has no control over Deferred Stock Unit Benefits except according to his/her Election Forms and Beneficiary Designation Form.

#### **8. Claims Against Participant's Deferred Stock Unit Benefits.** A Deferred Stock Unit Account relating to a Participant under this Program is not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to do so is void. A Deferred Stock Unit Benefit is not subject to attachment or legal process for a Participant's debts or other obligations. Nothing contained in this Program gives any Participant any interest, lien or claim against any specific asset of the



Corporation. A Participant or his/her beneficiary has no rights other than as a general creditor.

9. **Amendment or Termination.** This Program may be altered, amended, suspended, or terminated at any time by the Board.
10. **Notices.** Notices and elections under this Program must be in writing. A notice or election is deemed delivered if it is delivered personally or if it is mailed by registered or certified mail to the person at his/her last known business address.
11. **Waiver.** The waiver of a breach of any provision in this Program does not operate as and may not be construed as a waiver of any later breach.
12. **Construction.** This Program is created, adopted, maintained and governed according to the laws of the State of Delaware. Headings and captions are only for convenience; they do not have substantive meaning. If a provision of this Program is not valid or not enforceable, the validity or enforceability of any other provision is not affected. Use of one gender includes all, and the singular and plural include each other.
13. **Effective Date.** This Program shall be effective as a program under the Corporation's 2016 Omnibus Incentive Compensation Plan commencing with the 2022 Program Year.

# United States Steel Corporation

## Non-Employee Director Compensation Policy

Adopted as of December 14, 2021

The Corporate Governance & Sustainability Committee (the “**Committee**”) of the Board of Directors (“**Board**”) of United States Steel Corporation, a Delaware corporation (the “**Corporation**”), has adopted this Non-Employee Director Compensation Policy (the “**Policy**”) (a) to assist the Committee in establishing retainers, fees, and equity grants (and payment or award thereof, as applicable) associated with non-employee director compensation and (b) to establish stock ownership guidelines applicable to non-employee directors, in order to further align the long-term interests of the Corporation’s stockholders and non-employee directors. Any new director compensation policies and/or stock ownership guidelines enacted from time to time are deemed to be incorporated herein upon their effective date.

The Committee and/or the Board shall review and reassess this Policy from time to time to determine whether the Policy should be updated. The Committee, in its sole discretion, may amend, modify, waive, or terminate this Policy at any time, and the Committee shall have full power and authority to interpret the Policy and to adopt such rules for the administration, interpretation and application of the Policy as are consistent herewith and to interpret, amend, or revoke any such rules.

**Compensation.** Effective as of January 1, 2022, each director of the Board who is not an employee of the Corporation or an affiliate of the Corporation (“**Director**” or “**Directors**”) shall be entitled to the payments described below while serving as a director on the Board.

*Annual Retainer:*

Directors receive an annual retainer for serving on the Board and for chairing certain committees of the Board. The following amounts are the annual retainers for 2022:

Board Member:

US\$ 300,000

Board Chair:

US\$ 150,000

Chair of Audit Committee:

US\$ 20,000

Chair of Compensation & Organization Committee:

US\$ 20,000

Chair of Corporate Governance & Sustainability Committee:

US\$ 20,000

<i>Election:</i>	<p>Pursuant to the Corporation's Deferred Compensation Program for Non-Employee Directors (as the same may be amended and/or restated from time to time, the "<b>Program</b>") under the Corporation's 2016 Omnibus Incentive Compensation Plan (as the same may be amended and/or restated from time to time, or any successor plan thereto, the "<b>Plan</b>"), each year a Director may elect to receive from 55% (minimum) up to 100% (maximum) of his/her annual retainer in the form of (i) restricted stock units ("<b>RSUs</b>") of the Corporation and/or (ii) deferred stock units ("<b>DSUs</b>") of the Corporation. The portion not payable in the form of RSUs or DSUs shall be payable in cash.</p> <p>Directors must make the election in writing in advance of the calendar year to which the election relates (or, when a Director joins the Board, within 30 days of joining the Board), by completing the election form (and for DSUs, the beneficiary designation form) in the form provided by the Corporation.</p> <p>When an election is made with respect to a calendar year, it becomes irrevocable for that calendar year as of 11:59 pm on December 31<sup>st</sup> of the prior calendar year (or, for Directors first joining the Board, as of the date of the election) and may not be changed.</p>
<i>Effect of No Election:</i>	<p>In the case of a Director who does not submit a valid election form on or before the relevant election date, such Director's annual retainer shall be payable (i) 45% in cash and (ii) 55% in the form of RSUs.</p>
<i>Cash Retainer (if any):</i>	<p>The portion of a Director's annual retainer payable in cash (if any) shall be paid quarterly, in equal installments and in arrears, and any such quarterly payment shall be pro-rated for any partial quarter of service.</p>
<i>RSUs (if any):</i>	<p>Upon the date of the annual meeting of the Corporation's stockholders at which directors are elected to serve on the Board (the "<b>Annual Meeting</b>"), each Director who remains a member of the Board following the conclusion of such Annual Meeting and who has elected to receive all or a portion of his/her annual retainer in the form of RSUs shall be granted a number of RSUs, determined by the quotient of the dollar value of the portion of his/her annual retainer payable in the form of RSUs, divided by the Fair Market Value as of the grant date (but rounded to the nearest whole ten RSUs), pursuant to the terms of the Plan and the Corporation's standard form of RSU award agreement for Directors, which RSUs shall be eligible to vest in full on the earlier of (i) the first anniversary of the grant date and (ii) the date of the next Annual Meeting, in each case subject to the Director's continued service on such vesting date. The Corporation may but is not obligated to provide accelerated vesting of such RSUs in connection with a Director's earlier termination of service.</p>

<i>DSUs (if any):</i>	Upon the date of the Annual Meeting, each Director who remains a member of the Board following the conclusion of such Annual Meeting and who has elected to receive all or a portion of his/her annual retainer in the form of DSUs shall be granted a number of DSUs (including fractional units), determined by the quotient of the dollar value of the portion of his/her annual retainer payable in the form of DSUs, divided by the Fair Market Value as of the grant date, pursuant to the terms of the Plan, the Program and the Corporation's standard form of DSU award agreement for Directors, which DSUs shall be eligible to vest in full on the earlier of (i) the first anniversary of the grant date and (ii) the date of the next Annual Meeting, in each case subject to the Director's continued service on such vesting date, and shall otherwise be subject to the terms of the Program. The Corporation may but is not obligated to provide accelerated vesting of such DSUs in connection with a Director's earlier termination of service.
<i>Stub Award (2022 Only):</i>	To account for the switch from awards being granted as of January 15 <sup>th</sup> each calendar year to awards being granted as of the Annual Meeting each calendar year, with respect to the 2022 calendar year only, each Director shall receive an additional pro-rated retainer to cover the period from January 1, 2022 to the Annual Meeting, in an amount equal to US\$ 100,000, plus a pro-rated amount of any applicable additional Board chair or committee chair annual retainer, which retainer shall otherwise be subject to the terms of this Policy and the Plan and Program, as applicable, except that the grant date of RSUs and/or DSUs, as applicable, attributable to such pro-rated amount shall be January 15, 2022, and such RSUs and/or DSUs shall be eligible to vest in full on the first anniversary of the grant date, subject to the Director's continued service on such vesting date.
<i>Matching Program:</i>	The Corporation will supplement the fees paid to each Director with a one-time grant of shares of common stock of the Corporation pursuant to the terms of the Corporation's Non-Employee Director Stock Program (as the same may be amended and/or restated from time to time, the " <b>Matching Program</b> ") under the Plan. The number of shares of common stock to be granted shall be equal to that number of shares purchased in an open market transaction or transactions by the Director during the six months following the effective date on which such Director first becomes a member of the Board, up to a maximum grant of 1,000 shares of common stock. If the Director is prohibited from making an open market purchase due to a special trading blackout period imposed under the Corporation's Insider Trading Policy during any portion of the six-month period, the six-month period shall be extended by the number of days during which purchases were prohibited due to that special trading blackout. The grant will be made no later than the fifth business day following the date on which open market shares were purchased.
<i>Reimbursement:</i>	In addition to the foregoing payments, each member of the Board shall be entitled to reimbursement for travel expenses incurred in attending Board meetings and any committee meetings (travel expense reimbursement is subject to the Corporation's current expense policy, as amended from time to time).

The Corporation does not pay any Board retainers or fees or provide any Board equity grants not set forth above. These retainers, fees, or grants may be modified or adjusted from time to time as determined by the Committee.

Directors of the Board who are employees of the Corporation or an affiliate of the Corporation shall receive no compensation for their Board service.

**Stock Ownership.** Effective as of January 1, 2022, by no later than the fifth (5<sup>th</sup>) anniversary of the date on which the Director is first elected as a Director (the “**Phase-In Period**”), the Committee expects that all Directors will make a good faith effort to attain a level of share ownership of shares of the Corporation’s common stock at least equal to the Minimum Share Ownership Requirement, in accordance with the following:

*Minimum Share Ownership Requirement:*

The “**Minimum Share Ownership Requirement**” equals the number of shares of the Corporation’s common stock determined by dividing (i) five (5) times the maximum cash annual retainer for service as a Board member (that is, 45% of the annual retainer for service as a Board member, without regard to any applicable additional Board chair or committee chair annual retainer) by (ii) the Fair Market Value as of the Determination Date.

*Shares Counted:*

Shares that count toward the satisfaction of the Minimum Share Ownership Requirement include:

- Shares owned directly, including (i) restricted shares, (ii) shares deliverable upon settlement of unvested RSUs and DSUs, and (iii) shares deferred under the terms of the Program (and any prior or subsequent similar arrangement thereof); and
- Shares owned directly, if the individual has an economic interest in such shares. For this purpose, indirect ownership includes shares that would be “beneficially owned” and reported for purposes of the stock ownership table in the Corporation’s annual proxy statement and shares beneficially owned and reported on Table 1 of Forms 3, 4, or 5 under the Exchange Act.

*Determination of Share Ownership:*

Each Director’s satisfaction of the Minimum Share Ownership Requirement will be determined by the Committee annually as of the close of business on the last business day of the Corporation’s fiscal year (the “**Determination Date**”), although Directors are required to own a number of shares of the Corporation’s common stock sufficient to meet the most recently determined Minimum Share Ownership Requirement at all times during the year until the next Determination Date.

*Failure to Satisfy:* If a Director does not satisfy the Minimum Share Ownership Requirement as of a relevant Determination Date (following the end of such Director's Phase-In Period), then the Director shall not be required to purchase shares in the open market but instead will be required to retain 100% of the net after-tax amount of any shares held and subsequently granted until satisfaction of the Minimum Share Ownership Requirement. Once a Director satisfies the Minimum Share Ownership Requirement, the Director may sell or otherwise dispose of shares so long as such transaction would not cause the Director to fail to satisfy his or her Minimum Share Ownership Requirement.

*Exceptions:* The Minimum Share Ownership Requirement may be waived, at the sole discretion of the Committee, for a Director (i) if compliance would create severe hardship, (ii) if compliance would prevent such Director from complying with a court order, as in the case of a divorce settlement, or (iii) in connection with significant and sudden declines in the Fair Market Value of the shares. A Director seeking a waiver from the Minimum Share Ownership Requirement on account of one or more of these exceptions must file a notice with the Corporation's Secretary to be presented to the Committee, advising the Committee of the circumstances and describing the extent of the waiver requested. It is expected that requests for such waivers will rarely be sought or granted.

**General.** This Policy supersedes all prior agreements or policies concerning non-employee director compensation and/or non-employee director stock ownership guidelines. Capitalized terms used in this Policy but not otherwise defined herein shall have the meaning set forth in the Plan.



United States Steel  
Corporation  
600 Grant Street  
Pittsburgh, PA 15219-2800  
412 433 1125  
bmelnkovic@uss.com

**Barry Melnkovic**  
Senior Vice President &  
Chief  
Human Resources Officer

September 19, 2020

Kenneth Edward Jaycox Jr.  
[ADDRESS]

Dear Ken:

On behalf of United States Steel Corporation (U. S. Steel or the Company), I am pleased to confirm our offer to join the company in the position of Senior Vice President & Chief Commercial Officer effective on September 28, 2020. In this position, you will report directly to David Burritt, President & CEO at our Pittsburgh, PA corporate headquarters. Acceptance of this offer will require you to relocate to the greater Pittsburgh area. I am looking forward to you joining the team and helping us build the future of United States Steel Corporation.

The purpose of this letter is to provide clarity on the compensation and benefits programs for which you will be eligible. The details of our offer are below.

Base Salary: Your base salary will be at an annualized rate of \$550,000 subject to payroll deductions.

Executive Management Annual Incentive Compensation Plan (AICP): As part of your employment, you will be eligible to participate in the AICP targeted at 75% of your base salary earned during the year, with a maximum incentive opportunity of up to 230% of your target based on company performance and influenced by your individual performance. If an award is earned, AICP payments are typically paid in March following the performance year.

Long-Term Incentive Program (LTIP): You will be eligible to participate in the annual LTIP on a basis reasonably comparable to that of other employees at a similar job level. Under the current program, you will receive a mix of long-term incentive compensation value in the form of restricted stock units and performance awards. The LTIP award grant date target value for your role is \$1,000,000. The value, mix, terms and conditions of long-term incentive awards are reviewed and determined annually by the Compensation & Organization Committee of the Board of Directors. At this time, LTIP awards are typically granted in February each year based on eligibility as of January 1. Your first full grant will be made as soon as administratively practical following the February 2021 Compensation & Organization Committee meeting subject to approval by the Compensation & Organization Committee of the Board of Directors.

Hiring Incentive Payments: The Company will provide you with a cash incentive of \$200,000 payable as a lump sum within 30 days of your hire date and a second cash lump sum payment of \$100,000 payable within 30 days following your one year anniversary date of employment, provided that your individual performance assessment for the prior year was a “Meets Expectations” or better.

Each of these two hiring incentive payments will vest 1/24 each month after they are paid, with the first installment fully vesting on your two-year anniversary and the second installment fully vesting on your three-year anniversary. If you resign from U. S. Steel prior to your three-year anniversary, you agree that you will return the portion of any hiring incentive payment that has not yet vested. Any payment due will be sent within 30 days of your exit date. If you resign from U. S. Steel prior to your one-year anniversary, you agree that you will not be eligible to receive the second cash payment of \$100,000.

New Hire Long-Term Incentive Cash Award: Additionally, in consideration for long-term incentives that you may forfeit from your current employer, you will receive a cash-based long-term incentive award of \$300,000. Distribution of this award will occur as follows: one-quarter of the value will vest on the first anniversary of your date of employment, one-quarter of the value will vest on the second anniversary of your date of employment, and the remaining value will vest on the third anniversary of your date of employment.

Stock Ownership Guidelines: As an executive, you will be subject to stock ownership and retention guidelines as approved by our Board of Directors. The ownership requirement is currently defined as a multiple of base salary and, for executives at your level, the multiple is three times your base salary. Until the required ownership is achieved, you will be required to retain shares equal to 100% of the after-tax value of shares received in connection with the vesting of restricted stock units and equity performance shares. Once the ownership requirement is satisfied, an executive who has received approval can sell up to 100% of the available full value shares. Further details regarding this program will be provided with your new hire paperwork.

Change in Control Severance Plan: As a Senior Vice President, you will be an eligible Tier II participant in the Company’s Change in Control Severance Plan, providing for a severance multiple of 2.0 times your salary and bonus. You will be provided with a copy of the plan. Please contact me with any questions related to the change in control severance plan.

Severance Provision: If the Company terminates your employment within two years of your date of hire other than for Cause (as defined below), you will be entitled to a lump sum payment equal to the sum of (i) any unpaid portion of the new hire incentive payment described above, (ii) twelve months of your base salary, and (iii) the equivalent of one year of your target bonus (i.e., 75% of your base salary) as that amount would be calculated under the AICP (the “Severance Benefit”). This Severance Benefit is in lieu of any benefits to which you otherwise may be eligible under the Company’s Supplemental Unemployment Benefit (SUB) Program or any other severance or change in control arrangement or program. Such payment shall be made on the 30th day following your separation from service within the meaning of IRC section 409A (or, if such day is not a business day, on the next succeeding business day); provided, however, that no such payment may be made to you until the first business day following the six month anniversary of your separation from service if you are a “specified employee” under IRC section 409A at the time of your separation from service. The foregoing severance payment is conditioned upon your execution, nonrevocation, and compliance with the



terms of a general release and waiver of all claims you may have against the Company and its directors, officers and affiliates, in the form presented by the Company.

For purposes of this severance provision, “Cause” shall mean any of the following, determined in the sole discretion of the Company: (i) the willful and continued failure by you to substantially perform your duties with the Company (other than any such failure resulting from your disability), after reasonable notice of such failure and an opportunity to correct it, (ii) the willful and continued engaging by you in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise, or (iii) the breach by you of the Company’s Code of Ethical Business Conduct. For purposes of this Agreement, no act, or failure to act, will be considered “willful” unless done, or omitted to be done, by you in bad faith and without reasonable belief that such action or omission was in the best interest of the Company.

Following the second anniversary of your date of hire, the severance provision described above will expire, and you will be eligible for benefits, if any, under the Company’s severance plans or programs on the same basis as similarly-situated employees, and subject to the terms and conditions of such plans or programs.

Relocation Benefits: You are eligible for new hire relocation benefits, which include:

- Up to 6 months temporary living expense in the Pittsburgh area
- Two house hunting trips for you and your spouse
- One-way movement of household goods and personal effects
- Transportation for you and your family to relocate to Pittsburgh
- Closing costs on the sale of your current residence and purchase of your future residence
- Loss on sale benefit up to a maximum of \$30,000, which represents the difference between the origin home purchase price and the end-out sales price based on HUD-1 documents

For clarity, all relocation benefit expenses covered by the Company will be grossed up at your statutory tax rate on file at the end of the year. This includes any loss on sale, if applicable.

You agree that if you voluntarily terminate your employment within 24 months of the effective date of your hire, you will reimburse the company for any relocation benefits and cash hiring incentives you received. This amount will be due within thirty (30) days of the effective date of your employment termination.

Employee Benefits: You will be eligible to participate in retirement, savings, health and welfare benefit plans, including short-term and long-term disability programs. Outlined below are highlights of the retirement programs and additional benefits you will be eligible to receive based on your level.

- (1) Vacation: As an experienced hire, you will be eligible to receive four weeks of vacation annually. In 2020, your vacation will be prorated based on your hire date.
- (2) Retirement Account: You will participate in the Retirement Account under the Savings Fund Plan for Salaried Employees and be eligible for monthly company contributions in the amount of 4.75% to 8.5% (based on your age with the maximum 8.5% applying upon reaching 45 years of age) of your base salary. You will participate in a non tax-qualified restoration plan (the “Non Tax-

Qualified Retirement Account Program”) with respect to the portion of the company contributions to your Retirement Account that cannot be made due to certain Internal Revenue Code (IRC) limitations. In general, you will vest in your Retirement Account under the Savings Fund Plan and your account under the Non-Tax Qualified Retirement Account Program after you complete three years of continuous service. As of May 1, 2020, these contributions are suspended indefinitely, but you will be eligible to receive this contribution or its replacement when the program is restored.

(3) **Company Matching Contributions:** You will be eligible to make employee contributions on a pre-tax and/or after-tax basis to the Savings Account under the Savings Fund Plan for salaried employees not to exceed 16% of your base salary subject to limitations under the IRC. You will also be eligible for company contributions that match 100% of your employee contributions up to 6.0% of your base salary (subject to the IRC limitations.) You will participate in a non tax-qualified restoration plan (the “Supplemental Thrift Program”) with respect to the portion of company contributions to your Savings Account that cannot be made due to certain IRC limitations. In general, you will vest in your company matching contributions under the Savings Fund Plan after you complete three years of continuous service and in the Supplemental Thrift Program after you complete five years of continuous service. As of May 1, 2020, these contributions are suspended indefinitely, but you will be eligible to receive this contribution or its replacement when the program is restored.

(4) **Supplemental Retirement Account:** At your level with the company, you will be eligible to participate in the Supplemental Retirement Account Program (“SRA”). Under the SRA, you will be eligible for book accruals in the amount of 4.75% to 8.5% (based on your age with the maximum 8.5% applying upon reaching 45 years of age) of your AICP, when earned. There are various milestones which, if achieved, will allow you to fully vest in the SRA benefit. In general, you must be a participant in the plan for at least 3 years to vest in the SRA, in addition to reaching certain age and service requirements.

**Conditions of Employment:** The terms and conditions of this letter and the offer of employment that it contains shall be construed under the laws of, and the place of its acceptance shall be deemed to be, the Commonwealth of Pennsylvania. Any action, suit or proceeding based on or arising out of this Agreement shall be brought in state or federal courts in Allegheny County, Pennsylvania, and the parties agree to submit to the jurisdiction of such court(s), and such court(s) shall be the exclusive and sole venue for any such proceeding.

This offer of employment is contingent upon your successful completion of a background check, verification of work authorization and pre-placement drug screening. As a condition of your employment, you will also be required to execute a confidentiality and non-compete agreement. You will be subject to all applicable company policies and procedures, including but not limited to, the Code of Ethical Business Conduct. More information about policies and procedures will be provided to you upon commencement of your employment.

If you accept this offer of employment, you will be an employee-at-will, meaning that either you or the company may terminate the employment relationship at any time for any reason, with or without cause. Any statements to the contrary that may have been made to you, or that may be made to you, by the company, its agents or representatives are superseded by this offer letter. Nothing will change the at-will status of your

employment except for a written agreement signed by yourself and an appropriate officer of the company.

If you agree to accept this offer of employment, please countersign this letter and return it to me. I sincerely hope you will accept this employment offer. We look forward to working with you at United States Steel Corporation.

Very truly yours,

Barry Melnkovic  
Senior Vice President &  
Chief Human Resources Officer

Accepted by:

\_\_\_\_\_  
Kenneth Edward Jaycox Jr

\_\_\_\_\_  
Date

UNITED STATES STEEL CORPORATION  
SUBSIDIARIES AND JOINT VENTURES AS OF DECEMBER 31, 2021

<b>Company Name</b>	<b>Jurisdiction</b>
Chisholm Coal LLC	Kentucky
Chrome Deposit Corporation	Indiana
Compagnie de Gestion de Mifergui- Nimba, LTEE	Delaware
Cygnus Mines Limited	Canada
Double G Coatings, Inc.	Delaware
Double G Coatings Company, L.P.	Delaware
Essex Minerals Company	New Jersey
Fairfield Primary Operations, LLC	Texas
GCW/USS Energy, LLC	Illinois
Grant Assurance Corporation	Vermont
Kanawha Coal LLC	West Virginia
Oilfield Technologies, Inc.	Delaware
Orinoco Mining Company	Delaware
Perdido Land Development Co., Inc.	Delaware
USS-UI, LLC	Delaware
Pitcal Pipe, LLC	Delaware
Preserve Village Developers, LLC	Delaware
Stelco Holding Company	Delaware
Ontario Coal Company	Delaware
Ontario Eveleth Company	Minnesota
Ontario Hibbing Company	Minnesota
Hibbing Development Company	Minnesota
Hibbing Taconite Company	Minnesota
Stelco Coal Company	Pennsylvania
Stelco Erie Corporation	Delaware
Ontario Tilden Company	Michigan
Swan Point Yacht & Country Club, Inc.	Delaware
Timber Wolf Land, LLC	Delaware
Warrior & Gulf Navigation LLC	Alabama
U. S. Steel China, LLC	Delaware
U. S. Steel Holdco LLC	Delaware
Big River Steel Holdings LLC	Delaware
BRS Intermediate Holdings LLC	Delaware
Big River Steel LLC	Delaware
BRS Finance Corp	Delaware
Exploratory Ventures, LLC	Delaware
BRS Stock Holdco LLC	Delaware
Big River Steel Corp	Delaware
U. S. Steel Blocker LLC	Delaware
U. S. Steel Holdings, Inc.	Delaware
U. S. Steel Global Holdings I B.V.	Netherlands
U. S. Steel Global Holdings VI B.V.	Netherlands
U. S. Steel Košice, s.r.o. (USSK)	Slovakia
U. S. Steel Obalservis s.r.o.	Slovakia
Ferroenergy s.r.o.	Slovakia
Tubular s.r.o	Slovakia
U. S. Steel Košice – Labortest, s.r.o.	Slovakia
U. S. Steel Europe – Bohemia s.r.o. v likvidaci	Czech Republic
U. S. Steel Europe - France S.A.	France

UNITED STATES STEEL CORPORATION  
SUBSIDIARIES AND JOINT VENTURES AS OF DECEMBER 31, 2021

U.S. Steel Košice - SBS, s.r.o.	Slovakia
U. S. Steel Europe - Germany GmbH	Germany
U. S. Steel Global Holdings II, B.V.	Netherlands
U. S. Steel Canada Limited Partnership	Canada
U. S. Steel Holdings IV, Inc.	Delaware
U. S. Steel International of Canada, LTD.	Delaware
U. S. Steel LRD Canada North Inc.	Canada
U. S. Steel Mining Company, LLC	Alabama
U. S. Steel Timber Company, LLC	Alabama
U. S. Steel Tubular Products, LLC	Delaware
Lone Star Steel Holdings, Inc.	Delaware
Lone Star Steel Holdings II, Inc.	Oklahoma
U. S. Steel Tubular Products Middle East DMCC	Dubai, UAE
U. S. Steel Oilwell Services, LLC	Delaware
Patriot Premium Threading Services, LLC	Delaware
USS Construction Products, LLC	Delaware
U. S. Steel Tubular Products Canada ULC	Canada
U.S. Steel Produtos Tubulares do Brasil Ltda.	Brazil
Zinklahoma, Inc.	Delaware
U. S. Steel Tubular Products Holdings, LLC	Texas
U. S. Steel Seamless Tubular Operations, LLC	Texas
Star Brazil US, LLC 2	Texas
Star Brazil US, LLC 1	Texas
Lone Star Brazil Holdings 1 Ltda.	Brazil
UEC Technologies, LLC	Pennsylvania
USX Engineers and Consultants	Delaware
UEC Sail Information Technology, LTD.	India
United States Steel International, Inc.	New Jersey
United States Steel Export Company de Mexico, S.R.L. de C.V.	Mexico
United States Steel International de Mexico, S.R.L. de C. V.	Mexico
USS Galvanizing, Inc.	Delaware
PRO-TEC Coating Company, LLC	Delaware
PRO-TEC Coating Company, Inc.	Ohio
USS International Services, LLC	Delaware
USS Lakeside, LLC	Delaware
Chicago Lakeside Development, LLC	Delaware
CLD Parcel 14 LLC	Delaware
CLD Adjoining Residential Parcels LLC	Delaware
USS Oilwell Supply Co., LTD.	Delaware
USS Oilwell Tubular, Inc.	Delaware
USS Portfolio Delaware, Inc.	Delaware
USS WSP, LLC	Delaware
Worthington Specialty Processing	Michigan
ProCoil Company, LLC	Delaware
Worthington Taylor, LLC	Michigan
USX International Sales Company, Inc.	Barbados

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-229714 and 333-229713) and Form S-8 (Nos. 333-261805, 333-255653, 333-237966, 333-237965, 333-237964, 333-237963, 333-231216 and 333-231215) of United States Steel Corporation of our report dated February 11, 2022 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Pittsburgh, Pennsylvania  
February 11, 2022

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ David B. Burritt

David B. Burritt

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ Tracy A. Atkinson

Tracy A. Atkinson



POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ John J. Engel

John J. Engel

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ John V. Faraci

John V. Faraci

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ Murry S. Gerber

Murry S. Gerber

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ Jeh C. Johnson

Jeh C. Johnson

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or either one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ Paul A. Mascarenas  
Paul A. Mascarenas

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ Michael H. McGarry

Michael H. McGarry

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ David S. Sutherland

David S. Sutherland

POWER OF ATTORNEY

The undersigned does hereby make, constitute and appoint David B. Burritt, Christine S. Breves and Manpreet S. Grewal or any one of them, my true and lawful attorneys-in-fact to sign and execute for me and on my behalf United States Steel Corporation's Annual Report on Form 10-K for the year ended December 31, 2021 to be filed with the Securities and Exchange Commission, and any and all amendments to such report to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, in such form as they or any one or more of them may approve, and to do any and all other acts which said attorneys-in-fact may deem necessary or desirable to enable United States Steel Corporation to comply with said Act and the rules and regulations thereunder.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2022.

/s/ Patricia A. Tracey

Patricia A. Tracey



CHIEF EXECUTIVE OFFICER CERTIFICATION

I, David B. Burritt, certify that:

1. I have reviewed this annual report on Form 10-K 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.

February 11, 2022

/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 annual report on Form 10-K 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.

February 11, 2022

/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 Annual Report on Form 10-K of United States Steel Corporation for the period ending December 31, 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

February 11, 2022

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 Annual Report on Form 10-K of United States Steel Corporation for the period ending December 31, 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

February 11, 2022

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)**

**Information for the twelve months ended December 31, 2021 follows:**

Mine (Federal Mine Safety and Health Administration (MSHA) ID)	Total # of Significant & Substantial violations under §104(a) <sup>(a)</sup>	Total # of orders under §104(b) <sup>(a)</sup>	Total # of unwarrantable failure citations and orders under §104(d) <sup>(a)</sup>	Total # of violations under §110(b)(2) <sup>(a)</sup>	Total # of orders under §107(a) <sup>(a)</sup>	Total dollar value of proposed assessments from MSHA	Total # of mining related fatalities	Received Notice of Pattern of Violations under §104(e) <sup>(a)</sup> (yes/no)?	Received Notice of Potential to have Pattern under §104(e) <sup>(a)</sup> (yes/no)?	Total # of Legal Actions Pending with the Mine Safety and Health Review Commission as of Last Day of Period <sup>(b)</sup>	Legal Actions Initiated During Period	Legal Actions Resolved During Period
Mt. Iron (2100820, 2100282)	62	—	—	—	—	\$964,441	—	no	no	—	98	172
Keewatin (2103352)	25	—	—	—	—	\$392,561	—	no	no	—	21	25

<sup>(a)</sup> References to Section numbers are to sections of the Federal Mine Safety and Health Act of 1977.

<sup>(b)</sup> 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 legal actions were to contest citations and proposed assessments.



# **2022 MINNTAC AND KEETAC MINERAL RESOURCES & RESERVES ESTIMATE**



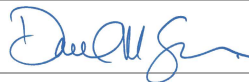
**AS OF JANUARY 1 2022**



C5663

C5663-TN-001-RevB

## APPROVAL

Description	Name	Title	Signature	Date
<b>Author</b>	Claude Bisaillon	Sr. Geological Engineer		2022-02-09
<b>Author</b>	Melanie Laroche-Boisvert	Mining EIT	 <small>Melanie LaRoche-Boisvert (Feb 9, 2022 22:18 EST)</small>	2022-02-09
<b>DRA Approved</b>	Daniel Gagnon	VP Mining		2022-02-09
<b>US Steel Approved</b>				

## REVISION RECORD

Revision	Description	Date
A	Initial Draft	Feb 3 2022
B	Final report	Feb 9 2022





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## 1 PURPOSE

United States Steel (US Steel) has requested DRA Americas to prepare independent estimates of the mineral resources and mineral reserves at its Minntac and Keetac iron ore mines in the state of Minnesota. This report is an excerpt of the SK-1300 TRS reports for Minntac and Keetac mines

## 2 MINNTAC MINE 2022 MINERAL RESOURCES AND RESERVES ESTIMATE

### 2.1 Minntac Mineral Resource Estimate

Three (3) 3-D block models were created by DRA in the HxGN MinePlan software, one for each of the three deposits: East, West and Sherman. These block models were used to evaluate the Mineral Resources; the parameters used are detailed in the following sections.

The Minntac deposits are composed of various layers of materials; the bottom of each layer was modeled based on the intercepts in each drill hole. Surfaces and 3-D solids were then created from these intercepts, and the blocks were coded according to the layer to which their centroids belong

The Mineral Resources, exclusive of Mineral Reserves, for the Minntac deposits are estimated at 933 MLT of indicated resources with an average grade of 18.14% MagFe, 5.80% concentrate silica and 23.21% weight recovery, representing 251 MNT of pellets. and 582 MLT of inferred resources grading 18.05% MagFe, 6.3% concentrate silica and 22.51% weight recovery representing 149 MNT of pellets . Table 2.1 presents the open pit Mineral Resources, exclusive of Mineral Reserves.

**Table 2.1 – Mineral Resource Estimate by Deposit – Effective January 1 2022**

		Deposit			
		East Pit	West Pit	Sherman	Total
<b>Indicated Resources</b>	Tonnage (MLT)	285.0	519.6	128.0	<b>932.6</b>
	MagFe (%)	18.71	17.68	19.18	<b>18.20</b>
	Concentrate Silica (%)	5.80	5.71	4.04	<b>5.51</b>
	Weight Recovery (%)	24.20	22.49	27.15	<b>23.65</b>
	Pellets (MNT)	78.5	133.0	39.5	<b>251.0</b>
<b>Inferred Resources</b>	Tonnage (MLT)	266.1	282.1	34.4	<b>582.6</b>
	MagFe (%)	18.65	17.45	18.30	<b>18.05</b>
	Concentrate Silica (%)	6.30	6.47	4.46	<b>6.27</b>
	Weight Recovery (%)	23.52	21.19	25.30	<b>22.50</b>

	Pellets (MNT)	71.2	68.0	9.9	<b>149.1</b>
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Footnotes:

1. The effective date of the Mineral Resource Estimate is January 1 2022.
2. Mineral Resources are reported in accordance SEC guidelines, exclusive of Mineral Reserves.
3. Mineral Resources were estimated using a price of \$85 /NT pellets and include modifying factors related to mining cost, mining dilution and recovery, process recoveries and costs, and G&A.
4. Figures have been rounded to an appropriate level of precision for the reporting of Mineral Resources.
5. Due to rounding, some columns or rows may not compute as shown.
6. The Mineral Resources are stated as dry tons processed.

## 2.2 Minntac Mineral Reserve Estimate

The Report was based on the Mineral Resources estimated by DRA along with the geotechnical and economic parameters for the pit optimization.

### 2.2.1 Pit Optimization

The open pit optimization was conducted on the deposit to determine the economic pit limits. The optimisation was carried out using HxGN MinePlan's MSOPit module. The current ore and waste mining costs, processing costs, pellet price, as well as pit and plant operating parameters were considered. The optimiser operates on a net value calculation for all the block in the model (i.e., revenue from pellet sales minus the operating costs).

Only Indicated Mineral Resources from the 3D block model have been considered in the optimisation and mine plan. Table 2.2 presents the pit optimization parameters and Table 2.2 presents the Permit to Mine boundary, limiting the reserves. These parameters reflect the ongoing operating parameters at the mine: a standard open pit truck and shovel operation and a production rate of 54 MLT of ore per year. The conversion from crude ore to saleable pellets is based on a formula provided by US Steel engineers and verified by DRA.

No Mineral Reserve estimate was performed for the Sherman deposit since this deposit is not located within the Permit to Mine boundary.

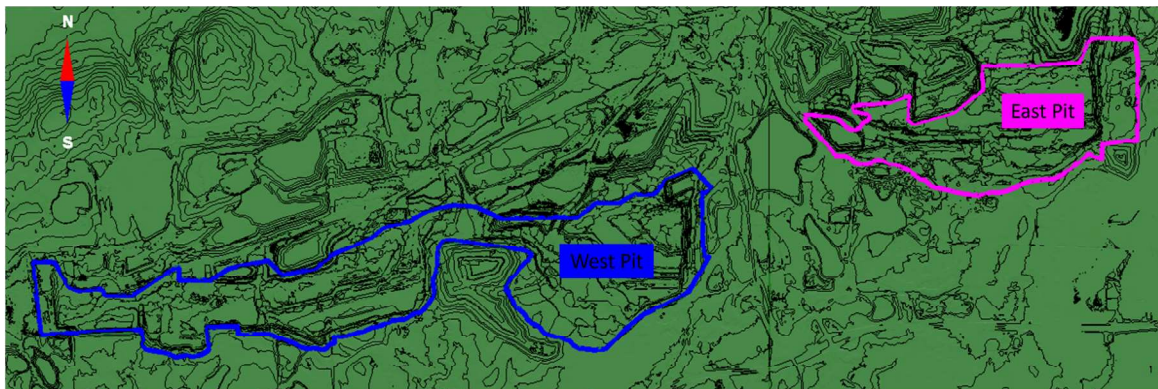
The Mineral Reserves are reported at a pellet price of \$85/NT.

**Table 2.2 – Mineral Reserve Pit Optimisation Parameters**

Description	Unit	Value
<b>General</b>		
Pellets price	\$/NT pellets	85.00
Pit slope angles	°	Overall slopes of 38.7° in waste rock and ore and 14.9° in overburden.
Mining limits	n/a	See Figure 2.1
Transportation cost	\$/NT	5.00
Royalties	\$/NT pellets	Variable

Description	Unit	Value
Crude ore to pellets conversion	n/a	$\frac{\text{Long Tons Ore} \times \text{Weight Recovery} \times (1 - 0.0223) \times 1.12 \text{ LT}/\Lambda}{0.9623}$
<b>Processing</b>		
Weight recovery	%	$(100 - 4.9693 * (\text{Silica} - 4) - 0.2762 * (\text{Silica} - 4)^2) * \left( \frac{\text{MagFe} - 1.48}{69.6942 - 0.8435(\text{Silica} - 4)} - 1.48 \right)$
Concentrator costs	\$/NT pellets	Fixed + variable costs
Crusher costs	\$/NT pellets	Fixed + variable costs
Agglomerator costs	\$/NT pellets	Fixed costs
G&A	\$/NT pellets	Fixed costs
Total processing costs	\$/NT pellets	Variable costs
<b>Mining</b>		
Waste mining cost	\$/LT waste	Fixed costs
Surface mining cost	\$/LT surface	Fixed costs
Ore mining cost	\$/LT ore	Fixed costs

Figure 2.1 – Permit to Mine Boundaries



#### 2.2.1.1 Pellet Price

The \$85/NT pellets price was selected based on public market research for valuation of the Minntac pellets.

#### 2.2.1.2 Overall Slope Angles

The slope angles used in the HxGN MinePlan MPSOPit optimizations follow the recommended overall slope of 38.7° in waste rock and ore and 14.9° in overburden.

## Mine Dilution and Mining Recovery

The Minntac deposit has an 8% slope. Therefore, a 95% mining recovery was applied to account for ore material left behind at the ore-waste contacts. A 1% dilution was applied, in line with current operations.

### 2.2.1.3 Mining, Processing, and G&A Costs

The mining, processing, and G&A costs, and associated calculations and parameters, were provided by US Steel based on their current operations and validated by DRA.

### 2.2.1.4 Cut-Off Grades

Material with a Silica grade less than 10%, and a MagFe grade greater than 14% is considered ore. These thresholds are based on the mill requirements and ensure that the material sent to be processed will profitably generate pellets. Any material which does not meet these criteria is considered waste and will be sent to a waste stockpile.

In addition, oxidized material is defined as having MagFe/Total Fe < 30%. Any ore material meeting this criterion had its classification changed to oxidized material and was considered waste.

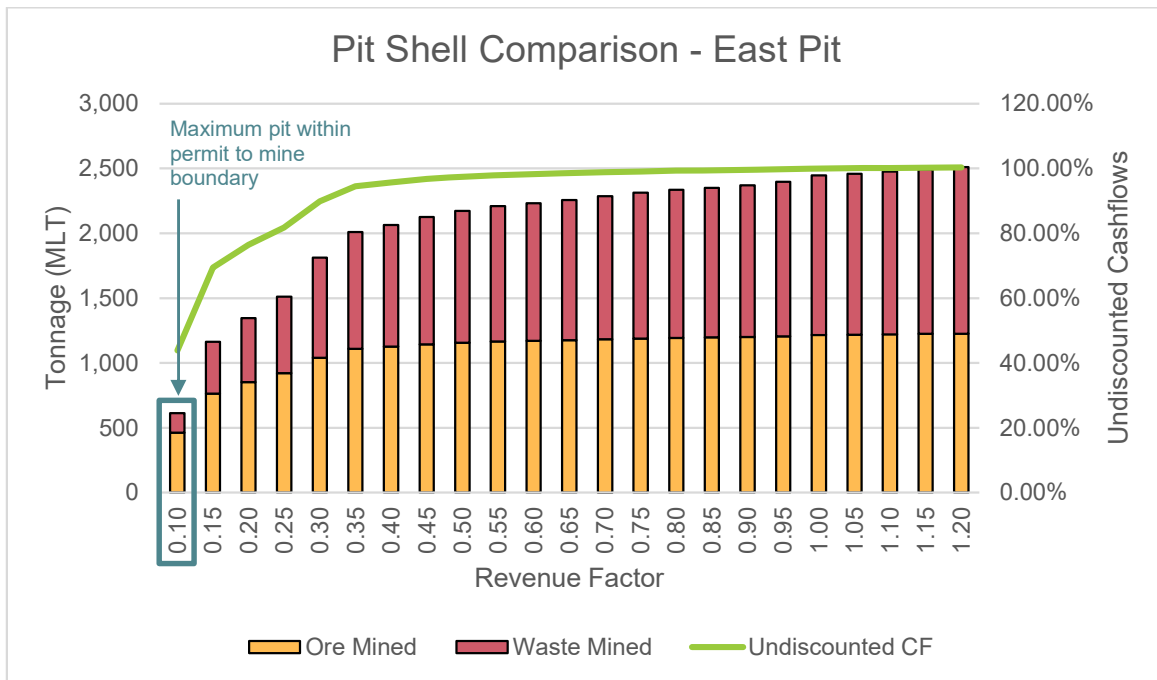
## 2.2.2 Pit Optimization Results

The optimal mining limits for the Minntac deposits were established using HxGN MinePlan's MSOPit, using the Pseudoflow algorithm as well as the parameters described in Table 2.2. The East and West deposits are more constrained by the Permit to Mine Boundary rather than by economic considerations. Figures 02.2 and 02.3 present the results of the pit shell generation without considering the Permit to Mine Boundary.

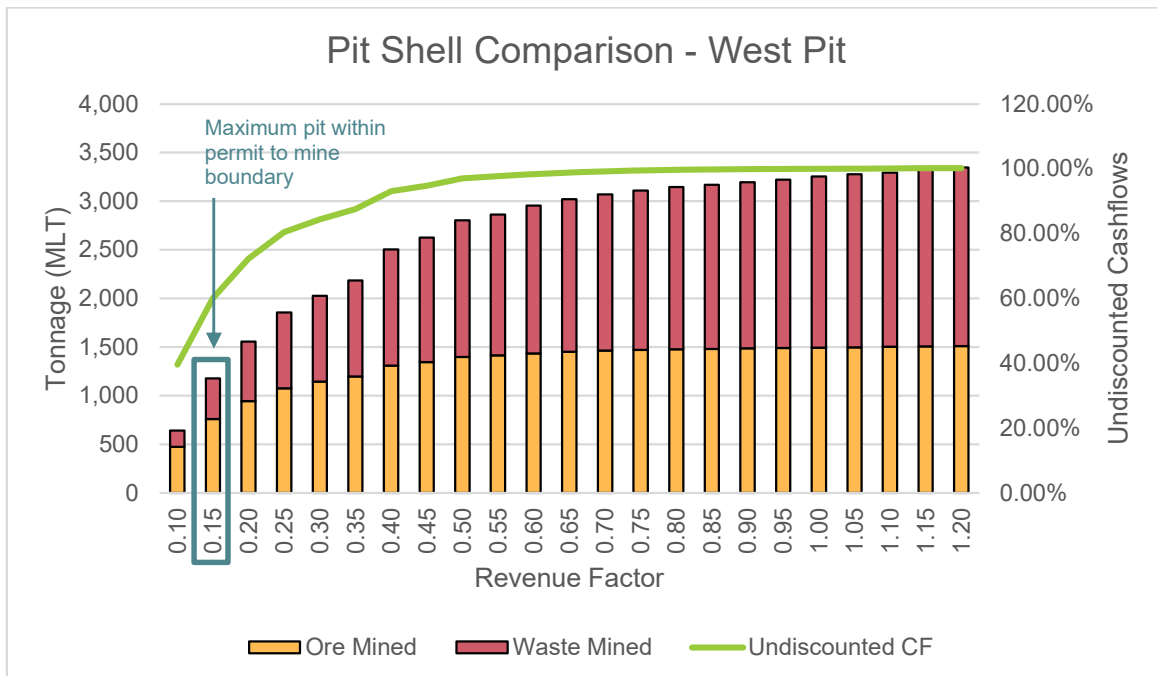
For the pits generated without considering the Permit to Mine Boundary, for both, the East and West deposits, the cashflows are positive. When looking at these pits, the revenue factor 1.00 pits would be chosen for each deposit at the ultimate pit limits; however, the pits must be constrained by the Permit to Mine Boundary. Given that the pits generated within the Permit to Mine Boundary would also have positive cashflows for every pit and that they are fully encompassed within the revenue factor 1.00 pits generated without considering the boundaries., The largest pits generated within the boundaries were chosen as the ultimate pit limits for the East and West Minntac deposits.

In terms of tonnages, the largest pit within the East Permit to Mine Boundary is approximately equivalent to the revenue factor 0.10 pit generated without considering the Permit to Mine Boundary, as indicated in blue in Figure 2.2. Similarly, the largest pit within the West Permit to Mine Boundary is approximately equivalent to the 0.15 pit generated without considering the Permit to Mine Boundary, as indicated in blue in Figure 2.3. The selected pits contain a combined 987.3 MLT of ore and 753.8 MLT of waste, including surface material, for an overall strip ratio of 0.76.

**Figure 2.2 – Comparison of Pit Shells without Considering the Permit to Mine Boundary – East Deposit**



**Figure 2.3 – Comparison of Pit Shells without Considering the Permit to Mine Boundary – West Deposit**



### 2.2.3 Pit Design

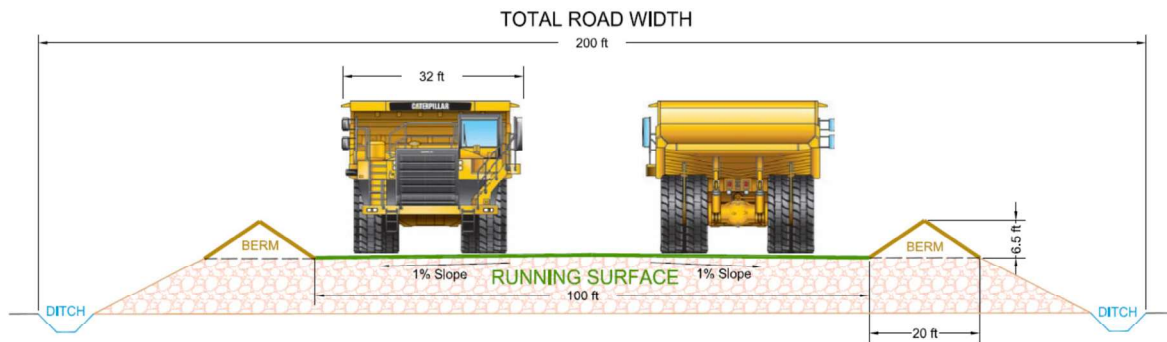
The next step in the Mineral Reserves estimation process is to design an operational pit that will form the basis of the production plan. These pit designs use the selected economic pit shells as a base and include smoothing pit

walls, adding ramps to access the pit bottom and ensuring that the pits can be mined using the existing mining fleet. The pits were design in HxGN MinePlan. The following sections provide the parameters that were used for the open pit design and present the results.

### 2.2.3.1 Haul Road Design

The ramps and haul roads have a width of 200 ft and a maximum slope of 8%, accommodating the 240t haul trucks used in the operation, as shown in Figure 2.4. The final pit design does not explicitly include ramps, since the bottom of the pit has a natural slope which will allow equipment to maneuver. Therefore, temporary haul roads will be built over the life of time to access different areas.

**Figure 2.4 – Haul Ramp**



### 2.2.3.2 Pit Slopes

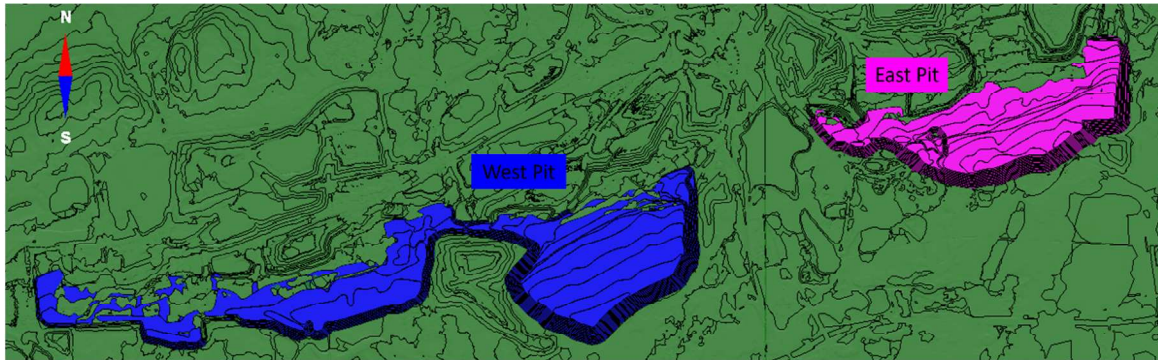
The pit designs follow the overall geotechnical slopes of 38.7° in waste rock and ore and 14.9° in overburden.

### 2.2.3.3 Open Pit Design Results

Figure 2.5 depicts the open pit design for the East and West Minntac pits. These pit designs were used for the estimation of Mineral Reserves. The final pit designs delineate 1,741.1 MLT combined ore and waste material compared to 1,987.5 MLT in the pit shell. The difference is a 15.6% decrease in ore material and a 7.9% decrease in waste material, due to following the geotechnical pit slope parameters and ensuring practical mining areas, all the while ensuring the permit to mine boundaries are respected.

**Figure 2.5 – Minntac Pits**





## 2.2.4 Mineral Reserve Classification

According to the Code of Federal Regulations, a mineral reserve is defined as “an estimate of tonnage and grade or quality of indicated and measured minerals resources that, in the opinion of the qualified person, can be the basis of an economically viable project. More specifically, it is the economically mineable part of a measured or indicated mineral resource, which includes diluting materials and allowances for losses that may occur when the material is mined or extracted”. Mineral reserves can be classified as either proven, “the economically mineable part of a measured mineral resource [resulting] from conversion of a measured mineral resource”, or probable, “the economically mineable part of an indicated and, in some cases, a measured mineral resource”.

Modifying factors are used to convert indicated and measured mineral resources to proven and probable mineral reserves. These include but are not limited to: “mining; processing; metallurgical; infrastructure; economic; marketing; legal; environmental compliance; plans, negotiations, or agreements with local individuals or groups; and governmental factors. The number, type and specific characteristics of the modifying factors applied will necessarily be a function of and depend upon the mineral, mine, property, or project”.

## 2.2.5 Mineral Reserves

The Mineral Reserves for the deposits are estimated at 974.0 million long tons of ore, with an average MagFe grade of 19.29%, an average silica grade of 5.59% and an average weight recovery of 25.11%. To access these reserves, 741.5 million long tons of waste, including surface material, will need to be mined for an overall strip ratio of 0.76 to 1 (waste/ore). Table 2.3 presents the open pit Mineral Reserves.

**Table 2.3 – Minntac – Mineral Reserves Estimate by Pit – Effective January 1 2022**

Deposit	Probable Reserves (MLT)	MagFe (%)	Silica (%)	Weight Recovery (%)	Waste (MLT)	Strip Ratio (Waste/Ore)	Pellets (MNT)
East	442.3	19.71	5.89	25.54	304.1	0.69	130.0
West	531.7	18.94	5.35	24.74	437.4	0.82	151.2





**// 2022 Minntac and Keetac Mineral Resources  
& Reserves Estimate**

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<b>Total</b>	<b>974.0</b>	<b>19.29</b>	<b>5.59</b>	<b>25.11</b>	<b>741.5</b>	<b>0.76</b>	<b>281.2</b>
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Footnotes:

1. The effective date of the Mineral Reserve Estimate is January 1 2022.
  2. Mineral Reserves are reported in accordance SEC guidelines.
  3. Mineral Reserves were estimated using a price of \$85 /NT pellets and include modifying factors related to mining cost, mining dilution and recovery, process recoveries and costs, and G&A.
  4. Figures have been rounded to an appropriate level of precision for the reporting of Mineral Reserves.
  5. Due to rounding, some columns or rows may not compute as shown.
  6. The Mineral Reserves are stated as dry tons processed.
-

### 3 KEETAC MINE 2022 MINERAL RESOURCES AND RESERVES ESTIMATE

#### 3.1 Keetac Mineral Resource Estimate

One (1) 3-D block model was created by DRA in the HxGN MinePlan software for the Keetac deposit. This block model was used to evaluate the Mineral Resources.

The geological and structural context of the Keetac Mine is well known. The Banded Iron Formation (BIF), as recognized by geologists working in the Minnesota Iron Range, consists of four main units which dip slightly towards the Southeast (between 4° & 6°):

- Upper Slate;
- Upper Chert;
- Lower Slate;
- Lower Chert.

As mentioned previously, the Lower Chert unit (and its mineralized sub-units 711, 712, 713, 720, 740 and 750) forms the main ore body at the Keetac mine. The geological interpretation of the deposit was aided by various reports and maps (both public and unpublished), as well as regular discussions with Keetac geologists and engineers.

The Mineral Resources, exclusive of Mineral Reserves, for the Keetac deposit are estimated at 606 MLT of indicated resources with an average grade of 18.93% MagFe, 4.40% concentrate silica and 27.34% weight recovery, representing 193 MNT of pellets. and 505 MLT of inferred resources grading 18.83% MagFe, 3.81% concentrate silica and 27.30% weight recovery representing 161 MNT of pellets. Table 3.1 presents the open pit Mineral Resources, exclusive of Mineral Reserves.

**Table 3.1 – Keetac – Mineral Resource Estimate – Effective January 1 2022**

Description	Ore Tonnage (MLT)	MagFe (%)	Silica (%)	Weight Recovery (%)	Pellets (MNT)
Indicated Resources	606.2	18.93	3.40	27.34	192.9
Inferred Resources	505.4	18.83	3.81	27.30	160.5

**Footnotes:**

1. The effective date of the Mineral Resource Estimate is January 1 2022
2. Mineral Resources are reported in accordance SEC guidelines, exclusive of Mineral Reserves.
3. Mineral Resources were estimated using a price of 85 \$/NT pellets and include modifying factors related to mining cost, mining dilution and recovery, process recoveries and costs, and G&A.
4. Figures have been rounded to an appropriate level of precision for the reporting of Mineral Resources.
5. Due to rounding, some columns or rows may not compute as shown.
6. The Mineral Resources are stated as dry tons processed.

## 3.2 Keetac Mineral Reserve Estimate

The Report was based on the Mineral Resources estimated by DRA along with geotechnical and economic parameters for the pit optimisation.

### 3.2.1 Pit Optimisation

The open pit optimisation was conducted on the deposit to determine the economic pit limits. The optimisation was carried out using HxGN MinePlan's MSOPit module. The current ore and waste mining costs, processing costs, pellet price, as well as pit and plant operating parameters were considered. The optimizer operates on a net value calculation for all the blocks in the model (i.e., revenue from pellet sales minus the operating costs).

Only Indicated Mineral Resources from the 3D block model have been considered in the optimisation and mine plan. Table 3.2 presents the pit optimisation parameters and Figure 3.1 presents the Permit to Mine boundary, limiting the reserves. These parameters reflect the ongoing operating parameters at the mine: a standard open pit truck and shovel operation and a production rate of 20 MLT of ore per year. The conversion from crude ore to saleable pellets is based on a formula provided by US Steel engineers and verified by DRA.

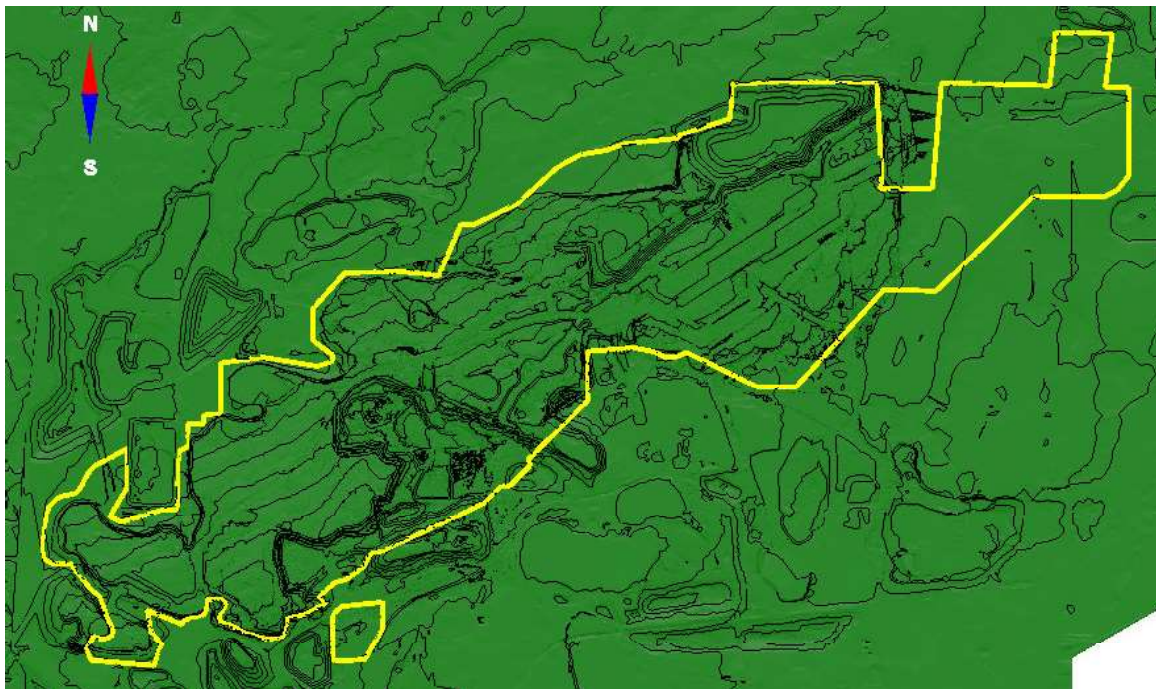
The Mineral Reserves are reported at a pellet price of \$85/NT.

**Table 3.2 – Mineral Reserve Pit Optimisation Parameters**

Description	Unit	Value
<b>General</b>		
Pellets price	\$/NT pellets	85.00
Pit slope angles	°	Overall slopes of 38.7° in waste rock and ore and 14.9° in overburden.
Mining limits	n/a	See Figure 3.1
Transportation cost	\$/NT	5.00
Royalties	\$/NT pellets	Variable
Crude ore to pellets conversion	n/a	$\frac{\text{Long Tons Ore} \times 1.12 \frac{LT}{NT} \times 0.98 \times 1.06 \times \text{Weight Recovery}}{100}$
<b>Processing</b>		
Concentrator costs	\$/NT pellets	Fixed + variable costs
Crusher costs	\$/NT pellets	Fixed + variable costs
Agglomerator costs	\$/NT pellets	Fixed costs
G&A	\$/NT pellets	Fixed costs
Total processing costs	\$/NT pellets	Variable costs
<b>Mining</b>		

Waste mining cost	\$/LT waste	<i>Fixed costs</i>
Surface mining cost	\$/LT surface	<i>Fixed costs</i>
Ore mining cost	\$/LT ore	<i>Fixed costs</i>

Figure 3.1 – Permit to Mine Boundary



#### 3.2.1.1 Pellet Price

The \$85/NT pellets price was selected based on public market research as fair value of Keetac pellets.

#### 3.2.1.2 Overall Slope Angles

The slope angles used in the HxGN MinePlan MPSOPit optimisations follow the recommended overall slope of 38.7° in waste rock and ore and 14.9° in overburden.

#### Mine Dilution and Mining Recovery

The Keetac deposit has a 2-4° slope. Therefore, a 95% mining recovery was applied to account for ore material left behind at the ore-waste contacts. A 1% dilution was applied, in line with current operations.

### 3.2.1.3 Mining, Processing, and G&A Costs

The mining, processing, and G&A costs, and associated calculations and parameters, were provided by US Steel based on their current operations and validated by DRA.

### 3.2.1.4 Cut-Off Grades

Lower Chert was considered ore if it met the following criteria:

- MagFe grade greater than 14%
- Liberation index less than 9%
- Weight recovery greater than 18%
- Ferrous/Ferris ratio less than 3.6%

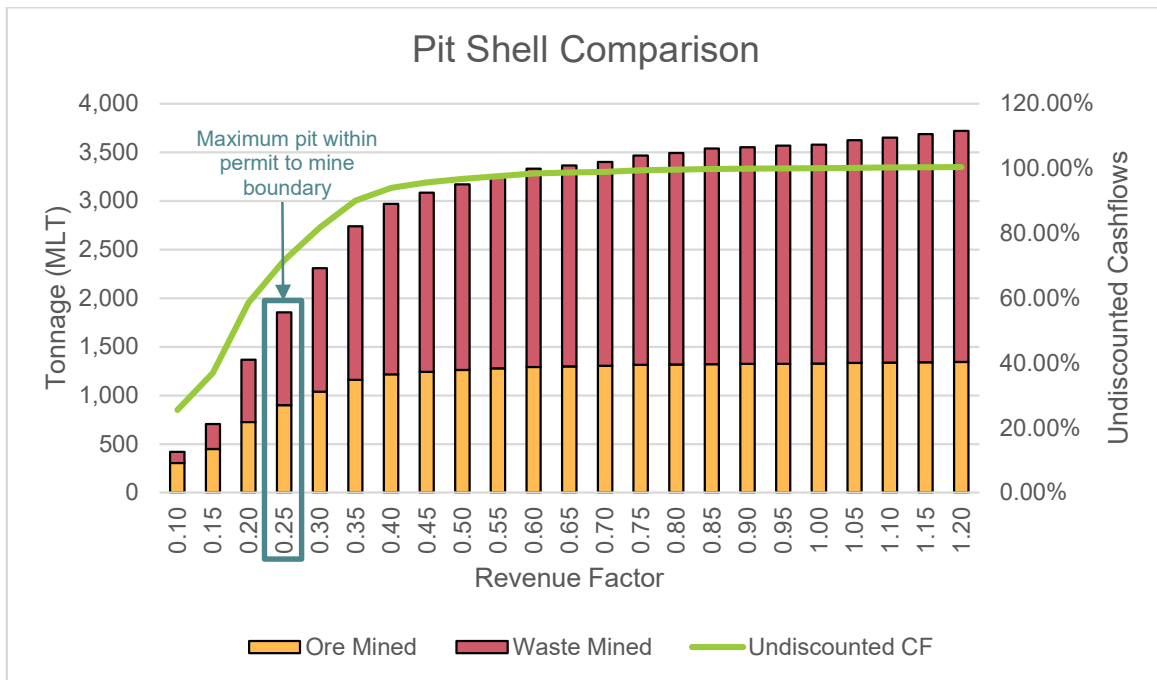
Upper Chert was considered ore if it met the same criteria as the Lower Chert; however, the weight recovery had to be greater than 20% based on expected lower recovery at the process plant for this type of ore.

## 3.2.2 Pit Optimization Results

The optimal pit mining limit for the deposit was established using HxGN MinePlan's MSOPit, using the Pseudoflow algorithm as well as the parameters described in Table 3.2. The deposit is more constrained by the permit to mine limit than economic considerations. Figure 3.2 presents the results of the pit shell generation without considering the permit to mine boundary.

For the pits generated without considering the permit to mine boundary, the cashflows are positive for every pit. When looking at these pits, the revenue factor 1.00 pit would be chosen as the ultimate pit limit; however, the pit must be constrained by the permit to mine boundary. Given that the pits generated within the permit to mine boundary also have positive cashflows for every pit and that they are fully encompassed within the revenue factor 1.00 pit generated without the permit to mine boundary, the largest pit generated within the permit to mine boundaries was chosen as the ultimate pit limit for the Keetac operation. In terms of tonnages, the largest pit within the permit to mine boundaries is approximately equivalent to the revenue factor 0.20 pit generated without considering the permit to mine boundary, as indicated in blue in Figure 3.2. Therefore, the largest pit within the permit to mine boundary was elected as the basis for the mineral reserve estimate. The selected pit contains 708.5 MLT of ore and 862.0 MLT of waste for an overall strip ratio of 1.52.

**Figure 3.2 – Comparison of Pit Shells without Considering the Permit to Mine Boundary**



### 3.2.3 Pit Design

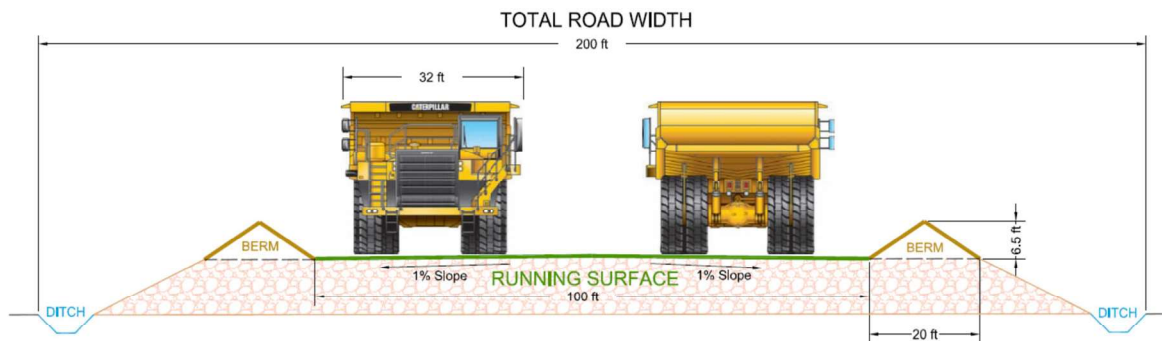
The next step in the Mineral Reserves estimation process is to design an operational pit that will form the basis of the production plan. This pit design uses the chosen optimised pit shell as a base and includes smoothing pit walls, adding ramps to access the pit bottom and ensuring that the pit can be mined using the existing mining fleet. The pits were designed in HxGN MinePlan. The following sections provide the parameters that were used for the open pit design and present the results.

#### 3.2.3.1 Haul Road Design

The ramps and haul roads have a width of 200 ft and maximum slope of 8%, accommodating the 240t haul trucks used in the operation, as shown in Figure 3.3.. The final pit design does not explicitly include ramps, since the bottom of the pit has a natural 8% slope which will allow equipment to maneuver. Therefore, temporary haul roads will be built over the life of mine to access different areas.



**Figure 3.3 – Haul Ramp**



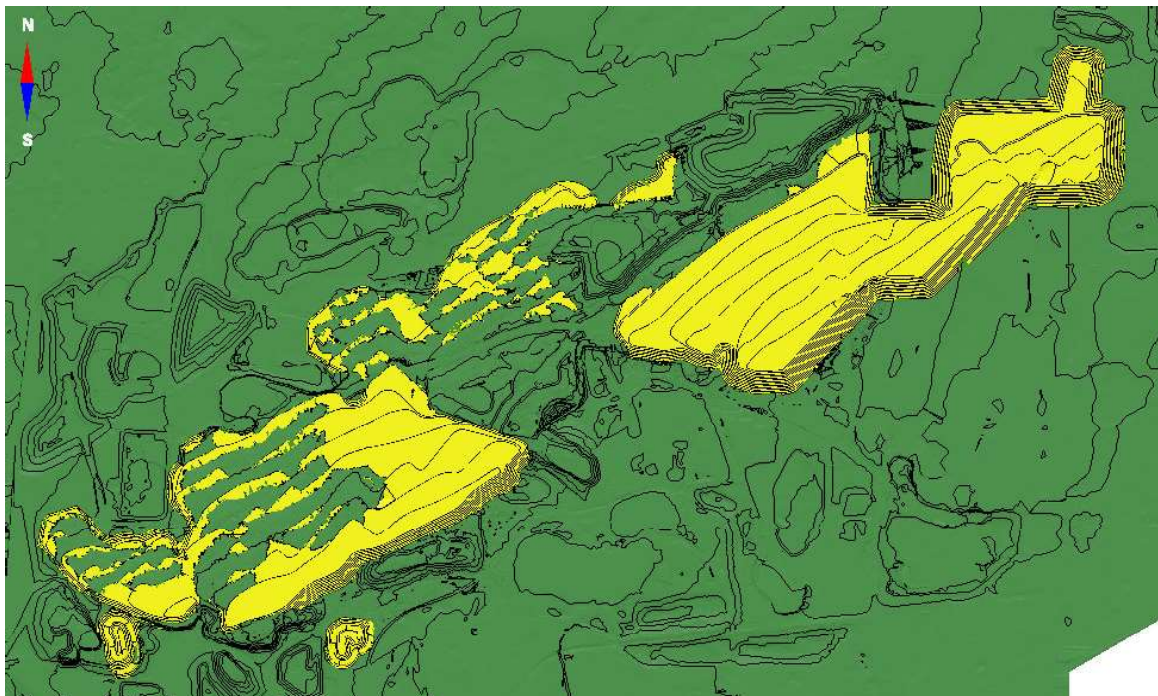
### 3.2.3.2 Pit Slopes

The pit design follows the overall geotechnical slopes of  $38.7^\circ$  in waste rock and ore and  $14.9^\circ$  in overburden.

### 3.2.3.3 Open Pit Design Results

Figure 3.4 presents the open pit design for the Keetac pit. This pit was used for the estimation of Mineral Reserves. The final pit design delineates a combined 1,440.7 MLT of ore and waste material, compared to 1,570.5 MLT in the pit shell. The difference is a 19.5% decrease in ore material and a 0.9% increase in waste material, due to following the geotechnical pit slope parameters and ensuring practical mining areas, all the while ensuring the permit to mine boundaries are respected.

**Figure 3.4 – Keetac Pit**



### 3.2.4 Mineral Reserve Classification

According to the Code of Federal Regulations, a mineral reserve is defined as “an estimate of tonnage and grade or quality of indicated and measured minerals resources that, in the opinion of the qualified person, can be the basis of an economically viable project. More specifically, it is the economically mineable part of a measured or indicated mineral resource, which includes diluting materials and allowances for losses that may occur when the material is mined or extracted”. Mineral reserves can be classified as either proven, “the economically mineable part of a measured mineral resource [resulting] from conversion of a measured mineral resource”, or probable, “the economically mineable part of an indicated and, in some cases, a measured mineral resource”.

Modifying factors are used to convert indicated and measured mineral resources to proven and probable mineral reserves. These include but are not limited to: “mining; processing; metallurgical; infrastructure; economic; marketing; legal; environmental compliance; plans, negotiations, or agreements with local individuals or groups; and governmental factors. The number, type and specific characteristics of the modifying factors applied will necessarily be a function of and depend upon the mineral, mine, property, or project”.

### 3.2.5 Mineral Reserves

The Mineral Reserves for the deposit are estimated at 564.2 MLT of ore, with an average MagFe grade of 19.29%, an average concentrate silica grade of 3.57% and an average weight recovery of 20.97%. To access these reserves, a total of 858.6 MLT of waste, including surface material, will need to be extracted, for a 1.52 strip ratio. Processing the 564.2 million long tons of ore in the concentrator then in the pellet plant will produce a total 185.2 MNT of pellets. Table 3.3 presents the open pit Mineral Reserves.

**Table 3.3 – Keetac – Mineral Reserves Estimate – Effective January 1 2022**

Probable Reserves (MLT)	MagFe (%)	Concentrate Silica (%)	Weight Recovery (%)	Waste (MLT)	Strip Ratio (Waste/Ore)	Pellets (MNT)
564.2	19.29	3.57	20.97	858.6	1.52	185.2

Footnotes:

1. The effective date of the Mineral Reserve Estimate is January 1 2022.
2. Mineral Reserves are reported in accordance SEC guidelines.
3. Mineral Reserves were estimated using a price of \$85 /NT pellets and include modifying factors related to mining cost, mining dilution and recovery, process recoveries and costs, and G&A.
4. Figures have been rounded to an appropriate level of precision for the reporting of Mineral Reserves.
5. Due to rounding, some columns or rows may not compute as shown.
6. The Mineral Reserves are stated as dry tons processed.











# C5663-TN- 001-Rev B1

Final Audit Report

2022-02-10

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