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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

Form 10-K

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

For the fiscal year ended December 31, 2023

or

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

Commission file number: 1-13105

Arch Resources, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**43-0921172**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
1 CityPlace Drive **Suite 300** **St. Louis** **Missouri**	
(Address of principal executive offices)	**63141** (Zip code)

Registrant's telephone number, including area code: **(314) 994-2700**

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

Title of Each Class	**Trading Symbol**	**Name of Each Exchange on Which Registered**
Common Stock, $.01 par value	ARCH	New York Stock Exchange

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

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

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

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

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

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

Large accelerated filer	☒	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. ☒

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

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

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

The aggregate market value of the voting stock held by non-affiliates of the registrant (excluding outstanding shares beneficially owned by directors, officers, other affiliates and treasury shares) as of **June 30, 2023** was approximately $2,052.1 million.

At February 1, 2024 there were 18,360,691 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission in connection with the 2023 annual stockholders' meeting are incorporated by reference into Part III of this Form 10-K.

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If you are not familiar with any of the mining terms used in this report, we have provided explanations of many of them under the caption "Glossary of Selected Mining Terms" on page 38 of this report. Unless the context otherwise requires, all references in this report to "Arch," the Company," "we," "us," or "our" are to Arch Resources, Inc. and its subsidiaries.

CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING INFORMATION

This report contains 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, such as our expected future business and financial performance, and are intended to come within the safe harbor protections provided by those sections. The words "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "predicts," "projects," "seeks," "should," "will" or other comparable words and phrases identify forward-looking statements, which speak only as of the date of this report. Forward-looking statements by their nature address matters that are, to different degrees, uncertain. Actual results may vary significantly from those anticipated due to many factors, including:

- loss of availability, reliability and cost-effectiveness of transportation facilities and fluctuations in transportation costs;
- operating risks beyond our control, including risks related to mining conditions, mining, processing and plant equipment failures or maintenance problems, weather and natural disasters, the unavailability of raw materials, equipment or other critical supplies, mining accidents, and other inherent risks of coal mining that are beyond our control;
- inflationary pressures on and availability and price of mining and other industrial supplies;
- changes in coal prices, which may be caused by numerous factors beyond our control, including changes in the domestic and foreign supply of and demand for coal and the domestic and foreign demand for steel and electricity;
- volatile economic and market conditions;
- the effects of foreign and domestic trade policies, actions or disputes on the level of trade among the countries and regions in which we operate, the competitiveness of our exports, or our ability to export;
- the effects of significant foreign conflicts;
- the loss of, or significant reduction in, purchases by our largest customers;
- our relationships with, and other conditions affecting our customers and our ability to collect payments from our customers;
- risks related to our international growth;
- competition, both within our industry and with producers of competing energy sources, including the effects from any current or future legislation or regulations designed to support, promote or mandate renewable energy sources;
- alternative steel production technologies that may reduce demand for our coal;
- our ability to secure new coal supply arrangements or to renew existing coal supply arrangements;
- cyber-attacks or other security breaches that disrupt our operations, or that result in the unauthorized release of proprietary, confidential or personally identifiable information;
- our ability to acquire or develop coal reserves in an economically feasible manner;

- inaccuracies in our estimates of our coal reserves;
- defects in title or the loss of a leasehold interest;
- the availability and cost of surety bonds; including potential collateral requirements;
- We may not have adequate insurance coverage for some business risks;
- disruptions in the supply of coal from third parties;
- Decreases in the coal consumption of electric power generators could result in less demand and lower prices for thermal coal;
- our ability to pay dividends or repurchase shares of our common stock according to our announced intent or at all;
- the loss of key personnel or the failure to attract additional qualified personnel and the availability of skilled employees and other workforce factors;
- public health emergencies, such as pandemics or epidemics, could have an adverse effect on our business;
- existing and future legislation and regulations affecting both our coal mining operations and our customers' coal usage, governmental policies and taxes, including those aimed at reducing emissions of elements such as mercury, sulfur dioxides, nitrogen oxides, particulate matter or greenhouse gases;
- increased pressure from political and regulatory authorities, along with environmental and climate change activist groups, and lending and investment policies adopted by financial institutions and insurance companies to address concerns about the environmental impacts of coal combustion;
- increased attention to environmental, social or governance matters ("ESG");
- our ability to obtain or renew various permits necessary for our mining operations;
- risks related to regulatory agencies ordering certain of our mines to be temporarily or permanently closed under certain circumstances;
- risks related to extensive environmental regulations that impose significant costs on our mining operations, and could result in litigation or material liabilities;
- the accuracy of our estimates of reclamation and other mine closure obligations;
- the existence of hazardous substances or other environmental contamination on property owned or used by us;
- risks related to tax legislation and our ability to use net operating losses and certain tax credits; and
- other factors, including those discussed in "Legal Proceedings," set forth in Item 3 of this report and "Risk Factors," set forth in Item 1A of this report.

All forward-looking statements in this report, as well as all other written and oral forward-looking statements attributable to us or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements contained in this section and elsewhere in this report. These factors are not necessarily all of the important factors that could affect us. These risks and uncertainties, as well as other risks of which we are not aware or which we currently do not believe to be material, may cause our actual future results to be materially different than those expressed in our forward-looking statements. These forward-looking statements speak only as of the date on which such statements were

made, and we do not undertake to update our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by the federal securities laws.

Additionally, our discussions of certain ESG matters and issues herein are developed with various standards and frameworks (including standards for the measurement of underlying data), and the interests of various stakeholders. As such, such discussions may not necessarily be "material" under the federal securities laws for SEC reporting purposes. Furthermore, many of our disclosures regarding ESG matters are subject to methodological considerations or information, including from third parties, that is still evolving and subject to change. For example, our disclosures based on any standards may change due to revisions in framework requirements, availability of information, changes in our business or applicable government policies, or other factors, some of which may be beyond our control.

PART I

ITEM 1. BUSINESS

Introduction

We are one of the world's largest coal producers and a premier producer of metallurgical coal. For the year ended December 31, 2023, we sold approximately 75 million tons of coal, including approximately 0.1 million tons of coal we purchased from third parties. We sell substantially all of our coal to steel mills, power plants and industrial facilities. At December 31, 2023, we operated seven active mines located in three of the major coal-producing regions of the United States. The locations of our mines and access to export facilities enable us to ship coal worldwide. We incorporate by reference the information about the geographical breakdown of our coal sales for the respective periods covered within this report contained in Note 20, "Risk Concentrations" to the Consolidated Financial Statements.

Business Strategy

We are a leading United States producer of metallurgical products for the global steel industry, and the leading supplier of premium High-Vol A metallurgical coal globally. We operate four large, modern metallurgical mines that consistently achieve high standards for both mine safety and environmental stewardship. Leer and Leer South longwall mines anchor our large-scale, first quartile metallurgical franchise. The Leer franchise consistently ranks among the lowest cost U.S. metallurgical mines and produces a product quality that is recognized and sought-after worldwide. The Leer and Leer South operations are complemented by the Beckley and Mountain Laurel continuous miner mines, which in aggregate provide us with a full suite of high-quality metallurgical products for sale into the global metallurgical market.

Arch and its subsidiaries also operate thermal mines in the Powder River Basin and Colorado that produce thermal coal for sale into international and domestic markets. In Colorado, our West Elk mine produces a high-quality thermal product that can compete effectively in seaborne markets, where thermal coal demand remains robust. In addition, West Elk supplies a sizeable North American industrial customer base that we believe will continue to rely significantly on thermal coal, which can be highly advantageous for specific industrial applications. In the Powder River Basin, most of our production is sold to U.S. power generators, who are systematically shifting their generating capacity to other, non-coal fuel and energy sources. In keeping with this shift and the ongoing decline in domestic demand for thermal coal, Arch is managing the shrinking of its operating footprint in an economically and socially responsible manner, taking into careful consideration the needs of its thermal employee base, the communities in which we operate, and the needs of our thermal power customers as well as consumers of power generation generally. We remain confident that our Powder River Basin mines can continue to provide significant, incremental cash flow to complement the strong cash-generating capabilities of our core metallurgical franchise in the near to intermediate term, while self-funding their own closure obligations over the longer term.

We believe that our long-term success depends upon achieving excellence in mine safety and environmental stewardship; conducting business in an ethical and transparent manner; investing in our people and the communities in which we operate; and demonstrating strong corporate governance. With our strategic shift towards metallurgical products – which are an essential input in the production of new steel – we have aligned our value proposition to reflect the world's intensifying focus on sustainability and the construction of a new, steel-intensive, low-carbon economy. We were the first – and remain the only – U.S. metallurgical coal producer to join Responsible Steel, the steel industry's global multi-stakeholder standard and certification initiative. In the fourth quarter of 2023, our Leer mine achieved Level A verification for all protocols comprising the Towards Sustainable Mining (TSM) Initiative, which we believe further enhances our standing as a supplier of choice to increasingly sustainability-focused global steelmakers.

We are a demonstrated leader in mine safety, with an average lost-time incident rate during the past five years that is nearly 2.5 times better than the industry average. Our subsidiaries have won more than 40 national and state safety awards in the past five years.

In the environmental arena, our subsidiaries received zero notices of violation (NOV) in 2023 and 2021 while receiving one NOV in 2022. Arch has averaged fewer than one NOV per year over the past five years, versus an average of approximately 15 annually by 10 other major U.S. coal producers. In the area of water management, there have been zero exceedances for a 100 percent compliance record for the third year in a row.

Coal Characteristics

End users generally characterize coal as thermal coal or metallurgical coal. Heat value, sulfur, ash, moisture content, and volatility, in the case of metallurgical coal, are important variables in the marketing and transportation of coal. These characteristics help producers determine the best end use of a particular type of coal. The following is a description of these general coal characteristics:

Heat Value. In general, the carbon content of coal supplies most of its heating value, but other factors also influence the amount of energy it contains per unit of weight. The heat value of coal is commonly measured in Btus. Coal is generally classified into four categories, lignite, subbituminous, bituminous and anthracite, reflecting the progressive response of individual deposits of coal to increasing heat and pressure. Anthracite is coal with the highest carbon content and, therefore, the highest heat value, nearing 15,000 Btus per pound. Bituminous coal, used primarily to generate electricity and to make coke for the steel industry, has a heat value ranging between 10,500 and 15,500 Btus per pound. Subbituminous coal ranges from 8,300 to 13,000 Btus per pound and is generally used for electric power generation. Lignite coal is a geologically young coal which has the lowest carbon content and a heat value ranging between 4,000 and 8,300 Btus per pound.

Sulfur Content. Federal and state environmental regulations, including regulations that limit the amount of sulfur dioxide that may be emitted as a result of combustion, have affected and may continue to affect the demand for certain types of coal. The sulfur content of coal can vary from seam to seam and within a single seam. The chemical composition and concentration of sulfur in coal affects the amount of sulfur dioxide produced in combustion. Coal-fueled power plants can comply with sulfur dioxide emission regulations by burning coal with low sulfur content, blending coals with various sulfur contents, purchasing emission allowances on the open market and/or using sulfur dioxide emission reduction technology.

Ash. Ash is the inorganic material remaining after the combustion of coal. As with sulfur, ash content varies from seam to seam. Ash content is an important characteristic of coal because it impacts boiler performance and electric generating plants must handle and dispose of ash following combustion. The composition of the ash, including the proportion of sodium oxide and fusion temperature, is also an important characteristic of coal, as it helps to determine the suitability of the coal to end users. The absence of ash is also important to the process by which metallurgical coal is transformed into coke for use in steel production.

Moisture. Moisture content of coal varies by the type of coal, the region where it is mined and the location of the coal within a seam. In general, high moisture content decreases the heat value and increases the weight of the coal, thereby making it more expensive to transport. Moisture content in coal, on an as-sold basis, can range from approximately 2% to over 30% of the coal's weight.

Other. Users of metallurgical coal measure certain other characteristics, including fluidity, volatility, and swelling capacity to assess the strength of coke produced from a given coal or the amount of coke that certain types of coal will yield. These characteristics are important elements in determining the value of the metallurgical coal we produce and market.

Industry Overview

Background. Coal is mined globally using various methods of surface and underground recovery. Coal is primarily used for steel production and electric power generation, but it is also used for certain industrial processes such as cement production. Coal is a globally marketed commodity and can be transported to demand centers by ocean-going vessels, barge, rail, truck or conveyor belt.

In 2023, world coal production further recovered from the COVID-19 pandemic related supply and demand disruptions experienced in 2020. An expansionary economic environment was supportive of coal fundamentals in 2023. Based on preliminary industry data and internal estimates, we believe world coal production increased around 2% in 2023 to approximately 8.9 billion metric tons; this likely represents an all-time for yearly world coal production after having increased around 8% in 2022.

China is the largest producer of coal in the world accounting for over 50% of total production. According to available data from the Chinese National Bureau of Statistics and Estimates, China produced around 4.7 billion metric tons of coal in 2023. Other major coal producing countries are India, Indonesia, the United States, Australia, Russia, South Africa and Colombia. India, the world's second biggest coal producer, could reach 1 billion metric tons of production in 2024. In 2023, U.S. coal production decreased by approximately 2% to 528 million metric tons, after increasing around 3% in 2022 to around 540 million metric tons mainly due to lower demand for power generation. U.S. coal production has decreased by roughly 50% in the past decade as coal-fired generation demand has continued to decrease. The U.S. is now the fourth largest producer after being surpassed by India and Indonesia in the past decade.

Steel is produced via two main methods: basic oxygen furnace (BOF) and electric arc furnace (EAF). EAF steelmaking produces steel by using an electrical current to melt scrap steel, while BOF steelmaking relies on coke and iron ore as key inputs to produce pig iron, which is then converted into steel. Metallurgical coal is a key part of the BOF process as it is used to make coke.

The main steel producing countries are China, India, Japan, United States, Russia, South Korea, Turkey, Germany, Brazil, and Italy. Approximately 72% of global steel is produced via the BOF steelmaking process, while in the United States, BOF accounts for around 31% of steel production. Arch sells high-quality metallurgical coal products that are essential inputs for BOF steel production worldwide. Our focus is to be a premier low-cost, metallurgical coal supplier to the global steel industry.

In 2023, world steel production is expected to be little changed from 2022 due to ongoing global recessionary fears, inflationary pressures and the Ukraine-Russia war. The World Steel Association forecasts steel demand to grow around 2% globally in 2023; however, the demand growth will not be balanced. Steel demand growth in some key regions, including Europe, South America, Africa and the Middle East, will be negative, according to World Steel Association forecasts. Chinese steel production was flat in 2023, as the government implemented production controls.

Global trade of metallurgical coal was also affected by the pandemic and has slowly recovered. We estimate metallurgical coal import-export trade flows improved slightly in 2023 from 2022 levels. A full restoration of trade volumes back to pre-pandemic levels could take place in 2024; however, certain factors continue to affect the industry, including weather, geological issues, workforce absenteeism, supply chain constraints, transportation reliability and lingering effects from the COVID-19 pandemic, including responses thereto. The primary nations that supply seaborne metallurgical coal to the global steel markets are Australia, the United States, Canada, and Russia.

Australia is the largest metallurgical coal exporter and the second largest thermal coal exporter in the world. Towards the end of 2020, China implemented a ban on all coal imports from Australia. This ban imposed by the key importer of coal on the key exporter of coal rearranged historical global trade patterns. Although the ban on Australian coal was lifted in 2023, it was in place long enough to further open the Chinese markets to United States coal suppliers. In 2023, Australian exports of metallurgical to China were limited compared to recent historical averages. Australian metallurgical coal exports are expected to have fallen in 2023, reaching the lowest level in 11 years, based on preliminary trade data. Additionally, the regulatory environment in Australia has become more restrictive for coal mining, including the recently enacted increase in royalty rates within Queensland. These actions have limited additional investment in the coal mining industry.

We rank among the largest metallurgical coal producers in the United States. Based on internal estimates, we produced around 11% of total U.S. metallurgical coal supply, which was estimated to be around 75 million tons in 2023. Our metallurgical coal was sold to five North American customers and exported to 34 customers overseas in 11 countries in 2023.

All of our metallurgical coal is produced at operations in West Virginia. Approximately 50% of the metallurgical coal produced in the United States is produced in West Virginia. Carbon content, volatility, fluidity, coke strength after reaction (CSR), and other chemical and physical properties are among critical characteristics for metallurgical coal.

We produce coal used for electric power generation (thermal) and industrial facilities from our mines located in Wyoming and Colorado. The European energy crisis, which was exacerbated by the Ukraine-Russia war, contributed to strong demand for our thermal coal products from international buyers in 2022, although the demand growth in 2023 was subdued. The European Union, which has traditionally been a major market for Russian coals, imposed a ban on Russian coals as of August 2022. Limited global investments in thermal coal supply, weather events, a lack of qualified labor availability, and other factors limited the supply response, which resulted in record prices for domestic and international markets in 2022.

Much of our domestic coal is sold at the mine where title and risk of loss transfer to the customer as coal is loaded into the railcar or truck. Customers are generally responsible for transportation - typically using third party carriers. There are, however, some agreements where we retain responsibility for the coal during delivery to the customer site or intermediate terminal. Our export coals usually change title and risk of loss as the coal is loaded on a vessel. Normally we contract for transportation services from the mine to the ocean loading port. On occasion, we retain title to the coal to the ocean receiving port.

In 2023, approximately 88% of our coal volumes were sold as thermal products with the remaining 12% sold as metallurgical products. However, due to the significantly higher value and selling price of our metallurgical coals compared to thermal coals, our metallurgical segment contributed around 60% of our total sales revenue in 2023.

We seek to establish direct long-term relationships with customers through exemplary customer service while operating safe and environmentally responsible mines. The commercial environment in which we operate is very competitive. We compete with domestic and international coal producers, traders or brokers, and non-coal based power producers, as well as with electric arc-based steel producers. We compete using price, coal quality, transportation, optionality, customer administration, reputation, and reliability.

We have an experienced and knowledgeable sales, marketing, and logistics group. This group is dedicated to meeting customer needs, coordinating transportation, and managing risk.

Coal prices are tied to competing fuel sources as well as supply and demand patterns, which are influenced by many uncontrollable factors. For power generation, the price of coal is affected by the relative supply and demand of competitive coal, transportation, availability, weather, competing power generation fuels particularly natural gas, governmental subsidies of alternate energy sources, regulations and economic conditions. For metallurgical coal, the price of coal is affected by the supply and demand of competitive coal, transportation, the price of steel, the price of scrap, demand for steel, transportation rates, strength of the U.S. dollar, regulations, international trade disputes and economic conditions.

U.S. Coal Production. The United States is among the largest coal producers in the world. According to the U.S. Energy Information Administration (EIA), there are over 250 billion short tons of recoverable coal reserves in the United States. Current domestic recoverable coal reserves could supply the coal-fired generation fleet for the next 500 years, based on current demand.

The EIA subdivides United States coal production into three major areas: Western Region, Appalachia, and Interior Region. According to the preliminary information from EIA, total U.S. coal production decreased by an estimated 13 million short tons in 2023, to around 582 million short tons.

The Western Region includes the Powder River Basin and the Western Bituminous region. According to the EIA, coal produced in the Western Region decreased from approximately 335 million short tons in 2022 to around 320 million short tons in 2023. The Powder River Basin is located in northeastern Wyoming and southeastern Montana and is the largest producing region in the United States. Coal from this region is sub-bituminous coal with low sulfur content ranging from 0.2% to 0.9% and heating values ranging from 8,300 to 9,500 BTU/lb. Powder River Basin coal generally has a lower heat content than other regions and is produced from thick seams using surface recovery methods. The Western Bituminous region includes Colorado, Utah and southern Wyoming. Coal from this region typically has low sulfur content ranging from 0.4% to 0.8% and heating values ranging from 10,000 to 12,200 BTU/lb. Western

Bituminous coal has certain quality characteristics, especially its higher heat content, low ash and low sulfur, that make this a desirable coal for domestic and international power producers.

Appalachia is divided into north, central and southern regions. According to the EIA, coal produced in the Appalachian region increased from approximately 161 million short tons in 2022 to around 167 million short tons in 2023. Appalachian coal is located near the prolific eastern shale-gas producing regions. Central Appalachian thermal coal is disadvantaged for power generation because of the depletion of economically attractive reserves, increasing costs of production, and permitting issues. However, virtually all U.S. metallurgical coal is produced in Appalachia and the relative scarcity and high quality of this coal allows for a pricing premium over thermal coal. Appalachia, while still a major producer of thermal coal, is undergoing a shift towards heavier reliance on metallurgical coal production for both domestic and international use. This is especially the case in Central Appalachia.

Northern Appalachia includes Pennsylvania, Northern West Virginia, Ohio and Maryland. Coal from this region generally has a high heat value ranging from 10,300 to 13,500 BTU/lb. and a sulfur content ranging from 0.8% to 4.0%. Central Appalachia includes Southern West Virginia, Virginia, Kentucky and Northern Tennessee. Coal mined from this region generally has a high heat value ranging from 11,400 to 13,200 BTU/lb. and low sulfur content ranging from 0.2% to 2.0%. Southern Appalachia primarily covers Alabama and generally has a heat content ranging from 11,300 to 12,300 BTU/lb. and a sulfur content ranging from 0.7% to 3.0%. Southern Appalachia mines are primarily focused on metallurgical markets.

The Interior coal region includes Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas, and Western Kentucky. The Illinois Basin is the largest producing region in the Interior and consists of Illinois, Indiana and western Kentucky. According to the EIA, coal produced in the Interior Region decreased from approximately 98 million short tons in 2022 to around 95 million short tons in 2023. Coal from the Illinois Basin generally has a heat value ranging from 10,100 to 12,600 BTU/lb. and has a sulfur content ranging from 1.0% to 4.3%. Despite its high sulfur content, coal from the Illinois Basin can generally be used by electric power generation facilities that have installed emissions control devices, such as scrubbers.

Coal Mining Methods

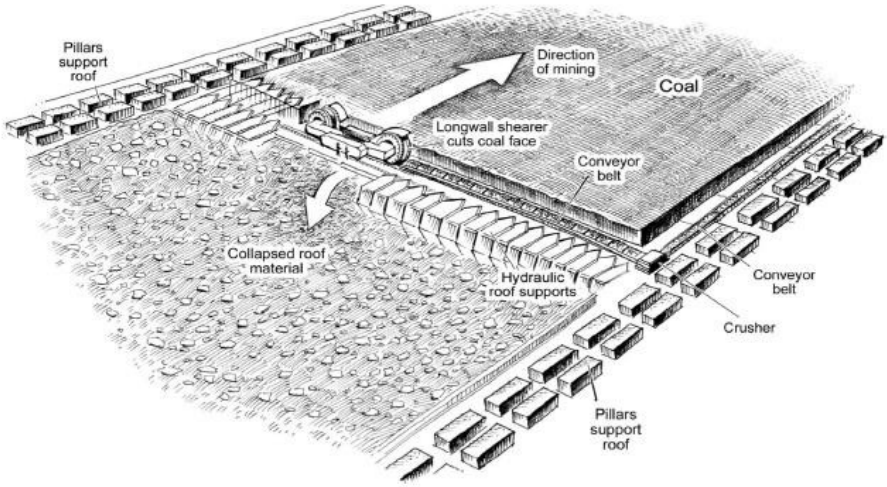
The geological characteristics of our coal reserves largely determine the coal mining method we employ. We use two primary methods of mining coal: underground mining and surface mining.

Underground Mining. We use underground mining methods when coal is located deep beneath the surface. We have included the identity and location of our underground mining operations below under “Our Mining Operations-General.”

Our underground mines are typically operated using one or both of two different mining techniques: longwall mining and room-and-pillar mining.

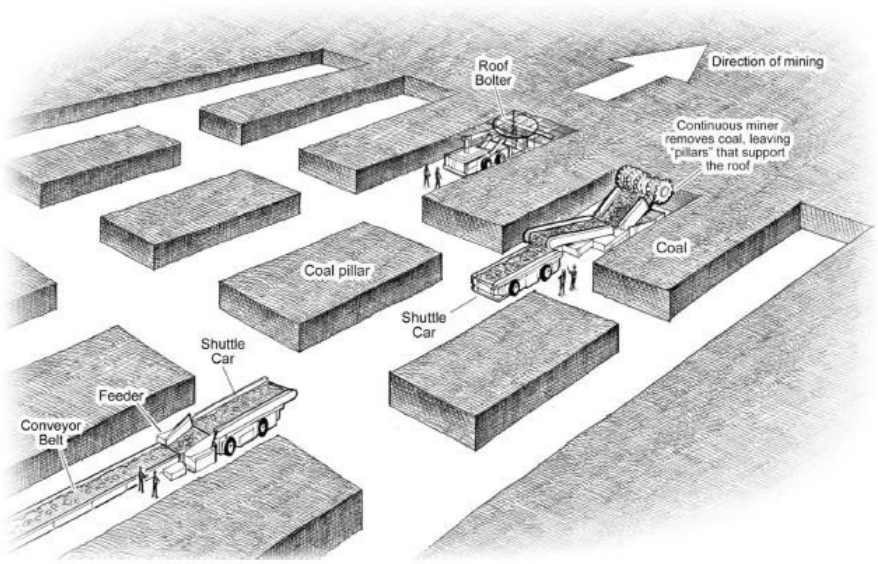
Longwall Mining. Longwall mining involves using a mechanical shearer to extract coal from long rectangular blocks of medium to thick seams. Ultimate seam recovery using longwall mining techniques can exceed 75%. In longwall mining, continuous miners are used to develop access to these long rectangular coal blocks. Hydraulically powered supports temporarily hold up the roof of the mine while a rotating drum mechanically advances across the face of the coal seam, cutting the coal from the face. Chain conveyors then move the loosened coal to an underground mine conveyor system for delivery to the surface. Once coal is extracted from an area, the roof is allowed to collapse in a controlled fashion behind the hydraulic roof supports. Depending on the depth of the cover, the seam thickness and

overlying geology, the collapse of the roof can cause surface subsidence. The following diagram illustrates a typical underground mining operation using longwall mining techniques:



Room-and-Pillar Mining. Room-and-pillar mining is effective for small blocks of thin coal seams or larger blocks of thicker coal that has more variable geologic conditions. In room-and-pillar mining, a network of rooms is cut into the coal seam, leaving a series of pillars of coal to support the roof of the mine. Continuous miners are used to cut the coal and shuttle cars are used to transport the coal to a conveyor belt for further transportation to the surface. The pillars generated as part of this mining method can constitute up to 40% of the total coal in a seam. Higher seam recovery rates can be achieved if retreat mining is used. In retreat mining, coal is mined from the pillars as workers retreat. As retreat mining occurs, the roof is allowed to collapse in a controlled fashion.

The following diagram illustrates our typical underground mining operation using room-and-pillar mining techniques:



Coal Preparation and Blending. We crush the coal mined from our Powder River Basin mining complexes and ship it directly from our mines to the customer. Typically, no additional preparation is required for a saleable product. Coal extracted from some of our underground mining operations contains impurities, such as rock, shale and clay occupying a wide range of particle sizes. All of our mining operations in the Appalachia region use a coal preparation plant located near the mine or connected to the mine by a conveyor. These coal preparation plants allow us to process the coal we extract from those mines to ensure a consistent quality and to enhance its suitability for particular end-users. In addition, depending on coal quality and customer requirements, we may blend coal mined from different locations, including coal produced by third parties, in order to achieve a more suitable product.

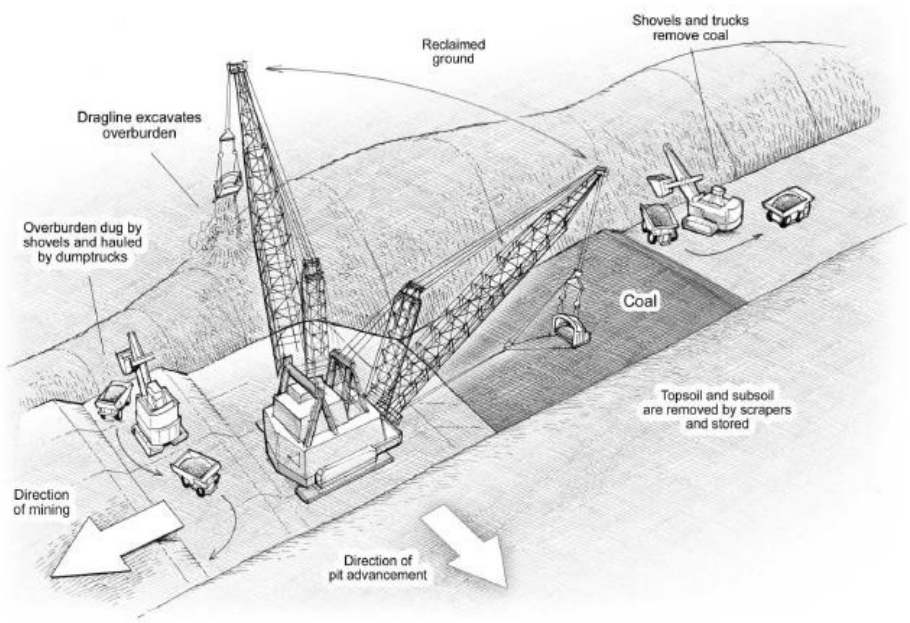
The processes we employ at our preparation plants depend on the size of the raw coal. For coarse material, the separation process relies on the difference in the density between coal and waste rock and, for the very fine fractions, the separation process relies on the difference in surface chemical properties between coal and the waste minerals. To remove impurities, we crush raw coal and classify it into various sizes. For the largest size fractions, we use dense media vessel separation techniques in which we float coal in a tank containing a liquid of a pre-determined specific gravity. Since coal is lighter than its impurities, it floats, and we can separate it from rock and shale. We treat intermediate sized particles with dense medium cyclones, in which a liquid is spun at high speeds to separate coal from rock. Fine coal is treated in spirals, in which the differences in density between coal and rock allow them, when suspended in water, to be separated. Ultra fine coal is recovered in column flotation cells utilizing the differences in surface chemistry between coal and rock. By injecting stable air bubbles through a suspension of ultra-fine coal and rock, the coal particles adhere to the bubbles and rise to the surface of the column where they are removed. To minimize the moisture content in coal, we process most coal sizes through centrifuges. A centrifuge spins coal very quickly, causing water accompanying the coal to separate.

For more information about the locations of our preparation plants, you should see the section entitled “Our Mining Operations.”

Surface Mining. We use surface mining when coal is found close to the surface. We have included the identity and location of our surface mining operations below under “Our Mining Operations-General.” The majority of the thermal coal we produce comes from surface mining operations.

Surface mining involves removing the topsoil then drilling and blasting the overburden (earth and rock covering the coal) with explosives. We then remove the overburden with heavy earth-moving equipment, such as draglines, power shovels, excavators and loaders. Once exposed, we drill, fracture and systematically remove the coal using haul trucks or conveyors to transport the coal to a preparation plant or to a loadout facility. We reclaim disturbed areas as part of our normal mining activities. After final coal removal, we use draglines, power shovels, excavators or loaders to backfill the remaining pits with the overburden removed at the beginning of the process. Once we have replaced the overburden and topsoil, we reestablish native vegetation and plant life into the natural habitat and make other improvements that have local community and environmental benefits.

The following diagram illustrates a typical dragline surface mining operation:



Our Mining Operations

General. At December 31, 2023, we operated seven active mines in the United States. The Company reports its results of operations primarily through two reportable segments: the Metallurgical (MET) segment, containing the Company's metallurgical operations in West Virginia, and the Thermal segment containing the Company's thermal operations in Wyoming and Colorado. For additional information about the operating results of each of our segments for the years ended December 31, 2023, 2022, and 2021, see Note 23, "Segment Information" to the Consolidated Financial Statements.

In general, we have developed our mining complexes and preparation plants at strategic locations in close proximity to rail or barge shipping facilities. Coal is transported from our mining complexes to customers by means of railroads, trucks, barge lines, and ocean-going vessels from terminal facilities. We currently own or lease under long-term arrangements all of the equipment utilized in our mining operations. We employ sophisticated preventative maintenance and rebuild programs and upgrade our equipment to ensure that it is productive, well-maintained and cost-competitive.

In November of 2021, we sold our equity investment in Knight Hawk Holdings, LLC, which had been part of our Corporate, Other and Eliminations grouping. For further information on the sale of Knight Hawk Holdings, LLC, please see Note 4, "Divestitures" to the Consolidated Financial Statements.

The following map shows the locations of our active, royalty and undeveloped mining operations. Note that this is limited to those properties in which we have current mining operations or expect to have an economic benefit due to mining activity in the future:

The following table provides a summary of information regarding our active mining complexes as of December 31, 2023, including the total tons sold associated with these complexes for the years ended December 31, 2023, 2022, and 2021 and the total reserves associated with these complexes at December 31, 2023. The amount disclosed below for the total cost of property, plant and equipment of each mining complex does not include the costs of the coal reserves that we have assigned to an individual complex. The Company owns 100% of the active mining complexes below.

Mining Complex	Mines	Mining Equipment	Railroad	Tons Sold [1] 2021	2022	2023	Total Cost of Property, Plant and Equipment at December 31, 2023 ($ millions)	Total Recoverable Mineral Reserves (Million tons)
Metallurgical:								
Leer	U	LW, CM	CSX	4.6	3.9	4.3	$ 363.2	36.1
Leer South	U	LW, CM	CSX	0.8	2.2	2.7	713.9	62.7
Beckley	U	CM	CSX	1.1	0.9	1.2	118.6	25.3
Mountain Laurel	U	CM	CSX	1.0	0.8	1.1	92.6	16.6
Thermal:								
Black Thunder	S	D, S	UP/BN	60.2	62.3	60.5	260.2	420.0
Coal Creek	S	D, S	UP/BN	2.0	3.8	2.3	0.3	—
West Elk	U	LW, CM	UP	3.0	4.3	2.9	31.2	38.2
Totals				72.7	78.2	75.0	$ 1,580.0	598.9

S = Surface mine
U = Underground mine

D = Dragline
S = Shovel/truck
LW = Longwall
CM = Continuous miner

UP = Union Pacific Railroad
CSX = CSX Transportation
BN = Burlington Northern-Santa Fe Railway

(1) Tons of coal we purchased from third parties that were not processed through our loadout facilities are not included in the amounts shown in the table above.

In October 2018, the Securities and Exchange Commission ("SEC") adopted amendments to its current disclosure rules to modernize the mineral property disclosure requirements for mining registrants. The amendments include the adoption of S-K 1300, which will govern disclosure for mining registrants (the "SEC Mining Modernization Rules").

Descriptions in this report of our mineral reserves and resources are prepared in accordance with S-K 1300, as well as similar information provided by other issuers in accordance with S-K 1300, may not be comparable to similar information that is presented elsewhere outside of this report. Please refer to the Technical Report Summaries ("TRS") filed as Exhibits 96.1-96.3 to our Annual Report on Form 10-K for the period ended December 31, 2023 for additional information with respect to our material properties. Refer to Item 2. Properties for further discussion on the reserves and material properties.

Metallurgical

Leer. The Leer Complex is a longwall operation, located in Taylor County, West Virginia, that includes approximately 36.1 million tons of proven and probable coal reserves as of December 31, 2023 and is primarily sold as High-Vol A metallurgical quality coal in the Lower Kittanning seam, and is part of approximately 93,300 acres that is considered our Tygart Valley area. A significant portion of the reserves at Leer are owned rather than leased from third parties.

All the production is processed through a 1,400 ton-per-hour preparation plant and loaded on the CSX railroad. A 15,000-ton train can be loaded in less than four hours.

Leer South. The Leer South mining complex is a longwall operation in the Lower Kittanning seam with a preparation plant and a loadout facility located on approximately 26,600 acres in Barbour County, West Virginia. The 1,600 ton-per-hour preparation plant is located near the mine, and the loadout facility is served by the CSX railroad and connected to the plant by a 4,000 ton-per-hour conveyor system. The loadout facility is capable of loading a 15,000 ton unit train in less than four hours.

Coal quality is primarily High-Vol A metallurgical coal similar to our Leer Complex. The Leer South mining complex had approximately 62.7 million tons of proven and probable reserves at December 31, 2023. A significant portion of the reserves at Leer South are owned rather than leased from third parties.

Beckley. The Beckley mining complex is located on approximately 16,700 acres in Raleigh County, West Virginia. Beckley is extracting high quality, Low-Vol metallurgical coal in the Pocahontas No. 3 seam. The Beckley mining complex had approximately 25.3 million tons of proven and probable reserves at December 31, 2023.

Coal is conveyed from the mine to a 600-ton-per-hour preparation plant before shipping the coal via the CSX railroad. The loadout facility can load a 10,000-ton train in less than four hours.

Mountain Laurel. Mountain Laurel is an underground mining complex located on approximately 38,200 acres in Logan County and Boone County, West Virginia. Underground mining operations at the Mountain Laurel mining complex extracts High-Vol B metallurgical coal from the Alma and No. 2 Gas seams. The Mountain Laurel mining complex has approximately 16.6 million tons of proven and probable reserves at December 31, 2023.

We process all of the coal through a 1,400-ton-per-hour preparation plant before shipping the coal to our customers via the CSX railroad. The loadout facility can load a 15,000-ton train in less than four hours.

Thermal

Black Thunder. Black Thunder is a surface mining complex located on approximately 35,300 acres in Campbell County, Wyoming. The Black Thunder complex extracts thermal coal from the Upper Wyodak and Main Wyodak seams.

We control a significant portion of the coal reserves through federal and state leases. The Black Thunder mining complex had approximately 420.0 million tons of proven and probable reserves at December 31, 2023.

The Black Thunder mining complex currently consists of four active pit areas and two active loadout facilities. We ship all of the coal raw to our customers via the Burlington Northern Santa Fe and Union Pacific railroads. We do not process the coal mined at this complex. Each of the loadout facilities can load a 15,000-ton train in less than two hours.

Coal Creek. Coal Creek is a surface mining complex located on approximately 7,400 acres in Campbell County, Wyoming. The Coal Creek mining complex extracts thermal coal from the Wyodak-R1 and Wyodak-R3 seams.

The Coal Creek complex currently consists of one active pit area and a loadout facility. We ship all of the coal raw to our customers via the Burlington Northern Santa Fe and Union Pacific railroads. We do not process the coal mined at this complex. The loadout facility can load a 15,000-ton train in less than three hours.

In alignment with our desire to shrink our operational footprint and associated liabilities, we have committed to systematically reclaiming our Coal Creek operation as sales from the complex taper down.

West Elk. West Elk is an underground mining complex located on approximately 18,400 acres in Gunnison County, Colorado. The West Elk mining complex extracts thermal coal from the E seam. We are currently working on developing longwall panels in the B seam at the complex.

We control a significant portion of the coal reserves through federal and state leases. The West Elk mining complex had approximately 38.2 million tons of proven and probable reserves at December 31, 2023.

The West Elk complex currently consists of a longwall, continuous miner sections, a preparation plant, and a loadout facility. We ship most of the coal raw to our customers via the Union Pacific railroad. When required to improve the quality of some of our coal production, it is processed through the 800 ton-per-hour preparation plant. The loadout facility can load an 11,000-ton train in less than three hours.

Sales, Marketing and Trading

Overview. Coal prices are influenced by a number of factors and can vary materially by region. The price of coal within a region is influenced by general marketplace conditions, the supply and price of alternative fuels to coal (such as natural gas and subsidized renewables), production costs, coal quality, transportation costs involved in moving coal from the mine to the point of use and mine operating costs. For example, in thermal coal markets, higher heat and lower ash content generally result in higher prices, and higher sulfur and higher ash content generally result in lower prices within a given geographic region. In metallurgical coal markets, chemical properties within the coal and transportation costs determine price differences.

The cost of producing coal at the mine is also influenced by geologic characteristics such as seam thickness, overburden ratios and depth of underground reserves. It is generally less expensive to mine coal seams that are thick and located close to the surface than to mine thin underground seams. Within a particular geographic region, underground mining, which is the mining method we use in our Appalachian mines, is generally more expensive than surface mining, which is the mining method we use in the Powder River Basin. This is the case because of the higher capital costs relative to the reserve base, including costs for construction of extensive ventilation systems, and higher per unit labor costs due to lower productivity associated with underground mining.

Our sales, marketing and trading functions are principally based in St. Louis, Missouri and consist of sales and trading, transportation and distribution, quality control and contract administration personnel as well as revenue management. We also have sales employees in our Singapore and London offices. In addition to selling coal produced from our mining complexes, from time to time we purchase and sell coal mined by others, some of which we blend with coal produced from our mines. We focus on meeting the needs and specifications of our customers rather than just selling our coal production.

Customers. The Company markets its metallurgical and thermal coal to domestic and foreign steel producers, domestic and foreign power generators, and other industrial facilities. For the year ended December 31, 2023, we derived approximately 15% of our total coal revenues from sales to our three largest customers, JFE Steel Corporation, T S Global Procurement Company Pte. and Southern Company and approximately 39% of our total coal revenues from sales to our 10 largest customers.

In 2023, we sold coal to domestic customers located in 29 different states. The locations of our mines enable us to ship coal to most of the major coal-fueled power plants in the United States.

In addition, in 2023, we exported coal to Europe, Asia, Central and South America, and Africa. Revenue from exports to seaborne countries was $1.8 billion, $2.3 billion and $1.1 billion for the years ended December 31, 2023, 2022 and 2021, respectively. As of December 31, 2023 and 2022, trade receivables related to metallurgical-quality coal sales totaled $206.3 million and $142.9 million, respectively, or 75% and 60% of total trade receivables, respectively. We do not have foreign currency exposure for our international sales as all sales are denominated and settled in U.S. dollars.

The Company's seaborne revenues by coal shipment destination for the year ended December 31, 2023, were as follows:

(In thousands)		
Europe	$	696,975
Asia		935,158
Central and South America		136,423
Africa		4,971
Total	$	1,773,527

Long-Term Coal Supply Arrangements

As is customary in the coal industry, we enter into fixed price, fixed volume term-based supply contracts, the terms of which are sometimes more than one year ("long-term"), with many of our customers. Multiple year contracts usually have specific and possibly different volume and pricing arrangements for each year of the contract. Long-term contracts allow customers to secure a supply for their future needs and provide us with greater predictability of sales volume and sales prices. In 2023, we sold approximately 75% of the tonnage (representing approximately 46% of the Company's revenues) of our coal under long-term supply arrangements. The majority of our supply contracts include a fixed price for the term of the agreement or a pre-determined escalation in price for each year. Some of our long-term supply agreements may include a variable pricing system. While most of our sales contracts are for terms of one to five years, some are as short as one month. At December 31, 2023, the average volume-weighted remaining term of our long-term contracts for metallurgical and thermal coal was approximately 2.5 years, with remaining terms ranging from one to four years. At December 31, 2023, remaining tons under long-term supply agreements, including those subject to price re-opener or extension provisions, were approximately 110.2 million tons.

We typically sell coal to North American customers under term arrangements through a "request-for-proposal" process. We also respond to private solicitations and generally do not know if a customer intends to buy the coal for which they solicited. The terms of our coal sales agreements are dictated by the availability and price of alternative fuels, general marketplace conditions, the quality of the coal we have available to sell, our mine operations (including operating costs), the length of contract, as well as negotiations with customers. Consequently, the terms of these contracts may vary to some extent by customer, including base price adjustment features, price re-opener terms, coal quality requirements, quantity parameters, permitted sources of supply, future regulatory changes, extension options, *force majeure*, termination, damages and assignment provisions. Our long-term supply contracts typically contain provisions to adjust the base price due to new governmental statutes, ordinances or regulations. We typically sell our metallurgical coal to non-North American customers based on various indices or agreements to mutually negotiate the price. These agreements generally are for one year and can reset pricing with each shipment. Additionally, some of our contracts contain provisions that allow for the recovery of costs affected by modifications or changes in the interpretations or application of any applicable statute by local, state or federal government authorities. These provisions only apply to the base price of coal contained in these supply contracts. In some circumstances, a significant adjustment in base price can lead to termination of the contract.

Certain of our contracts contain index provisions that change the price based on changes in market based indices or changes in economic indices or both. Certain of our contracts contain price re-opener provisions that may allow a party to commence a renegotiation of the contract price at a pre-determined time. Price re-opener provisions may automatically set a new price based on prevailing market price or, in some instances, require us to negotiate a new price, sometimes within a specified range of prices. In a limited number of agreements, if the parties do not agree on a new price, either party has an option to suspend the agreement for the pricing period not agreed to. In addition, certain of our contracts contain clauses that may allow customers to terminate the contract in the event of certain changes in environmental laws and regulations that impact their operations.

Customers are generally required to take their coal on a ratable basis but have been known to push sales out in low demand periods when contract prices are higher. Each of these situations must be dealt with on an individual basis.

Coal quality and volumes are stipulated in coal sales agreements. In most cases, the annual pricing and volume obligations are fixed, although in some cases the volume specified may vary depending on the customer consumption requirements. Most of our coal sales agreements contain provisions requiring us to deliver coal within certain ranges for specific coal characteristics such as heat content (for thermal coal contracts), volatile matter (for metallurgical coal contracts), and for both types of contracts, sulfur, ash and moisture content. Failure to meet these specifications can result in economic penalties, suspension or cancellation of shipments or termination of the contracts.

Our coal sales agreements also typically contain *force majeure* provisions allowing temporary suspension of performance by us or our customers, during the duration of events beyond the control of the affected party, including events such as strikes, adverse mining conditions, mine closures or serious transportation problems that affect us or unanticipated plant outages that may affect the buyer. Our contracts also generally provide that in the event a *force majeure* circumstance exceeds a certain time period, the unaffected party may have the option to terminate the purchase or sale in whole or in part. Some contracts stipulate that this tonnage can be made up by mutual agreement or at the discretion of the buyer. Agreements between our customers and the railroads servicing our mines may also contain *force majeure* provisions.

In most of our thermal coal contracts, we have a right of substitution (unilateral or subject to counterparty approval), allowing us to provide coal from different mines, including third-party mines, as long as the replacement coal meets quality specifications and will be sold at the same equivalent delivered cost.

In some of our coal supply contracts, we agree to indemnify or reimburse our customers for damage to their or their rail carrier's equipment while on our property, which results from our or our agents' negligence, and for damage to our customer's equipment due to non-coal materials being included with our coal while on our property.

Trading. In addition to marketing and selling coal to customers through traditional coal supply arrangements, we seek to optimize our coal production and leverage our knowledge of the coal industry through a variety of other marketing, trading and asset optimization strategies. From time to time, we may employ strategies to use coal and coal-related commodities and contracts for those commodities in order to manage and hedge volumes and/or prices associated with our coal sales or purchase commitments, reduce our exposure to the volatility of market prices or augment the value of our portfolio of traditional assets. These strategies may include physical coal contracts, as well as a variety of forward, futures or options contracts, swap agreements or other financial instruments, in coal or other commodities such as natural gas and foreign currencies.

We maintain a system of complementary processes and controls designed to monitor and manage our exposure to market and other risks that may arise as a consequence of these strategies. These processes and controls seek to preserve our ability to profit from certain marketing, trading and asset optimization strategies while mitigating our exposure to potential losses.

Transportation. We generally sell coal to international customers at export terminals, and we are usually responsible for the cost of transporting coal to the export terminals. We transport our coal to Atlantic coast terminals, Pacific cost terminals or terminals along the Gulf of Mexico for transportation to international customers. Our international customers are generally responsible for paying the cost of ocean freight. We may also sell coal to international customers delivered to an unloading facility at the destination country.

We own a 35% interest in Dominion Terminal Associates LLP (DTA), a limited liability partnership that operates a ground storage-to-vessel coal transloading facility in Newport News, Virginia. The facility has a rated throughput capacity of 20 million tons of coal per year and ground storage capacity of approximately 1.7 million tons. The facility primarily serves international customers, as well as domestic coal users located along the Atlantic coast of the United States. From time-to-time, we may lease a portion of our port capacity to third parties. DTA is in need of capital investment to maximize functionality and minimize downtime to mechanical issues. Together with DTA leadership and ownership partners, we are evaluating a needs assessment and rough timeline for the recommended work. In connection with expected capital investments at DTA, we expect the total investment to be between $57 million and $85 million which equates to our 35% share between $20.0 million and $30.0 million on contributions for equity affiliate in 2024.

Additionally, we have entered into throughput agreements with third parties to facilitate international shipments. The majority of our international metallurgical shipments are shipped through DTA or Curtis Bay, which is strategically located on the CSX network and the Chesapeake Bay.

We ship our coal to domestic customers by means of railcars, barges, or trucks, or a combination of these means of transportation. We generally sell coal used for domestic consumption free on board (f.o.b.) at the mine or nearest loading facility. Our domestic customers normally bear the costs of transporting coal by rail, barge or truck.

Historically, most domestic electricity generators have arranged long-term shipping contracts with rail, trucking or barge companies to assure stable delivery costs. Transportation can be a large component of a purchaser's total cost. Although the purchaser pays the freight, transportation costs still are important to coal mining companies because the purchaser may choose a supplier largely based on cost of transportation. Transportation costs borne by the customer vary greatly based on each customer's proximity to the mine, our proximity to the loadout facilities and the provisions of their specific transportation agreements. Trucks and overland conveyors haul coal over shorter distances, while barges, Great Lake carriers and ocean vessels move coal to export markets and domestic markets requiring shipment over the Great Lakes and several river systems.

Most coal mines are served by a single rail company, but much of the Powder River Basin, including our mines, are served by two rail carriers: the Burlington Northern-Santa Fe railroad and the Union Pacific railroad. We generally transport coal produced at our Appalachian mining complexes via the CSX railroad. Besides rail deliveries, some customers in the eastern United States rely on a river barge system or over-the-road trucks.

Competition

The coal industry is intensely competitive with alternative energy sources outside of the industry and between producing companies. The most important factors on which we compete are coal quality, delivered costs to the customer and reliability of supply. Our principal domestic coal-producing peers include Allegheny Metallurgical; Alpha Metallurgical Resources Inc.; Blackhawk Mining LLC; Coronado Coal LLC; Corsa Coal Corp.; Eagle Specialty Materials LLC; Navajo Transitional Energy Company LLC; Peabody Energy Corp.; Ramaco Resources; and Warrior Met Coal, Inc. Some of these coal producers are larger than we are and may have greater financial resources and larger reserve bases than we do. We also compete directly with a number of smaller producers in each of the geographic regions in which we operate, as well as companies that produce coal from one or more foreign countries, such as Australia, Canada, Colombia, Indonesia, South Africa and Russia.

Our principal competitor in thermal coal is natural gas, other alternative fuels, and subsidized renewables. Specifically, coal competes directly with other fuels, such as natural gas, nuclear energy, hydropower, subsidized renewable, and petroleum, for steam and electrical power generation. Costs and other factors relating to these alternative fuels, such as safety and environmental considerations, as well as tax incentives and various mandates, affect the overall demand for coal as a fuel and the price we can charge for the coal. Rail rates and the performance of the railroads, which are generally controlled by our customers, meaningfully impacts our competitiveness with other producers and alternative fuel sources. For example, rail rates for domestic coal, a cost that we cannot control, can account for over two-thirds of the delivered cost of the product.

Suppliers

Principal supplies used in our business include petroleum-based fuels, explosives, tires, steel and other raw materials as well as spare parts and other consumables used in the mining process. We use third-party suppliers for a significant portion of our equipment rebuilds and repairs, drilling services and construction. We use sole source suppliers for certain parts of our business such as explosives and fuel, and preferred suppliers for other parts of our business such as original equipment suppliers, dragline and shovel parts and related services. We believe adequate substitute suppliers are available. For more information about our suppliers, you should see Item 1A, "Risk Factors-Inflationary pressures on mining and other industrial supplies, including steel-based supplies, diesel fuel and rubber tires, or the inability to obtain a sufficient quantity of those supplies, could negatively affect our operating costs or disrupt or delay our production."

Environmental and Other Regulatory Matters

Coal mining is one of the most regulated and inspected industrial activities in the United States. Federal, state and local authorities regulate the U.S. coal mining industry with respect to matters such as employee health and safety and the environment, including the protection of air quality, water quality, wetlands, special status species of plants and animals, land uses, cultural and historic properties and other environmental resources identified during the permitting process. Reclamation is required during production and after mining has been completed. Materials used and generated by mining operations must also be managed according to applicable regulations and law. These laws have, and will continue to have, a significant effect on our production costs and our competitive position.

We endeavor to conduct our mining operations in compliance with applicable federal, state and local laws and regulations. However, due in part to the extensive, comprehensive and changing regulatory requirements, violations during mining operations occur from time to time. We cannot assure you that we have been or will be at all times in complete compliance with such laws and regulations. Expenditures we incur to maintain compliance with all applicable federal and state laws have been and are expected to continue to be significant and increase overtime. Federal and state mining laws and regulations require us to obtain surety bonds to guarantee performance or payment of certain long-term obligations, including mine closure and reclamation costs, federal and state workers' compensation benefits, coal leases and other miscellaneous obligations. Compliance with these laws has substantially increased the cost of coal mining for domestic coal producers.

Future laws, regulations or orders, as well as future interpretations, changes in political policies and more rigorous enforcement of existing laws, regulations or orders, may require substantial increases in equipment and operating costs and delays, interruptions or a termination of operations, the extent to which we cannot predict. Future laws, regulations or orders may also cause coal to become a less attractive fuel source, thereby reducing coal's share of the market for fuels and other energy sources used to generate electricity. As a result, future laws, regulations or orders may adversely affect our mining operations, cost structure or our customers' demand for coal.

The following is a summary of the various federal and state environmental and similar regulations that have a material impact on our business:

Mining Permits and Approvals. Numerous governmental permits or approvals are required for mining operations. When we apply for these permits and approvals, we may be required to prepare and present to federal, state or local authorities' data pertaining to the effect or impact that any proposed production or processing of coal may have on the environment. For example, in order to obtain a federal coal lease, the U.S. Department of the Interior, Bureau of Land Management ("BLM") must prepare an environmental impact statement to assist the BLM in determining the potential environmental impact of lease issuance, including any collateral effects from the mining, transportation and burning of coal, which may in some cases include a review of impacts on climate change. The authorization, permitting and implementation requirements imposed by federal, state and local authorities may be costly and time consuming and may delay commencement or continuation of mining operations. In the states where we operate, the applicable laws and regulations also provide that a mining permit or modification can be delayed, refused or revoked if officers, directors, shareholders with specified interests or certain other affiliated entities with specified interests in the applicant or permittee have, or are affiliated with another entity that has, outstanding permit violations. Thus, past or ongoing violations of applicable laws and regulations could provide a basis to revoke existing permits and to deny the issuance of additional permits.

In order to obtain mining permits and approvals from federal and state regulatory authorities, mine operators must submit a reclamation plan for restoring, upon the completion of mining operations, the mined property to its prior condition or other authorized use. Typically, we submit the necessary permit applications several months or even years before we plan to begin mining a new area. Some of our required permits are becoming increasingly more difficult and expensive to obtain, and the application review processes are taking longer to complete and becoming increasingly subject to challenge and political manipulation even after a permit has been issued.

Under some circumstances, substantial fines and penalties, including revocation or suspension of mining permits, may be imposed under the laws described above. Monetary sanctions and, in severe circumstances, criminal sanctions may be imposed for failure to comply with these laws.

Surface Mining Control and Reclamation Act. The Surface Mining Control and Reclamation Act, which we refer to as SMCRA, establishes mining, environmental protection, reclamation and closure standards for all aspects of surface mining as well as many aspects of underground mining. Mining operators must obtain SMCRA permits and permit renewals from the Office of Surface Mining, which we refer to as OSM, or from the applicable state agency if the state agency has obtained regulatory primacy. A state agency may achieve primacy if the state regulatory agency develops a mining regulatory program that is no less stringent than the federal mining regulatory program under SMCRA. All states in which we conduct mining operations have achieved primacy and issue permits in lieu of OSM, but are still subject to federal oversight.

SMCRA permit provisions include a complex set of requirements which include, among other things, coal prospecting; mine plan development; topsoil or growth medium removal and replacement; selective handling of overburden materials; mine pit backfilling and grading; disposal of excess spoil; protection of the hydrologic balance; subsidence control for underground mines; surface runoff and drainage control; establishment of suitable post mining land uses; and revegetation. We begin the process of preparing a mining permit application by collecting baseline data to adequately characterize the pre-mining environmental conditions of the permit area. This work is typically conducted by third-party consultants with specialized expertise and includes surveys and/or assessments of the following: cultural and historical resources; geology; soils; vegetation; aquatic organisms; wildlife; potential for threatened, endangered or other special status species; surface and ground water hydrology; climatology; riverine and riparian habitat; and wetlands. The geologic data and information derived from the other surveys and/or assessments are used to develop the mining and reclamation plans presented in the permit application. The mining and reclamation plans address the provisions and performance standards of the state's equivalent SMCRA regulatory program, and are also used to support applications for other authorizations and/or permits required to conduct coal mining activities. Also included in the permit application is information used for documenting surface and mineral ownership, variance requests, access roads, bonding information, mining methods, mining phases, other agreements that may relate to coal, other minerals, oil and gas rights, water rights, permitted areas, and ownership and control information required to determine compliance with OSM's Applicant Violator System, including the mining and compliance history of officers, directors and principal owners of the entity.

Once a permit application is prepared and submitted to the regulatory agency, it goes through an administrative completeness review and a thorough technical review. Also, before a SMCRA permit is issued, a mine operator must submit a bond or otherwise secure the performance of all reclamation obligations. After the application is submitted, a public notice or advertisement of the proposed permit is required to be given, which begins a notice period that is followed by a public comment period before a permit can be issued. It is not uncommon for a SMCRA mine permit application to take over a year to prepare, depending on the size and complexity of the mine, and anywhere from six months to two years or even longer for the permit to be issued. The variability in time frame required to prepare the application and issue the permit can be attributed primarily to the various regulatory authorities' discretion in the handling of comments and objections relating to the project received from the general public and other agencies. Also, it is not uncommon for a permit to be delayed as a result of litigation related to the specific permit or another related company's permit.

In addition to the bond requirement for an active or proposed permit, the Abandoned Mine Land Fund, which was created by SMCRA, requires that a fee be paid on all coal produced. The proceeds of the fee are used to restore mines closed or abandoned prior to SMCRA's adoption in 1977, as well as fund other state and federal initiatives. For the first three quarters of 2023, the fee was $0.28 per ton of coal produced from surface mines and $0.12 per ton of coal produced from underground mines. As a result of the Infrastructure Investment and Jobs Act of 2021, which included the Abandoned Mine Land Reclamation Amendments of 2021, the fees decreased as of the calendar quarter beginning October 1, 2021. The current fee is $0.224 per ton of coal produced from surface mines and $0.096 per ton of coal produced from underground mines. In 2023, we recorded $15.1 million of expense related to these reclamation fees.

Surety Bonds. Mine operators are often required by federal and/or state laws, including SMCRA, to assure, usually through the use of surety bonds, payment of certain long-term obligations including mine closure or reclamation costs, federal and state workers' compensation costs, coal leases and other miscellaneous obligations. Although surety bonds are usually non-cancelable during their term, many of these bonds are renewable on an annual basis and collateral requirements may change.

The costs of these bonds have widely fluctuated in recent years while the market terms of surety bonds have remained difficult for mine operators. These changes in the terms of the bonds have been accompanied at times by a decrease in the number of companies willing to issue surety bonds. As of December 31, 2023, we posted an aggregate of approximately $456.3 million in surety bonds, cash, and letters of credit outstanding for reclamation purposes.

At December 31, 2023, the Company maintains a fund for asset retirement obligations at our Black Thunder mine and thus far has contributed $142.3 million that will serve to defease the long-term asset retirement obligation for its thermal asset base.

For additional information, please see "Failure to obtain or renew surety bonds on acceptable terms could affect our ability to secure reclamation and coal lease obligations and, therefore, our ability to mine or lease coal, which could have a material adverse effect on our business and results of operations," contained in Item 1A, "Risk Factors—Risk Related to Our Operations," for a discussion of certain risks associated with our surety bonds.

Mine Safety and Health. Stringent safety and health standards have been imposed by federal legislation since Congress adopted the Mine Safety and Health Act of 1969. The Mine Safety and Health Act of 1977 significantly expanded the enforcement of safety and health standards and imposed comprehensive safety and health standards on all aspects of mining operations. In addition to federal regulatory programs, all of the states in which we operate also have programs aimed at improving mine safety and health. Collectively, federal and state safety and health regulation in the coal mining industry is among the most comprehensive and pervasive systems for the protection of employee health and safety affecting any segment of U.S. industry.

Under the Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977, each coal mine operator must secure payment of federal black lung benefits to claimants who are current and former employees and to a trust fund for the payment of benefits and medical expenses to claimants who last worked in the coal industry prior to July 1, 1973. The trust fund is funded by an excise tax on coal production. The Inflation Reduction Act of 2022 set the tax at the lower of $1.10 per ton for coal mined in underground operations and $0.55 per ton for coal mined in surface operations, in each case not to exceed 4.4% of the gross sales price. This excise tax does not apply to coal shipped outside the United States. We recorded $35.5 million, $21.5 million, and $34.8 million of expense related to this excise tax in 2023, 2022, and 2021. Versions of a Black Lung Benefits Improvement Act have been introduced in both the 2021-2022 and 2023-2024 U.S. Congressional sessions. The 2021-2022 bill died in committee. The 2023-2024 bill aims to remove barriers, including lengthy processing times, lack of a legal representative and inflation, that may prevent claimants from accessing black lung benefits.

On January 18, 2023, the Office of Workers' Compensation Programs ("OWCP") proposed revisions to regulations under the Black Lung Benefits Act governing authorization of self-insurers. The revisions seek to codify the practice of basing a self-insured operator's security requirement on an actuarial assessment of its total present and future black lung liability. A material change to the regulations is the requirement that all self-insured operators must post security equal to 120% of their projected black lung liabilities. The proposed regulations were posted to the Federal Register on January 19, 2023 with written comments to be accepted within 60 days of this date. The comment period was subsequently extended to April 19, 2023. The revisions proposed by the OWCP were a material deviation from their bulletin issued in December 2020 that would have required the majority of coal operators to post security equal to 70% of their projected black lung liabilities. If the above regulation is codified into law, the Company will be required to post additional collateral to maintain its self-insured status. The Company is evaluating alternatives to self-insurance, including the purchase of commercial insurance to cover these claims. Additionally, the Company is assessing the availability of surety bond capacity within the markets, additional sources of liquidity, and other items to prepare for the proposed regulations.

Clean Air Act. The federal Clean Air Act and similar state and local laws that regulate air emissions affect coal mining directly and indirectly. Direct impacts on coal mining and processing operations include Clean Air Act permitting requirements and emissions control requirements. These include emissions of ozone precursors and particulate matter which may include controlling fugitive dust. The Clean Air Act also indirectly affects coal mining operations, for example, by extensively regulating the emissions of fine particulate matter measuring 2.5 micrometers in diameter or smaller, sulfur dioxide, nitrogen oxides, mercury and other compounds emitted by coal-fueled power plants and industrial boilers, which are the largest end-users of our coal. Already stringent regulation of emissions were further tightened throughout the Obama Administration, including the Mercury and Air Toxics Standard (MATS), finalized in 2011 and discussed in more detail below. In addition, the U.S. Environmental Protection Agency (the "EPA") has issued regulations with respect to other emissions, such as greenhouse gases, from new, modified, reconstructed and existing electric generating units, including coal-fired plants. For example, in May 2023, the EPA proposed revised New Source Performance Standards ("NSPS") under Clean Air Act section 111(b) for greenhouse gas emissions from new and reconstructed fossil fuel-fired stationary combustion turbine electric generating units and from fossil fuel-fired steam generating units that undertake a large modification. Other greenhouse gas regulations apply to industrial boilers (see discussion of Climate Change, below). On January 20, 2021, the current administration issued an executive order directing all federal agencies to review and take action to address any federal regulations, orders, guidance documents, policies and any similar agency actions promulgated during the prior administration that may be inconsistent with the administration's policies. As a result, it is unclear the degree to which certain recent regulatory developments may be modified or rescinded. The executive order also established an Interagency Working Group on the Social Cost of Greenhouse Gases ("Working Group"), which is called on to, among other things, develop methodologies for calculating the "social cost of carbon," "social cost of nitrous oxide" and "social cost of methane." The Working Group published a Technical Support Document in February 2021 seeking public comments by May 2021. Recommendations from the Working Group were due beginning June 1, 2021 and final recommendations no later than January 2022. The Working Group made initial recommendations in February 2021; final recommendations have not been released. Building on the Working Group's interim values for social cost of greenhouse bases, the EPA released, for public review in November 2022, a September 2022 draft report with updated social cost of carbon figures. In November 2023, the EPA released a final Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances on the Social Cost of Greenhouse Gases setting the estimated Social Cost of CO_2 at $120, $190 or $340, the Social Cost of CH_4 at $1,300, $1,600 or $2,300 and the Social Cost of N_2O at $35,000, $54,000 or $87,000, each per metric ton and each depending on the discount rate used. On December 22, 2023, the Working Group published a memorandum recommending that agencies "use their professional judgment to determine which estimates of the [social cost of greenhouse gasses] reflect the best available evidence, are most appropriate for particular analytical contexts, and best facilitate sound decision-making." Further regulation of air emissions, as well as uncertainty regarding the future course of regulation, could eventually reduce the demand for coal.

On January 27, 2021, the current administration issued an executive order focused on addressing climate change. Among other things, the executive order directed the Secretary of the Interior to pause new oil and natural gas leasing on public lands or in offshore waters pending completion of a comprehensive review of the federal permitting and leasing practices, consider whether to adjust royalties associated with coal, oil, and gas resources extracted from public lands and offshore waters, or take other appropriate action, to account for corresponding climate costs. In response to the executive order, the U.S. Department of the Interior suspended new oil and gas leases on federal land and in federal waters. The suspension was challenged in federal court, and in June 2021 a federal district court judge in Louisiana issued a preliminary injunction blocking the suspension. The executive order also directed the federal government to identify "fossil fuel subsidies" to take steps to ensure that, to the extent consistent with applicable law, federal funding is not directly subsidizing fossil fuels. In November 2021, the U.S. Department of the Interior issued a "Report On The Federal Oil And Gas Leasing Program," which assesses the current state of oil and gas leasing on federal lands and proposes several reforms, including raising royalty rates and implementing stricter standards for entities seeking to purchase oil and gas leases. On July 24, 2023, the BLM published a proposed rule that would revise BLM's oil and gas leasing regulations to align the regulations with certain provisions of the Inflation Reduction Act pertaining to royalty rates, rentals and minimum bids, to amend certain operating requirements, to update bonding requirements for leasing, development and production and to improve BLM's leasing process. The final rule has not yet been finalized.

Clean Air Act requirements that may directly or indirectly affect our operations include the following:

- *Acid Rain.* Title IV of the Clean Air Act, promulgated in 1990, imposed a two-phase reduction of sulfur dioxide emissions by electric utilities. Phase II became effective in 2000 and applies to all coal-fueled power plants with a capacity of more than 25-megawatts. Generally, the affected power plants have sought to comply with these requirements by switching to lower sulfur fuels, installing pollution control devices, reducing electricity generating levels or purchasing or trading sulfur dioxide emissions allowances. Although we cannot accurately predict the future effect of this Clean Air Act provision on our operations, we believe that implementation of Phase II has been factored into the pricing of the coal market.

- *Particulate Matter.* The Clean Air Act requires the EPA to set national ambient air quality standards, which we refer to as NAAQS, for certain pollutants associated with the combustion of coal, including sulfur dioxide, particulate matter, nitrogen oxides and ozone. Areas that are not in compliance with these standards, referred to as non-attainment areas, must take steps to reduce emissions levels. For example, NAAQS currently exist for particulate matter measuring 10 micrometers in diameter or smaller ("PM10") and for fine particulate matter measuring 2.5 micrometers in diameter or smaller ("PM2.5"), and the EPA revised the PM2.5 NAAQS on December 14, 2012, making it more stringent. The states were required to make recommendations on nonattainment designations for the new NAAQS in late 2013. The EPA issued final designations for most areas of the country in 2012 and made some revisions in 2015. Individual states must now identify the sources of emissions and develop emission reduction plans. These plans may be state-specific or regional in scope. Under the Clean Air Act, individual states have up to 12 years from the date of designation to secure emissions reductions from sources contributing to the problem. In December 2020, the EPA issued a decision, following its review of the PM NAAQS, and decided to retain the 2012 PM NAAQS with no revisions. . On January 27, 2023, the EPA published a proposed rule that would strengthen the primary (health-based) annual PM2.5 standard. Comments were accepted for 60 days, and the rule has not yet been finalized. Future regulation and enforcement of the new PM2.5 standard, as well as future revisions of PM standards, will affect many power plants, especially coal-fueled power plants, and all plants in non-attainment areas.

- *Ozone.* On October 26, 2015, the EPA published a final rule revising the existing primary and secondary NAAQS for ozone, reducing them to 70ppb on an 8-hour average. On November 17, 2016, the EPA issued a proposed implementation rule on non-attainment area classification and state implementation plans ("SIPs"). The EPA published a final rule in November 2017 that issued area designations with respect to ground-level ozone for approximately 35% of the U.S. counties, designating them as either "attainment/unclassifiable" or "unclassifiable." In April 2018 and July 2018, the EPA issued ozone designations for all areas not addressed in the November 2017 rule. States with moderate or high nonattainment areas were required to submit SIPs by October 2021. Significant additional emission control expenditures will likely be required at certain coal-fueled power plants to meet the new stricter NAAQS. Nitrogen oxides, which are a byproduct of coal combustion, are classified as an ozone precursor. As a result, emissions control requirements for new and expanded coal-fueled power plants and industrial boilers will continue to become more demanding in the years ahead. On December 6, 2018, the EPA issued a Final Rule implementing the 2015 Ozone NAAQS for nonattainment areas ("2015 Ozone Implementation Rule"). The 2015 Ozone Implementation Rule is notable for providing greater flexibility to States to consider international sources of pollution and other mechanisms for relief from strict application of the standard. With such flexibility, the effect on demand for coal will vary by state. By law, the EPA must review each NAAQS every five years. In December 2020, the EPA announced that it was retaining without revision the 2015 NAAQS for ozone. However, as noted above, on January 20, 2021, the current administration issued an executive order directing federal agencies to review and take action to address any federal regulations or similar agency actions promulgated during the prior administration that may be inconsistent with the current administration's stated priorities. The EPA was specifically ordered to, among other things, propose a Federal Implementation Plan for ozone standards for California, Connecticut, New York, Pennsylvania and Texas by January 2022. In December 2021 and January 2022, EPA approved multiple revisions to ozone SIPs in Pennsylvania, New York, Connecticut, and a number of

air quality districts in California. As addressed further below, in February 2023, the EPA finalized the disapproval of interstate transport SIPs submitted by 19 states addressing the 2015 Ozone NAAQS.

- *Nox SIP Call.* The Nitrogen Oxides State Implementation Plan ("Nox SIP") Call program was established by the EPA in October 1998 to reduce the transport of ozone on prevailing winds from the Midwest and South to states in the Northeast, which said that they could not meet federal air quality standards because of migrating pollution. The program was designed to reduce nitrous oxide emissions by one million tons per year in 22 eastern states and the District of Columbia. Phase II reductions were required by May 2007. As a result of the program, many power plants were required to install additional emission control measures, such as selective catalytic reduction devices. Installation of additional emission control measures has made it more costly to operate coal-fueled power plants, which could make coal a less attractive fuel.

- *Interstate Transport.* The EPA finalized the Clean Air Interstate Rule, which we refer to as CAIR, in March 2005. CAIR called for power plants in 28 Eastern states and the District of Columbia to reduce emission levels of sulfur dioxide and nitrous oxide, which could lead to non-attainment of PM2.5 and ozone NAAQS in downwind states (interstate transport), pursuant to a cap and trade program similar to the system now in effect for acid deposition control. In July 2008, in *State of North Carolina v. EPA* and consolidated cases, the D.C. Circuit disagreed with the EPA's reading of the Clean Air Act and vacated CAIR in its entirety. In December 2008, the D.C. Circuit revised its remedy and remanded the rule to the EPA. The EPA proposed a revised transport rule on August 2, 2010 (75 Fed. Reg. 45209) to address attainment of the 1997 ozone NAAQS and the 2006 PM2.5 NAAQS. The rule was finalized as the Cross State Air Pollution Rule ("CSAPR") on July 6, 2011, with compliance required for SO2 reductions beginning January 1, 2012 and compliance with Nox reductions required by May 1, 2012. Numerous appeals of the rule were filed, and, on August 21, 2012, the D.C. Circuit vacated the rule, leaving the EPA to continue implementation of the CAIR. Controls required under the CAIR, especially in conjunction with other rules, may have affected the market for coal inasmuch as multiple existing coal fired units were being retired rather than having required controls installed.

  The U.S. Supreme Court agreed to hear the EPA's appeal of the decision vacating CSAPR and on April 29, 2014, issued an opinion reversing the August 21, 2012 D.C. Circuit decision, remanding the case back to the D.C. Circuit. The EPA then requested that the court lift the CSAPR stay and toll the CSAPR compliance deadlines by three years. On October 23, 2014, the D.C. Circuit granted the EPA's request, and that court later dismissed all pending challenges to the rule on July 28, 2015 but it remanded some state budgets to the EPA for further consideration. CSAPR Phase 1 implementation began in 2015, with Phase 2 beginning in 2017. CSAPR generally requires greater reductions than under CAIR. As a result, some coal-fired power plants will be required to install costly pollution controls or shut down which may adversely affect the demand for coal. Finally, in October 2016, the EPA issued an update to the CSAPR to address interstate transport of air pollution under the more recent 2008 ozone NAAQS and the state budgets remanded by the D.C. Circuit. On August 10, 2017, the D.C. Circuit suspended briefing in the litigation after industry petitioners challenging the rule requested to delay proceedings so the EPA can determine whether to reconsider the revised CSAPR. On June 29, 2018, the EPA issued a proposed determination that the 2016 CSAPR Update Rule fully addresses states' interstate transport obligations under the 2008 ozone NAAQS. However, the EPA has also signaled in a variety of 2018 memoranda that states may have more flexibility to consider international emissions and higher thresholds in developing SIPs than under prior guidance. It is not clear how the combination of upholding the 2016 CSAPR Update Rule while allowing greater SIP flexibility will affect decisions to install controls or shut down units, and any resulting effects on the demand for coal. On September 13, 2019 the D.C. Circuit upheld most of the 2016 CSAPR Update Rule, but vacated a provision that allowed upwind states to continue to contribute significantly to downwind states' noncompliance beyond downwind states' statutory compliance deadlines. On October 15, 2020, EPA proposed the Revised CSAPR Update Rule in order to address 21 states' outstanding interstate pollution transport obligations for the 2008 NAAQS. On April 30, 2021, the EPA published the final rule, 86 Fed. Reg. 23,054, entitled the "Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS." The Revised CSAPR Update Rule became effective on June 29, 2021, and

was challenged by the "Midwest Ozone Group," a collection of utilities and industry entities. On March 3, 2023, the D.C. Circuit upheld the CSAPR Update Rule.

On February 28, 2022, the EPA issued a proposal to impose a Federal Implementation Plan ("FIP") in 26 states to address interstate transport of ozone season Nox emissions and compliance with the 2015 Ozone NAAQS. The EPA's proposal includes stringent new Nox emissions budgets for fossil fuel-fired power plants in 25 states.

As noted above, in February 2023, the EPA finalized the disapproval of interstate transport SIPs submitted by 19 states addressing the 2015 Ozone NAAQS, a prerequisite to the approval of FIPs in their place. Petitions for review of the SIP disapprovals for several states have been filed in federal courts of appeals, which have stayed the disapprovals of SIPs submitted by multiple states, including West Virginia. On March 15, 2023, the EPA issued its final "Good Neighbor Plan," which includes reductions in NOx emissions from power plants and industrial facilities in 23 states with the goal of reducing pollution that contributes to problems attaining and maintaining the 2015 Ozone NAAQS in downwind states. The Good Neighbor Plan FIP has been challenged and stayed in multiple courts of appeals, and states and industries have requested that the U.S. Supreme Court stay the Good Neighbor Plan nationwide. That case is scheduled to be heard in February 2024. In light of the litigation and the various stays of the EPA's SIP disapprovals and FIP approvals, the EPA has issued two interim final rules that adjust or stay certain requirements of the FIP consistent with the court orders. If the Good Neighbor Plan comes into effect in its current form, it may adversely affect the demand for coal.

- *Mercury.* In February 2008, the D.C. Circuit vacated the EPA's Clean Air Mercury Rule ("CAMR"), which was promulgated to reduce mercury emissions from coal-fired power plants and remanded it to the EPA for reconsideration. In response, the EPA announced an Electric Generating Unit ("EGU") Mercury and Air Toxics Standard ("MATS") on December 16, 2011. The MATS was finalized April 16, 2012, and required compliance for most plants by 2015. In addition, before the court decision vacating the CAMR, some states had either adopted the CAMR or adopted state-specific rules to regulate mercury emissions from power plants that are more stringent than the CAMR. MATS compliance, coupled with state mercury and air toxics laws and other factors have required many plants to install costly controls, re-fire with natural gas or retire, which may adversely affect the demand for coal.

  MATS was challenged in the D.C. Circuit, which upheld the rule on April 15, 2013. Petitioners successfully obtained Supreme Court review, and on June 29, 2015, the Supreme Court issued a 5-4 decision striking down the final rule based on the EPA's failure to consider economic costs in determining whether to regulate. The case was remanded to the D.C. Circuit. The EPA began reconsideration of costs, and petitioners unsuccessfully sought a stay of the rule in the Supreme Court in February 2016. In April 2016, the EPA issued a MATS 2016 Supplemental Finding, a final finding that it is appropriate and necessary to set standards for emissions of air toxics from coal- and oil-fired power plants. On December 27, 2018, the EPA released a proposed Supplemental Cost Finding, concluding that direct regulation of air toxics from coal- and oil-fired power plants is not cost-justified, but proposing to leave the emissions standards and other requirements of the 2012 rule in place. On May 22, 2020, the EPA released a final Supplemental Finding, again concluding that it is not "appropriate and necessary" to regulate EGUs under section 112 of the CAA. The EPA also took final action on the residual risk and technology review ("RTR") required by CAA section 112. The results from the RTR showed that emissions of hazardous air pollutants ("HAPs") had been reduced such that residual risk is at acceptable levels, there are no developments in HAP emissions controls to achieve further cost-effective reductions beyond the current standards, and, therefore, that no changes to the MATS rule were warranted. However, in the January 20, 2021 Executive Order, the Biden Administration announced a review of the rule in conjunction with other climate-related regulations, and is considering revisiting the "appropriate and necessary" determination and reversing the Supplemental Finding. On January 31, 2022, the EPA proposed revoking the May 2020 finding and proposed finding that it remains "appropriate and necessary" to regulate HAPs from EGUs under section 112 after considering cost. In April 2023, the EPA issued a proposed rule that would revise the MATS rule for power plants. The proposed rule includes a more stringent standard for emissions of

filterable particulate matter for coal-fired EGUs and a much lower mercury emission limit for lignite-fired EGUs. The proposed rule also requires the installation and operation of continuous emissions monitors for particulate matter.

- *Regional Haze.* The EPA has initiated a regional haze program designed to protect and improve visibility at and around national parks, national wilderness areas and international parks, particularly those located in the southwest and southeast United States. Under the Regional Haze Rule, affected states were required to submit regional haze SIPs by December 17, 2007, that, among other things, were to identify facilities that would have to reduce emissions and comply with stricter emission limitations. The vast majority of states failed to submit their plans by December 17, 2007, and the EPA issued a Finding of Failure to Submit plans on January 15, 2009 (74 Fed. Reg. 2392). The EPA had taken no enforcement action against states to finalize implementation plans and was slowly dealing with the state Regional Haze SIPs that were submitted, which resulted in the National Parks Conservation Association commencing litigation in the D.C. Circuit on August 3, 2012, against the EPA for failure to enforce the rule *(National Parks Conservation Act v. EPA, D.C. Cir)*. Industry groups, including the Utility Air Regulatory Group intervened.

  The EPA ultimately agreed in a consent decree with environmental groups to impose regional haze federal implementation plans ("FIPs") or to take action on regional haze SIPs before the agency for 42 states and the District of Columbia. The EPA has completed those actions for all but several states in its first planning period (2008-2010). In many eastern states, the EPA has allowed states to meet "best available retrofit control technology" ("BART") requirements for power plants through compliance with CAIR and CSAPR (a policy under pending litigation). Other states have had BART imposed on a case-by-case basis, and where the EPA found SIPs deficient, it disapproved them and issued FIPs. It is possible that the EPA may continue to increase the stringency of control requirements imposed under the Regional Haze Program as it moves toward the next planning period.

  This program may result in additional emissions restrictions from new coal-fueled power plants whose operations may impair visibility at and around federally protected areas. This program may also require certain existing coal-fueled power plants to install additional control measures designed to limit haze-causing emissions, such as sulfur dioxide, nitrogen oxides, volatile organic chemicals and particulate matter. These limitations could affect the future market for coal. However, on January 18, 2018, the EPA announced that it was revisiting the 2017 Regional Haze Rule revisions, and announced an intent to commence a new rulemaking. On September 11, 2018, the EPA released a "Regional Haze Reform Roadmap" and reaffirmed its commitment to additional rulemaking.

  On August 20, 2019, EPA issued guidance to states in preparing SIPs to meet the 2021 deadline, highlighting state flexibility. In September 2021, EPA issued a clarification memorandum, narrowing some of the flexibility identified in prior guidance. On August 30, 2022, the EPA published a notice of its final finding that 15 states have failed to submit SIPs that meet the requirements for the regional haze second planning period, triggering a two-year timeframe for the EPA to impose a FIP on those states or for states to take action that the EPA deems compliant. In June 2023, Sierra Club and other organizations filed a lawsuit against the EPA in the United States District Court for the District of Columbia alleging that the EPA's failure to act on seven states' submitted SIPs within the two-year statutory timeframe is a violation of the Clean Air Act. In November 2023, the lawsuit was amended to add 27 more states. This litigation is pending. Regional haze litigation over specific implementation continues, and both evolving guidance and the litigation could affect demand for coal.

- *New Source Review.* A number of pending regulatory changes and court actions are affecting the scope of the EPA's new source review program, which under certain circumstances requires existing coal-fueled power plants to install the more stringent air emissions control equipment required of new plants. One of these pending regulatory changes is the EPA's November 15, 2021 proposed rule on "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" and the EPA's December 6, 2022 supplemental

proposed rule intended to update, strengthen, and expand the standards proposed in the November 15, 2021 proposed rule. On December 2, 2023, the EPA published the final rule, which contains more stringent emissions requirements for oil and natural gas production and regulates methane and volatile organic compound emissions from existing sources for the first time. In addition, on May 23, 2023, the EPA proposed revised NSPS under CAA section 111(b) for greenhouse gas emissions from new and reconstructed fossil fuel-fired stationary combustion turbine electric generating units and from fossil fuel-fired steam generating units that undertake a large modification. The new source review program is continually revised and such revisions may impact demand for coal nationally.

Climate Change. Carbon dioxide, which is defined to be a greenhouse gas, is a by-product of burning coal by our coal. Global climate issues, including with respect to greenhouse gases such as carbon dioxide and any relationship between greenhouse gas emissions and perceived global warming, continue to attract significant public and scientific attention as well as regulation. For example, the Fourth, Fifth, and Sixth Assessment Reports of the Intergovernmental Panel on Climate Change have expressed concern about the impacts of human activity, especially from fossil fuel combustion, on global climate issues. As a result of the public and scientific attention, several governmental bodies increasingly are focusing on global climate issues and, more specifically, levels of emissions of carbon dioxide from coal combustion by power plants, as well as public reporting requirements regarding greenhouse gas emissions. Additional regulation of greenhouse gas emissions in the United States is likely to occur pursuant to future U.S. treaty obligations, statutory or regulatory changes at the federal, state or local level or otherwise.

Demand for coal also may be impacted by international efforts to reduce emissions of greenhouse gases. For example, in December 2015, representatives of 195 nations reached an agreement (the "Paris Agreement") that will, for the first time, commit participating countries to lowering greenhouse gas emissions, as discussed further below. Further, the United States and a number of international development banks, such as the World Bank, the European Investment Bank and European Bank for Reconstruction and Development, have announced that they will no longer provide financing for the development of new coal-fueled power plants, subject to very narrow exceptions.

Although the U.S. Congress has considered various legislative proposals that would address global climate issues and greenhouse gas emissions, no such federal proposals have been adopted into law to date. In the absence of U.S. federal legislation on these topics, the EPA has been the primary source of federal oversight, although future regulation of greenhouse gases and global climate matters in the United States could occur pursuant to future U.S. treaty obligations, statutory or regulatory changes under the Clean Air Act, federal adoption of a greenhouse gas regulatory scheme or otherwise.

In 2007, the U.S. Supreme Court held that the EPA has authority under the Clean Air Act to regulate carbon dioxide emissions from automobiles and can decide against regulation only if the EPA determines that carbon dioxide does not significantly contribute to climate change and does not endanger public health or the environment. Although the Supreme Court's holding did not expressly involve the EPA's authority to regulate greenhouse gas emissions from stationary sources, such as coal-fueled power plants, the EPA since has determined on its own that it has the authority to regulate greenhouse gas emissions from power plants, and the EPA has published a formal determination that six greenhouse gases, including carbon dioxide, endanger both the public health and welfare of current and future generations.

In 2014, the EPA proposed a sweeping rule, known as the "Clean Power Plan," to cut carbon emissions from existing electric generating units, including coal-fired power plants. A final version of the Clean Power Plan was adopted in August 2015. The final version of the Clean Power Plan aims to reduce carbon dioxide emissions from electrical power generation by 32% by 2030 relative to 2005 levels through reduction of emissions from coal-burning power plants and increased use of renewable energy and energy conservation methods. Under the Clean Power Plan, states are free to reduce emissions by various means and must submit emissions reduction plans to the EPA by September 2016 or, with an approved extension, September 2018. If a state has not submitted a plan by then, the Clean Power Plan authorizes the EPA to impose its own plan on that state. In order to determine a state's goal, the EPA has divided the country into three regions based on connected regional electricity grids. States are to implement their plans by focusing on (i) increasing the generation efficiency of existing fossil fuel plants, (ii) substituting lower carbon dioxide emitting natural gas generation for coal-powered generation and (iii) substituting generation from new zero carbon dioxide emitting

renewable sources for fossil fuel powered generation. States are permitted to use regionally available low carbon generation sources when substituting for in-state coal generation and coordinate with other states to develop multi-state plans. Following the adoption, 27 states sued the EPA, claiming that the EPA overstepped its legal authority in adopting the Clean Power Plan. In February 2016, the U.S. Supreme Court ordered the EPA to halt enforcement of the Clean Power Plan until a lower court rules on the lawsuit and until the Supreme Court determines whether or not to hear the case. In October 2017, the EPA commenced rulemaking proceedings to rescind the Clean Power Plan, and in December 2017, the EPA published an Advanced Notice of Proposed Rulemaking announcing an intent to commence a new rulemaking to replace the Clean Power Plan with an alternative framework for regulating carbon dioxide.

In a parallel litigation, 25 states and other parties filed lawsuits challenging the EPA's final New Source Performance Standards rules, which we refer to as NSPS, for carbon dioxide emissions from new, modified, and reconstructed power plants under the Clean Air Act. One of the primary issues in these lawsuits is the EPA's establishment of standards of performance based on technologies including carbon capture and sequestration, which we refer to as CCS. New coal plants cannot meet the new standards unless they implement CCS, which reportedly is not yet commercially available or technically feasible. In conjunction with the EPA's proposal to rescind the Clean Power Plan, the EPA also requested a stay of the NSPS litigation. The D.C. Circuit granted the request, and the litigation was held in abeyance.

On June 19, 2019, the EPA finalized the Affordable Clean Energy ("ACE") rule as a replacement for the Clean Power Plan, rendering the prior litigation moot. The ACE rule establishes emission guidelines for states to develop plans to address greenhouse gas emissions from existing coal-fired power plants. The ACE rule has several components: a determination of the best system of emission reduction for greenhouse gas emissions from coal-fired power plants, a list of "candidate technologies" states can use when developing their plans, a new preliminary applicability test for determining whether a physical or operational change made to a power plant may be a "major modification" triggering New Source Review, and new implementing regulations for emission guidelines under Clean Air Act section 111(d). On January 19, 2021, the D.C. Circuit Court of Appeals vacated the ACE rule and its implied repeal of the Clean Power Plan, remanding the rule to the EPA for further proceedings. As the remand was proceeding, the U.S. Supreme Court agreed, in ***West Virginia v. EPA*** and three other consolidated cases, to revisit the EPA's authority to regulate carbon emissions under Clean Air Act section 111(d) and considered the EPA's authority to regulate emissions sector-wide rather than on individual sources under section 111(d). These issues implicate not only the ACE, but potentially a variety of other rules related to coal combustion. In June 2022, the Supreme Court ruled against the EPA, holding that the Clean Power Plan's attempt to force an overall shift in power generation from higher-emitting to lower-emitting sources exceeded the EPA's statutory authority under the CAA. The Court therefore reversed the D.C. Circuit's vacatur of the ACE rule. On October 27, 2022, the D.C. Circuit issued an order effectively reinstating the ACE rule, but because the EPA had informed the court that it was presently undertaking a rulemaking process to replace the ACE rule with a new rule governing greenhouse gas emissions from existing fossil-fuel-fired power plants, the court placed the case in abeyance pending completion of that rulemaking. As noted above, on March 10, 2023, the EPA published a direct final rule extending until April 15, 2024 the deadline for state plans required to be submitted under the ACE rule. On May 23, 2023, the EPA proposed revised NSPS under Clean Air Act section 111(b) for greenhouse gas emissions from new and reconstructed fossil fuel-fired stationary combustion turbine electric generating units and from fossil fuel-fired steam generating units that undertake a large modification. If this proposed rule is finalized in its current form, it may adversely affect the demand for coal.

In December 2015, 195 nations (including United States) signed the Paris Agreement, a long-term, international framework convention designed to address climate change over the next several decades. This agreement entered into force in November 2016 after more than 70 countries, including the United States, ratified or otherwise agreed to be bound by the agreement. The United States was among the countries that submitted its declaration of intended greenhouse gas reductions in early 2015, stating its intention to reduce U.S. greenhouse gas emissions by 26-28% by 2025 compared to 2005 levels. Under President Trump, the United States, formally exited the Agreement on November 4, 2020, but President Biden has recommitted the United States to the Paris Agreement. Having rejoined the Paris Agreement, the United States submitted its Nationally Determined Contribution ("NDC"), or climate action plan, to the United Nations establishing a target of reducing the United States' net greenhouse gas emissions by 50-52% below 2005 levels by 2030. The United States followed up on the establishment of its NDC by announcing a suite of measures to reduce greenhouse gas emissions at the 27th Conference to the Parties on the UN Framework Convention on Climate

Change (“COP27”) held in Sharm el Sheik, Egypt, in November of 2022, including the development of an Energy Transition Accelerator to utilize carbon markets to promote deployment of renewable energy and support a transition away from fossil fuels. The COP27 announcements also included an update to the Methane Emissions Reduction Action Plan and an affirmation of progress under the “Global Methane Pledge” that aims to cut global methane pollution at least 30% by 2030 relative to 2020 levels, which was announced in the prior year. In November 2023 at a subsequent COP, COP28, the parties approved a road map for transitioning away from fossil fuels. Over the long term, international participation in the Paris Agreement framework could reduce overall demand for coal which could have a material adverse impact on us. These effects could be more adverse to the extent the United States continues to participate in these reduction programs (whether via the Paris Agreement or otherwise).

Several U.S. states have enacted legislation establishing greenhouse gas emissions reduction goals or requirements, joined regional greenhouse gas reduction initiatives or issued greenhouse gas reporting requirements. Many states also have enacted legislation or regulations requiring electricity suppliers to use renewable energy sources to generate a certain percentage of power, provide financial incentives to electricity suppliers for using renewable energy sources or impose costs on emitters of greenhouse gases in the electric generation sector. For example, eleven northeastern and mid-Atlantic states currently are members of the Regional Greenhouse Gas Initiative, which is a mandatory cap-and-trade program established in 2005 to cap regional carbon dioxide emissions from power plants. Similarly, California, Washington and Quebec remain members of the Western Climate Initiative, which was formed in 2008 to establish a voluntary regional greenhouse gas reduction goal and develop market-based strategies to achieve emissions reductions, and those two jurisdictions have adopted their own greenhouse gas cap-and-trade regulations and a joint “cap and trade” emissions reduction program. Any particular state, or any of these or other regional group, may have or adopt in the future rules or policies that cause some users of coal to switch from coal to a lower carbon fuel. There can be no assurance at this time that any new carbon dioxide cap-and-trade-program, carbon tax or other regulatory or policy regime, if implemented by any one or more states or regions in which our customers operate or at the federal level, will not affect the future market for coal in those states or regions and lower the overall demand for coal.

Clean Water Act. The federal Clean Water Act (sometimes shortened to CWA) and corresponding state and local laws and regulations affect coal mining operations by restricting the discharge of pollutants, including dredged and fill materials, into waters of the United States. The Clean Water Act provisions and associated state and federal regulations are complex and subject to amendments, legal challenges and changes in implementation. Recent court decisions and regulatory actions have created uncertainty over Clean Water Act jurisdiction and permitting requirements that could variously increase or decrease the cost and time we expend on Clean Water Act compliance.

The scope of waters that fall within the Clean Water Act’s jurisdiction is expansive and may include features not commonly understood to be a stream or wetland. In June 2015, the EPA and the Army Corps of Engineers (the “Corps”) issued a new rule defining the scope of “waters of the United States” (“WOTUS”) that are subject to regulation. The 2015 WOTUS rule was challenged by a number of states and private parties in various federal courts. In December 2017, the EPA and the Corps proposed a rule to repeal the 2015 WOTUS rule. The repeal took effect on December 23, 2019. In December 2018, the EPA and Corps also formally proposed a new rule revising the definition of WOTUS. The new rule -- the Navigable Waters Protection Rule (“NWPR”) -- became effective on June 22, 2020 and substantially reduced the scope of waters that fall within the Clean Water Act’s jurisdiction, in part by excluding ephemeral streams, which potentially qualified as “Waters of the United States” under the 2015 WOTUS rule. Numerous challenges to the NWPR were filed, and in 2021 under the new Biden administration, the EPA and the Corps asked the courts in the pending litigation to remand the NWPR for agency reconsideration but to maintain the effect of the NWPR in the interim. In August 2021, a federal district court in Arizona declined the request and vacated the NWPR without specifying whether its decision applied nationwide. However, the EPA and the Corps announced on September 3, 2021 that they would revert to the pre-2015 rule until further notice. On December 7, 2021, the EPA and the Corps announced a new proposed rule, which would largely retain the pre-2015 regulatory framework with the addition of other waters that meet the “relatively permanent” or “significant nexus” standards, and the agencies finalized the rule on December 30, 2022. On January 24, 2022, the U.S. Supreme Court decided to hear a challenge to EPA’s interpretation of WOTUS. In January 2023, the EPA and the Corps issued a final rule to revise the definition of WOTUS to put back into place the pre-2015 definition, updated to reflect consideration of subsequent court decisions. In May 2023, the Supreme Court decided *Sackett v. EPA*, which reduced the EPA’s jurisdictional reach by limiting the types of wetlands that constitute WOTUS. *Sackett* codified the definition of WOTUS as only “geographical features that are described in

ordinary parlance as 'streams, oceans, rivers, and lakes'" and to adjacent wetlands that are "indistinguishable" from those bodies of water due to a continuous surface connection. On September 8, 2023, the EPA issued its final rule revising the definition of WOTUS to conform to the Supreme Court's decision in *Sackett*.

Clean Water Act requirements that may directly or indirectly affect our operations include the following:

- Water Discharge. Section 402 of the Clean Water Act creates a process for establishing effluent limitations for discharges to streams that are protective of water quality standards through the National Pollutant Discharge Elimination System, which we refer to as the NPDES, or an equally stringent program delegated to a state regulatory agency. Regular monitoring, reporting and compliance with performance standards are preconditions for the issuance and renewal of NPDES permits that govern discharges into waters of the United States. Discharges that exceed the limits specified under NPDES permits can lead to the imposition of penalties, and persistent non-compliance could lead to significant penalties, compliance costs and delays in coal production. In addition, the imposition of future restrictions on the discharge of certain pollutants into waters of the United States could increase the difficulty of obtaining and complying with NPDES permits, which could impose additional time and cost burdens on our operations.

- Discharges of pollutants into waters that states have designated as impaired (i.e., as not meeting present water quality standards) are subject to Total Maximum Daily Load, which we refer to as TMDL, regulations. The TMDL regulations establish a process for calculating the maximum amount of a pollutant that a water body can receive while maintaining state water quality standards. Pollutant loads are allocated among the various sources that discharge pollutants into that water body. Mine operations that discharge into water bodies designated as impaired will be required to meet new TMDL allocations. The adoption of more stringent TMDL-related allocations for our coal mines could require more costly water treatment and could adversely affect our coal production.

  The Clean Water Act also requires states to develop anti-degradation policies to ensure that non-impaired water bodies continue to meet water quality standards. The issuance and renewal of permits for the discharge of pollutants to waters that have been designated as "high quality" are subject to anti-degradation review that may increase the costs, time and difficulty associated with obtaining and complying with NPDES permits.

  Under the Clean Water Act, citizens may sue to enforce NPDES permit requirements. Beginning in 2012, multiple citizens' suits were filed in West Virginia against mine operators for alleged violations of NPDES permit conditions requiring compliance with West Virginia's water quality standards. Some of the lawsuits alleged violations of water quality standards for selenium, whereas others alleged that discharges of conductivity and sulfate were causing violations of West Virginia water quality standards that prohibit adverse effects to aquatic life. The suits sought penalties as well as injunctive relief that would limit future discharges of selenium, conductivity or sulfate through the implementation of expensive treatment technologies. The federal district court for the Southern District of West Virginia has ruled in favor of the citizen suit groups in multiple suits alleging violations of the water quality standard for selenium and in two suits alleging violations of water quality standards due to discharge of conductivity (one of which was upheld on appeal by the United States Court of Appeals for the Fourth Circuit in January 2017). In 2015, the West Virginia Legislature amended the West Virginia Water Pollution Control Act and associated rules to expressly prohibit the direct enforcement of water quality standards against permit holders. On March 27, 2019, the EPA approved these changes.

  Citizens may also sue under the Clean Water Act when pollutants are being discharged without NPDES permits. Beginning in 2013, multiple citizens' suits were filed in West Virginia against landowners alleging ongoing discharges of pollutants, including selenium and conductivity, from valley fills at reclaimed mining sites. In each case, the reclamation bond had been released and the mining and NPDES permits had been terminated following the completion of reclamation. While it is difficult to predict the outcome of such suits, any determination that discharges from valley fills require NPDES permits could result in increased compliance costs following the completion of mining at our operations.

- *Dredge and Fill Permits.* Many mining activities, such as the development of refuse impoundments, fresh water impoundments, refuse fills, valley fills, and other similar structures, may result in impacts to waters

of the United States, including wetlands, streams and, in certain instances, man-made conveyances that have a hydrologic connection to such streams or wetlands. Under the Clean Water Act, coal companies are required to obtain a Section 404 permit from the Corps, prior to conducting such mining activities. The Corps is authorized to issue general "nationwide" permits for specific categories of activities that are similar in nature and that are determined to have minimal adverse effects on the environment. Permits issued pursuant to Nationwide Permit 21, which we refer to as NWP 21, generally authorize the disposal of dredged and fill material from surface coal mining activities into waters of the United States, subject to certain restrictions. Since March 2007, permits under NWP 21 were reissued for a five-year period with new provisions intended to strengthen environmental protections. There must be appropriate mitigation in accordance with nationwide general permit conditions rather than less restricted state-required mitigation requirements, and permit holders must receive explicit authorization from the Corps before proceeding with proposed mining activities. Notwithstanding the additional environmental protections designed in the NWP 21, on July 15, 2009, the Corps proposed to immediately suspend the use of NWP 21 in six Appalachian states, including West Virginia, Kentucky and Virginia where the Company conducts operations. On June 17, 2010, the Corps announced that it had suspended the use of NWP 21 in the same six states although it remained for use elsewhere. In February 2012, the Corps proposed to reissue NWP 21, albeit with significant restrictions on the acreage and length of stream channel that can be filled in the course of mining operations. The Corps' decisions regarding the use of NWP 21 does not prevent the Company's operations from seeking an individual permit under § 404 of the CWA, nor does it restrict an operation from utilizing another version of the nationwide permit, NWP 50, authorized for small underground coal mines that must construct fills as part of their mining operations. On January 13, 2021, the Corps published a final rule modifying its NWP program. The final rule replaced several of the 2017 NWPs, including NWP 21 and NWP 50, and added several new NWPs. The Corps removed the provision in NWP 21 and NWP 50 requiring the permittee to "receive a written authorization" from the Corps before commencing the covered activity.

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- *Effluent Limitations Guidelines.* In March 2023, the EPA published proposed and direct final rules containing revisions to the effluent limitations guidelines ("ELG") rule for the steam electric power generating point source category. If finalized, the rule would establish more stringent discharge standards for flue gas desulfurization wastewater, bottom ash transport water and combustion residual leachate at existing sources.

Resource Conservation and Recovery Act. The Resource Conservation and Recovery Act, which we refer to as RCRA, may affect coal mining operations through its requirements for the management, handling, transportation and disposal of hazardous wastes. Many mining wastes are excluded from the regulatory definition of hazardous wastes, and coal mining operations covered by SMCRA permits are by statute exempted from RCRA permitting. RCRA also allows the EPA to require corrective action at sites where there is a release of hazardous substances. In addition, each state has its own laws regarding the proper management and disposal of waste material. In June 2010, the EPA released a proposed rule to regulate the disposal of certain coal combustion residuals, which we refer to as CCR. The proposed rule set forth two very different options for regulating CCR under RCRA. The first option called for regulation of CCR as a hazardous waste under Subtitle C, which creates a comprehensive program of federally enforceable requirements for waste management and disposal. The second option utilized Subtitle D, which would give the EPA authority to set performance standards for waste management facilities and would be enforced primarily through citizen suits. The proposal left intact the so-called Bevill exemption for beneficial uses of CCR. The EPA finalized the CCR rule on December 19, 2014, setting nationwide solid nonhazardous waste standards for CCR disposal. On April 17, 2015, the EPA finalized regulations under the solid waste provisions (Subtitle D) of RCRA and not the hazardous waste provisions (Subtitle C) which became effective on October 19, 2015. The final rule establishes national minimum criteria for existing and new CCR landfills, surface impoundments and lateral expansions, and also establishes structural integrity criteria for new and existing surface impoundments (including establishing requirements for owners and operators to conduct periodic structural integrity-related assessments). The criteria include location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care and recordkeeping, notification and internet posting requirements. While classification of CCR as a hazardous waste would have led to more stringent restrictions and higher costs, this regulation may still increase our customers' operating costs and potentially reduce their ability to purchase coal. In addition, contamination caused by the past disposal of CCR, including coal ash,

could lead to citizen suit enforcement against our customers under RCRA or other federal or state laws and potentially reduce the demand for coal. In another development regarding coal combustion wastes, the EPA conducted an assessment of impoundments and other units that manage residuals from coal combustion and that contain free liquids following a massive coal ash spill in Tennessee in 2008. The EPA contractors conducted site assessments at many impoundments and is requiring appropriate remedial action at any facility that is found to have a unit posing a risk for potential failure. The EPA is posting utility responses to the assessment on its web site as the responses are received. After industry groups filed a suit in the D.C. Circuit, challenging the 2015 rule, former EPA Administrator Pruitt issued a letter on September 13, 2017 indicating the agency's decision to reconsider the rule in response to industry petitions. On August 22, 2018, the D.C. Circuit remanded the rule at the EPA's request. On August 28, 2020, the EPA issued a final revised rule that modifies standards regarding beneficial use and assessing environmental harm, and extends deadlines for regulated entities to come into compliance. Environmental groups sought to challenge the rule, but the petition was untimely and was voluntarily dismissed. In January 2022, the EPA issued new closure performance standard requirements for CCR impoundments that are likely to impose additional expense for facility closures. Challenges to those new requirements are currently pending before the D.C. Circuit. In May 2023, the EPA proposed revisions to the CCR rule that would expand the scope of the rule to include legacy CCR surface impoundments (i.e., inactive impoundments at inactive facilities) and would establish requirements for CCR management units (i.e., currently-exempt solid waste management units that involve the direct placement of CCR on the land). Future regulations resulting from the EPA coal combustion refuse assessments may impact the ability of the Company's utility customers to continue to use coal in their power plants.

Comprehensive Environmental Response, Compensation and Liability Act. The Comprehensive Environmental Response, Compensation and Liability Act, which we refer to as CERCLA, and similar state laws affect coal mining operations by, among other things, imposing cleanup requirements for threatened or actual releases of hazardous substances that may endanger public health or welfare or the environment. Under CERCLA and similar state laws, joint and several liability may be imposed on waste generators, site owners and lessees and others regardless of fault or the legality of the original disposal activity. Although the EPA excludes most wastes generated by coal mining and processing operations from the hazardous waste laws, such wastes can, in certain circumstances, constitute hazardous substances for the purposes of CERCLA. In addition, the disposal, release or spilling of some products used by coal companies in operations, such as chemicals, could trigger the liability provisions of the statute. Thus, coal mines that we currently own or have previously owned or operated, and sites to which we sent waste materials, may be subject to liability under CERCLA and similar state laws. In particular, we may be liable under CERCLA or similar state laws for the cleanup of hazardous substance contamination at sites where we own surface rights.

Endangered Species. The Endangered Species Act and other related federal and state statutes protect species threatened or endangered with possible extinction. Protection of threatened, endangered and other special status species may have the effect of prohibiting or delaying us from obtaining mining permits and may include restrictions on timber harvesting, road building and other mining or agricultural activities in areas containing the affected species. A number of species indigenous to our properties are protected under the Endangered Species Act or other related laws or regulations. Based on the species that have been identified to date and the current application of applicable laws and regulations, however, we do not believe there are any species protected under the Endangered Species Act that would materially and adversely affect our ability to mine coal from our properties in accordance with current mining plans. We have been able to continue our operations within the existing spatial, temporal and other restrictions associated with special status species. In its final rule published on December 16, 2020, the FWS adopted a regulatory definition of "habitat" for the first time, which could have important consequences for future designations of "critical habitat" under the Endangered Species Act. In October 2021, the Biden administration published rules that changed the definition of "habitat" and altered a policy that made it easier to exclude territory from critical habitat. Designation of critical habitat by the FWS can affect projects that require federal agency permits or funding, because section 7 of the Endangered Species Act requires federal agencies to ensure, through consultation with the FWS, that their actions are not likely to adversely modify or destroy designated critical habitat. Should more stringent protective measures be developed and applied to threatened, endangered or other special status species or to their critical habitat, then we could experience increased operating costs or difficulty in obtaining future mining permits.

Use of Explosives. Our mining operations are subject to numerous regulations relating to blasting activities. Pursuant to these regulations, we incur costs to design and implement blast schedules and to conduct pre-blast surveys and blast monitoring. In addition, the storage of explosives is subject to strict regulatory requirements established by four

different federal regulatory agencies. For example, pursuant to a rule issued by the Department of Homeland Security in 2007, facilities in possession of chemicals of interest, including ammonium nitrate at certain threshold levels, must complete a screening review in order to help determine whether there is a high level of security risk such that a security vulnerability assessment and site security plan will be required.

Other Environmental Laws. We are required to comply with numerous other federal, state and local environmental laws in addition to those previously discussed. These additional laws include, for example, the Safe Drinking Water Act, the Toxic Substance Control Act and the Emergency Planning and Community Right-to-Know Act.

Human Capital Resources

At December 31, 2023, Arch and its subsidiaries currently employ more than 3,400 people that are non-unionized in the United States and four employees overseas. Management believes that it has good relations with its employees.

Arch's responsible and respectful corporate culture has allowed it to attract and retain an experienced, talented and high-performing workforce. The Company and its subsidiaries had an average voluntary retention rate of 90% in 2023. Approximately 40% of the Company's workforce had at least 10 years of Company service in 2023.

Health and Safety. Safety is a deeply engrained value at Arch. We have consistently led our large, integrated peers in safety performance, as measured by lost-time incident rate.

The Company averaged 0.55 lost-time incidents per 200,000 employee-hours worked at December 31, 2023 in comparison to a national average lost-time incident rate of 2.13 (which represents the national average through the third quarter of 2023).

Across the organization, employees engage in a proactive, behavior-based approach to safety. Every field employee participates in safety training on an ongoing basis, and nearly 100 percent of our field employees have been trained as safety observers. If an at-risk behavior or a barrier to safe behavior is identified, employees are empowered to engage and to apply their training to resolve the potentially unsafe condition or practice immediately.

Since launching the behavior-based program in 2007, Arch's operating subsidiaries have recorded more than 2 million safety observations and in so doing have created a deep, employee-driven safety culture. Most importantly, the process has resulted in the successful modification of at-risk behaviors and has served as a platform for reinforcing positive behaviors. In addition, Arch operations conduct safety meetings in advance of every shift, to ensure that every employee begins every workday sharply focused on working safely.

Training and Development. We recognize the importance of furthering education and development of our employees through the various stages of their careers. To that end, we offer free access to thousands of courses that are designed for personal and career development through an online education platform. A number of these courses are tailored so employees can earn Continuing Education Units (CEU), Professional Development Hours (PDH), and Professional Engineering (PE) Units to fulfill accreditation requirements. Additionally, employees are eligible for a tuition reimbursement benefit through a program designed to encourage and support development of employee skills by providing financial assistance for an approved course of study. In the past five years, Arch's tuition reimbursement program totaled more than $1 million. These programs reflect our view that ongoing employee development is good business as well as a valuable benefit that can help attract and retain talented and skilled people.

We also invest significantly in the development of our next generation of leaders. Over the past five years, we have designed and conducted ongoing multi-day leadership workshops designed to educate high-potential corporate and subsidiary employees about our strategic direction, financial position, asset base and corporate culture, as well as to enhance leadership skillsets. More than 455 high-potential employees have participated in those workshops, with the Company's senior management team and other senior leaders participating in the training sessions.

In addition, we hold a safety and environmental stewardship summit at our headquarters location in Saint Louis each year. More than 200 employees from all subsidiary mine sites in addition to the senior leadership team and corporate employees participate in this summit each year, which creates opportunities for sharing best practices across the operations while reinforcing the Company's deep commitment to excellence in these critical areas of performance.

Information about our Executive Officers

The following is a list of our executive officers, their ages as of February 15, 2024 and their positions and offices during the last five years:

Name	Age	Position
Paul T. Demzik	62	Mr. Demzik has served as our Senior Vice President and Chief Commercial Officer since January 2019. From June 2013 to January 2019, Mr. Demzik served as Head of Thermal Coal Trading with Anglo American Marketing Limited in London and served as President of Peabody COALTRADE, LLC from July 2005 to July 2012.
John T. Drexler	54	Mr. Drexler has served as our Senior Vice President and Chief Operating Officer since 2020. Mr. Drexler served as our Senior Vice President and Chief Financial Officer from 2008 to 2020 and our Vice President-Finance and Accounting from 2006 to 2008. From 2005 to 2006, Mr. Drexler served as our Director of Planning and Forecasting. Prior to 2005, Mr. Drexler held several other positions within our finance and accounting department. Mr. Drexler also served on the board of Knight Hawk Holdings, LLC.
John W. Eaves	66	Mr. Eaves has served as our Executive Chairman of the Board of Directors since retiring as Chief Executive Officer in 2020. Mr. Eaves was our Chief Executive Officer from 2012 to 2020. Mr. Eaves served as our Chairman of the Board from 2015 to 2016 and our President and Chief Operating Officer from 2006 to 2012. From 2002 to 2006, Mr. Eaves served as our Executive Vice President and Chief Operating Officer. Mr. Eaves currently serves on the board of the CF Industries Holdings, Inc. Mr. Eaves was previously a Director of Advanced Emissions Solutions, Inc., The National Association of Manufacturers, The National Mining Association, and former Chairman of the National Coal Council.
Matthew C. Giljum	52	Mr. Giljum has served as our Senior Vice President and Chief Financial Officer since 2020. Mr. Giljum served as our Vice President of Finance and Treasurer from 2015 to 2020. Prior to that role, he served as the Company's Vice President of Finance, as well as a number of other positions of increasing responsibility in the Company's finance department.
Rosemary L. Klein	56	Ms. Klein has served as our Senior Vice President - Law, General Counsel and Secretary since October 2020. Prior to that she served as special counsel in the Company's legal department since 2015. Prior to joining the Company in 2015, Ms. Klein served as general counsel and corporate secretary - and held other senior leadership roles - at several multinational, publicly held corporations, including Solutia Inc. and Spartech Corporation.
Paul A. Lang	63	Mr. Lang has served as our President and Chief Executive Officer since 2020. Mr. Lang served as our President and Chief Operating Officer since April 2015 and has served as our Executive Vice President and Chief Operating Officer since April 2012 and as our Executive Vice President-Operations from August 2011 to April 2012. Mr. Lang served as Senior Vice President-Operations from 2006 through August 2011, as President of Western Operations from 2005 through 2006 and President and General Manager of Thunder Basin Coal Company from 1998 to 2005. Mr. Lang is a member of the Board of Directors of Rogers Group, Inc., The National Mining Association and the Board of Trustees of Missouri University of Science and Technology. Mr. Lang is also a member of the Rail Energy Transportation Advisory Committee of the Federal Surface Transportation Board. In addition, he has served as Director of Knight Hawk Holdings, LLC and on the development board of the Mining Department of the Missouri University of Science & Technology, and is the former chairman of the University of Wyoming's School of Energy Resources Council.
Deck S. Slone	60	Mr. Slone has served as our Senior Vice President-Strategy and Public Policy since June 2012. Mr. Slone served as our Vice President-Government, Investor and Public Affairs from 2008 to June 2012. Mr. Slone served as our Vice President-Investor Relations and Public Affairs from 2001 to 2008. In the past Mr. Slone served as the chairman of the National Coal Council, the co-chair of the Carbon Utilization Research Council, and the Chair of the National Mining Association's Energy Policy Task Force.
John A. Ziegler, Jr.	57	Mr. Ziegler has served as our Senior Vice President & Chief Administrative Officer since January 2019. Mr. Ziegler served as our Chief Commercial Officer since March 2014. Mr. Ziegler served as our Vice President-Human Resources from April 2012 to March 2014. From October 2011 to April 2012, Mr. Ziegler served as our Senior Director-Compensation and Benefits. From 2005 to October 2011 Mr. Ziegler served as Vice President-Contract Administration, President of Sales, then finally Senior Vice President, Sales and Marketing and Marketing Administration. Mr. Ziegler joined Arch in 2002 as Director-Internal Audit. Prior to joining Arch Resources, Mr. Ziegler held various finance and accounting positions with bioMerieux and Ernst & Young.

Available Information

We file annual, quarterly and current reports, and amendments to those reports, proxy statements and other information with the Securities and Exchange Commission. You may access and read our filings without charge through the SEC's website, at *sec.gov*.

We also make the documents listed above available without charge through our website, *archrsc.com*, as soon as practicable after we file or furnish them with the SEC. You may also request copies of the documents, at no cost, by telephone at (314) 994-2700 or by mail at Arch Resources, Inc., 1 CityPlace Drive, Suite 300, St. Louis, Missouri, 63141 Attention: Senior Vice President-Strategy and Public Policy. The information on our website is not part of this Annual Report on Form 10-K.

GLOSSARY OF SELECTED MINING TERMS

Certain terms that we use in this document are specific to the coal mining industry and may be technical in nature. The following is a list of selected mining terms and the definitions we attribute to them.

Bituminous coal	Coal used primarily to generate electricity and to make coke for the steel industry with a heat value ranging between 10,500 and 15,500 Btus per pound.
Btu	A measure of the energy required to raise the temperature of one pound of water one degree of Fahrenheit.
Coking coal	Coal used to produce coke, the primary source of carbon used in steelmaking.
Compliance coal	Coal which, when burned, emits 1.2 pounds or less of sulfur dioxide per million Btus, requiring no blending or other sulfur dioxide reduction technologies in order to comply with the requirements of the Clean Air Act.
Continuous miner	A machine used in underground mining to cut coal from the seam and load it onto conveyors or into shuttle cars in a continuous operation.
Dragline	A large machine used in surface mining to remove the overburden, or layers of earth and rock, covering a coal seam. The dragline has a large bucket, suspended by cables from the end of a long boom, which is able to scoop up large amounts of overburden as it is dragged across the excavation area and redeposit the overburden in another area.
Hard coal	Coking coal of gross calorific value greater than 5700 kcal/kg on an ash free but moist basis and further disaggregated into anthracite, coking coal and other bituminous coal.
High-Vol A	A coking coal used in steel production with a volatile matter content between 31% and 34.5% on a dry basis.
High-Vol B	A coking coal used in steel production with a volatile matter content between 34.5% and 38% on a dry basis.
Indicated mineral resource	Indicated mineral resource is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of adequate geological evidence and sampling. The level of geological certainty associated with an indicated mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit. Because an indicated mineral resource has a lower level of confidence than the level of confidence of a measured mineral resource, an indicated mineral resource may only be converted to a probable mineral reserve.
Inferred mineral resource	Inferred mineral resource is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. The level of geological uncertainty associated with an inferred mineral resource is too high to apply relevant technical and economic factors likely to influence the prospects of economic extraction in a manner useful for evaluation of economic viability. Because an inferred mineral resource has the lowest level of geological confidence of all mineral resources, which prevents the application of the modifying factors in a manner useful for evaluation of economic viability, an inferred mineral resource may not be considered when assessing the economic viability of a mining project, and may not be converted to a mineral reserve.
Lignite Coal	Coal with the lowest carbon content and a heat value ranging between 4,000 and 8,300 Btus per pound.
Longwall mining	One of two major underground coal mining methods, generally employing two rotating drums pulled mechanically back and forth across a long face of coal.
Low-sulfur coal	Coal which, when burned, emits 1.6 pounds or less of sulfur dioxide per million Btus.
Low-Vol	A coking coal used in steel production with a volatile matter content between 16% and 23% on a dry basis.

Measured mineral resource	Measured mineral resource is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of conclusive geological evidence and sampling. The level of geological certainty associated with a measured mineral resource is sufficient to allow a qualified person to apply modifying factors, as defined in S-K 1300, in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit. Because a measured mineral resource has a higher level of confidence than the level of confidence of either an indicated mineral resource or an inferred mineral resource, a measured mineral resource may be converted to a proven mineral reserve or to a probable mineral reserve.
Metallurgical coal	Coal used in steel production either as coking coal or pulverized coal injection (PCI).
Mid-Vol	A coking coal used in steel production with a volatile matter greater than 22% but less than 31% on a dry basis.
Preparation plant	A facility used for crushing, sizing and washing coal to remove impurities and to prepare it for use by a particular customer.
Probable mineral reserves	Probable mineral reserve is the economically mineable part of an indicated and, in some cases, a measured mineral resource.
Proven mineral reserves	Proven mineral reserve is the economically mineable part of a measured mineral resource and can only result from conversion of a measured mineral resource.
Pulverized coal injection coal (PCI)	Coal that is introduced directly into the blast furnace as a source of energy and carbon in the steelmaking process.
Reclamation	The restoration of land and environmental values to a mining site after the coal is extracted. The process commonly includes “recontouring” or shaping the land to its approximate original appearance, restoring topsoil and planting native grass and ground covers.
Qualified Person	Qualified Person or “QP” is an individual who is 1) a mineral industry professional with at least five years of relevant experience in the type of mineralization and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant; and 2) an eligible member or license in good standing of a recognized professional organization at the time of the technical report summary (TRS) is prepared.
Reserves	Reserves or mineral reserve is an estimate of tonnage and grade or quality of indicated and measured mineral 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.
Resources	Resources or mineral resources is a concentration or occurrence of material of economic interest on the earth’s crust in such form, grade or quality, and quantity that there are reasonable prospects for economic extraction. A mineral resource is a reasonable estimate of mineralization, taking into account relevant factors such as cut-off grade, likely mining dimensions, location or continuity, that, with the assumed and justifiable technical and economic conditions, is likely to, in whole or in part, become economically extractable. It is not merely an inventory of all mineralization drilled or sampled.
Room-and-pillar mining	One of two major underground coal mining methods, utilizing continuous miners creating a network of “rooms” within a coal seam, leaving behind “pillars” of coal used to support the roof of a mine.
Subbituminous coal	Coal used primarily to generate electricity with a heat value ranging between 8,300 and 13,000 Btus per pound.
Technical Report Summary (TRS)	A technical report summary or “TRS” report provides a statement a company’s coal reserves and has been prepared by a qualified person “QP” in accordance with the United States Securities and Exchange Commission (SEC), Regulation S-K 1300 for Mining Property Disclosure.

ITEM 1A. RISK FACTORS.

Our business involves certain risks and uncertainties. In addition to the risks and uncertainties described below, we may face other risks and uncertainties, some of which may be unknown to us and some of which we may deem immaterial. The following review of important risk factors should not be construed as exhaustive and should be read in conjunction with other cautionary statements that are included herein or elsewhere. If one or more of these risks or uncertainties occur, our business, financial condition or results of operations may be materially and adversely affected.

Summary Risk Factors

Our business is subject to several risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, results of operations, and cash flows. These risks are discussed more fully below and include, but are not limited to, risks related to:

Risks Related to Our Operations and Industry

- The loss of availability, reliability and cost-effectiveness of transportation facilities and fluctuations in transportation costs;
- Operating risks related to our coal mining operations that are beyond our control;
- Inflationary pressures on and availability and price of mining and other industrial supplies;
- A decline in coal prices;
- Volatile economic and market conditions;
- The effects of foreign and domestic trade policies;
- The effects of major foreign conflicts;
- The loss of, or a significant reduction in, purchases by our largest customers;
- Our ability to collect payments from our customers;
- International growth in our sales adds new and unique risks to our business;
- Competition from other producers, alternative fuel sources or subsidized renewables, including with respect to transportation, could put downward pressure on coal prices;
- Decreases in steel production from blast furnaces or advancement of alternative steel production technologies;
- Changes in purchasing patterns in the coal industry;
- If we or our service providers sustain cyber-attacks or other security incidents that disrupt our operations or involve unauthorized access to proprietary, confidential or personally identifiable information;
- Our inability to acquire additional coal reserves or our inability to develop coal reserves;
- Inaccuracies in our estimates of our coal reserves;
- A defect in title or the loss of a leasehold interest in certain properties or surface rights;
- Failure to obtain or renew surety bonds or insurance;
- We may not have adequate insurance coverage for some business risks;
- Disruptions in the quantities of coal purchased from other third parties;
- Decreases in the coal consumption of electric power generators could result in less demand and lower prices for thermal coal;
- We may not be able to pay dividends or repurchase shares of our common stock in accordance with our announced intent or at all;
- Our ability to operate our business effectively could be impaired if we lose key personnel or fail to attract qualified personnel;
- Public health emergencies, such as pandemics or epidemics, could have an adverse effect on our business;

Risks Related to Environmental Regulations, Other Regulations and Legislation

- Extensive environmental regulations, including existing and potential future regulatory requirements and costs relating to air emissions, affect our customers and could reduce the demand for coal as a fuel source;
- Increased pressure from political and regulatory authorities, along with environmental activist groups, and lending and investment policies adopted by financial institutions and insurance companies to address concerns about the environmental impacts of coal combustion;
- Increased attention to ESG matters could adversely impact our business and the value of the company.
- Our failure to obtain or renew permits necessary for our mining operations could negatively affect our business;
- Federal or state regulatory agencies have the authority to order certain of our mines to be temporarily or permanently closed under certain circumstances;
- Extensive environmental regulations impose significant costs on our mining operations, and future regulations could materially increase those costs or limit our ability to produce and sell coal;
- If the assumptions underlying our estimates of reclamation and mine closure obligations are inaccurate;
- Our operations may impact the environment or cause exposure to hazardous substances, and our properties may have environmental contamination;
- Changes in the legal and regulatory environment could complicate or limit our business activities, increase our operating costs or result in litigation;

Risks Related to Income Taxes

- Our ability to use net operating losses is subject to a current limitation and may be subject to additional limitations in the future.
- U.S. tax legislation may materially adversely affect our financial condition, results of operations and cash flows;

Risks Related to Our Operations and Industry

The loss of availability, reliability and cost-effectiveness of transportation facilities and fluctuations in transportation costs could affect the demand for our coal or impair our ability to supply coal to our customers.

We depend upon third-party transportation systems, including rail, barge, and truck, as well as seaborne vessels and port facilities, to deliver coal to our customers. Disruptions in transportation services due to weather-related problems, mechanical difficulties, labor shortages, mismanagement by the service providers, strikes, lockouts, bottlenecks, route closures, geopolitical disputes, natural disasters, health crises and responses thereto, and other events beyond our control, could impair our ability to supply coal to our customers. Decreased performance levels and the lack of reliability from these third-party transportation providers, over longer periods of time could cause our customers to look to other sources for their coal needs. In addition, increases in transportation costs, including the price of fuel, could make coal a less competitive source of energy when compared to alternative fuels or could make coal produced in one region of the United States less competitive than coal produced in other regions of the United States or abroad.

Poor rail service and/or rail rates increasing could lead to continued demand destruction of domestic utilities. This failure to provide adequate rail service and increasing rail rates has diminished the historic reliability and competitiveness of the coal-fired power plants, and continues to add uncertainty into the market.

If we experience disruptions in our transportation services or if transportation costs increase significantly and we are unable to find alternative transportation providers, our coal mining operations may be disrupted, we could experience a delay or halt of production or our profitability could decrease significantly. In addition, a growing portion of our coal sales in recent years has been into export markets, and we are actively seeking additional international customers. Our ability to maintain and grow our export sales revenue and margins depends on several factors, including the existence of sufficient and cost-effective export terminal capacity for the shipment of coal to foreign markets and the ability of third-party transportation providers to adequately provide a cost-effective service. At present, there is limited terminal capacity

for the export of coal into foreign markets. Our access to existing and future terminal capacity may be adversely affected by, among other factors, regulatory and permit requirements, environmental and other legal challenges, public perceptions and resulting political pressures, foreign and domestic trade policies, operational issues at terminals and competition among domestic coal producers for access to limited terminal capacity. If we are unable to maintain terminal capacity or are unable to access additional future terminal capacity for the export of our coal on commercially reasonable terms, or at all, our results could be materially and adversely affected.

From time to time, we enter into "take or pay" contracts for rail and port capacity related to our export sales. These contracts require us to pay for a minimum quantity of coal to be transported on the railway or through the port, regardless of whether we sell and ship any coal. If we fail to acquire sufficient export sales to meet our minimum obligations under these contracts, we are still obligated to make payments to the railway or port facility, which could have a negative impact on our cash flows, profitability and results of operations.

Our coal mining operations are subject to operating risks that are beyond our control, which could result in materially increased operating expenses and decreased production levels and could materially and adversely affect our profitability.

We conduct underground and surface mining operations. Certain factors beyond our control, including those listed below, could disrupt our coal mining operations, adversely affect production and shipments and increase our operating costs:

- poor mining conditions resulting from geological, hydrological or other conditions that may cause production challenges;
- a major incident at the mine site that causes all or part of the operations of the mine to cease for some period of time;
- mining, processing and plant equipment failures and unexpected maintenance problems;
- adverse weather and natural disasters, such as heavy rains or snow, flooding and other natural events affecting operations, transportation or customers, which could become more frequent or severe as a result of climate change, and public health crises;
- the unavailability of raw materials, equipment (including heavy mobile equipment) or other critical supplies such as repair parts, tires, explosives, fuel, lubricants and other consumables of the type, quantity and/or size needed to meet production expectations;
- planned, unexpected or accidental subsidence from underground mining;
- disputes over access and subsidence rights;
- accidental mine water discharges, fires, gas inundations, explosions or similar mining accidents;
- actions of state and federal authorities that regulate our operations;
- delays, closures, or labor unavailability by third parties that transport coal shipments or other products; and
- competition and/or conflicts with other natural resource extraction activities and production within our operating areas, such as coalbed methane extraction or oil and gas development.

If any of these conditions or events occurs, our coal mining operations may be disrupted and we could experience a delay or halt of production or shipments or our operating costs could increase significantly. In addition, if our insurance coverage is limited or excludes certain of these conditions or events, then we may not be able to recover, or recover fully for losses incurred as a result of such conditions or events, some of which may be substantial.

Inflationary pressures on mining and other industrial supplies, including steel-based supplies, diesel fuel and rubber tires, or the inability to obtain a sufficient quantity of those supplies, could negatively affect our operating costs or disrupt or delay our production.

Inflation rates in the U.S. could result in decreased demand for our products, increased operating costs, increased interest rates and constrained liquidity, reduced government spending and volatility in financial markets. Our coal mining operations use significant amounts of steel, diesel fuel, explosives, rubber tires and other mining and industrial supplies. The cost of roof control supplies, including roof bolts and plates, we use in our underground mining operations depends

on the price of steel. We also use significant amounts of diesel fuel, explosives and tires for trucks and other heavy machinery, particularly at our Black Thunder mining complex. Future increases in costs for supplies that are used directly or indirectly in the normal course of our business and increases in other operating costs, such as increases in steel prices, freight rates, labor and other materials and supplies may negatively impact our profitability.

Due to the decline in the mining industry, there has been a corresponding decrease in the number of providers of mining equipment and supplies. If we are unable to procure these equipment and supplies, our coal mining operations may be disrupted or we could experience a delay or halt in our production. Any of the foregoing events could materially and adversely impact our business, financial condition, results of operations and cash flows.

Coal prices are subject to change based on a number of factors and can be volatile. If there is a decline in prices, it could materially and adversely affect our profitability and the value of our coal reserves.

Our profitability and the value of our coal reserves depend upon the prices we receive for our coal. The contract prices we may receive in the future for coal depend upon factors beyond our control, including the following:

- the domestic and foreign demand for coal, which depends significantly on the demand for steel and electricity;
- overall global economic activity and growth and the unknown geopolitical consequences of the wars between Ukraine and Russia and between Israel and Hamas and other macro issues;
- competition for production of steel from non-coal sources including, electric arc furnaces or other processes that may use alternatives to coking as a reduction agent, which may limit demand for coking coal;
- the quantity and quality of coal available from our peers and alternative sources of fuel;
- competition for subsidized renewable energy production;
- domestic and foreign air emission standards for coal-fueled power plants and blast furnaces and the ability to meet these standards;
- adverse weather, climatic or other natural conditions, including unseasonable weather patterns, which could become more frequent or severe in connection with climate change;
- domestic and foreign economic conditions, including economic slowdowns and the relative exchange rates of U.S. dollars for foreign currencies;
- domestic and foreign legislative, regulatory and judicial developments, environmental regulatory changes or changes in energy policy and energy conservation measures that could adversely affect the coal industry, such as legislation limiting carbon emissions or providing for increased funding and incentives for alternative energy sources;
- the imposition of tariffs, quotas, trade barriers and other trade protection measures;
- the proximity to, capacity of, and cost of transportation and port facilities; and
- technological advancements, including those related to hydrogen-based steel production alternative energy sources, and those intended to convert coal-to-liquids or gas.

Declines in the prices we receive for our future coal sales, could materially and adversely affect us by decreasing our profitability, cash flows, liquidity and the value of our coal reserves.

Volatile economic and market conditions have affected and in the future may continue to affect our revenues and profitability.

Global economic downturns have negatively impacted, and in the future could negatively impact, our revenues and profitability. Our profitability depends, in large part, on conditions in the markets that we serve, which fluctuate in response to various factors beyond our control. The prices at which we sell our coal are largely dependent on prevailing market prices. We have experienced significant price volatility at times during the past several years.

Economic conditions, including those caused by the continuing effects of elevated inflation and interest rates, increased military conflicts and wars, and supply chain disruptions have led to extreme volatility of prices. If there are further downturns in economic conditions, our and our customers' businesses, financial condition and results of operations could be adversely affected. There can be no assurance that our cost control actions and capital discipline, or any other

actions that we may take, will be sufficient to offset any adverse effect these conditions may have on our business, financial condition or results of operations.

The effects of foreign and domestic trade policies, actions or disputes on the level of trade among the countries and regions in which we operate could negatively impact our business, financial condition or results of operations.

Trade barriers such as tariffs imposed by the United States could potentially lead to trade disputes with other foreign governments and adversely impact global economic conditions. For instance, in March 2018, the United States imposed a 25% tariff on all imported steel into the United States citing national security interests, which resulted in certain foreign countries imposing offsetting tariffs in retaliation. In December 2021, the Biden Administration revised the 25% tariff with the European Union to a tariff-rate quota on imports greater than a certain tonnage amount, and continued the original Section 232 tariffs, under the Trade Expansion Act of 1962, as amended, with respect to all other importers of steel into the United States. Continued or worsening United States-China trade tensions may result in additional tariffs or other protectionist measures that could materially, adversely affect foreign demand for our coal.

In addition, potential changes to international trade agreements, trade policies, trade concessions or other political and economic arrangements may benefit coal producers operating in countries other than the United States. We may not be able to compete based on price or other factors with companies that, in the future, benefit from favorable foreign trade policies or other arrangements.

The effects of major foreign conflicts on the level of trade, including sanctions, among the countries and regions in which we operate could negatively impact our business, financial condition or results of operations.

We face risks related to several ongoing wars and regional conflicts, including the Ukraine-Russia war, and the Israel-Hamas war and escalations thereof, as well as trade disruptions related to conflict in the Persian Gulf and Red Sea. The extent and duration of these and similar military or armed conflicts, including terrorism, are impossible to predict, but could result in sanctions and future market or supply disruptions, which could be significant and may have a severe adverse effect on the countries and regions or global trade broadly in which we operate. For example, various governments, such as the European Union, have banned imports from Russia including commodities such as natural gas and coal, and resulting sanctions and future market or supply disruptions in these and other regions are difficult to predict and could severely impact the world economy. These events significantly impacted coal markets by disrupting previously existing trading patterns. The resulting volatility, including market expectations of potential changes in coal prices and inflationary pressures on steel products, significantly impacted prices for our coal and the availability and cost of supplies and equipment and could continue to impact us in the future.

The loss of, or a significant reduction in, purchases by our largest customers could adversely affect our profitability.

For the year ended December 31, 2023, we derived approximately 15% of our total coal revenues from sales to our three largest customers and approximately 39% of our total coal revenues from sales to our ten largest customers. If any of those customers, particularly any of our three largest customers, were to significantly reduce the quantities of coal it purchases from us, or if we are unable to sell coal to those customers on terms as favorable to us, it may have an adverse impact on the results of our business.

Our ability to collect payments from our customers could be impaired if their creditworthiness deteriorates, and our financial position could be materially and adversely affected by the bankruptcy of any of our significant customers.

Our ability to receive payment for coal sold and delivered depends on the continued creditworthiness of our customers. If we determine that a customer is not creditworthy, we may be able to withhold delivery under the customer's coal sales contract. If this occurs, we may decide to sell the customer's coal on the spot market, which may be at prices lower than the contracted price, or we may be unable to sell the coal at all. Furthermore, the bankruptcy of any of our significant customers could materially and adversely affect our financial position.

In addition, our customer base may change with deregulation as domestic utilities sell their power plants to their non-regulated affiliates or third parties that may be less creditworthy, thereby increasing the risk we bear for customer payment default. Some power plant owners may have credit ratings that are below investment grade or may become below investment grade after we enter into contracts with them. Furthermore, our metallurgical customers operate in a highly competitive and cyclical industry where their creditworthiness could deteriorate rapidly. In addition, competition with other coal suppliers could force us to extend credit to customers and on terms that could increase the risk of payment default. Customers in other countries may also be subject to other pressures and uncertainties that may affect their ability to pay, including trade barriers, exchange controls and local economic and political conditions.

International growth in our sales adds new and unique risks to our business.

We have sales offices in Singapore and the United Kingdom. Our international offices sell our coal to new international customers, which may present uncertainties and new risks. A majority of our metallurgical coal sales consist of sales to international customers, and we expect that international sales will continue to account for a larger portion of our revenue. A number of foreign countries in which we sell our metallurgical coal implicate additional risks and uncertainties due to the different economic, cultural and political environments. Such risks and uncertainties include, but are not limited to:

- longer sales-cycles and time to collection, producing large swings in working capital from period to period;
- tariffs and international trade barriers and export license requirements, including any that might result from global trade uncertainties;
- different and changing legal and regulatory requirements;
- potential liability under the U.S. Foreign Corrupt Practices Act of 1977, as amended, or comparable foreign regulations;
- government currency controls;
- fluctuations in foreign currency exchange and interest rates;
- political and economic instability, changes, hostilities and other disruptions; and
- unexpected changes in diplomatic and trade relationships.

Negative developments in any of these factors in the foreign markets into which we sell our metallurgical coal could result in a reduction in demand for metallurgical coal, the cancellation or delay of orders already placed, difficulty in collecting receivables, higher costs of doing business and/or non-compliance with legal and regulatory requirements, each, or any of which, could materially adversely impact our cash flows, results of operations and profitability.

Competition, including with respect to transportation, could put downward pressure on coal prices and, as a result, materially and adversely affect our revenues and profitability.

We have significant competition with producers of other fuels, such as natural gas and subsidized renewables. Natural gas pricing has declined in recent years and has historically been the main basis for setting the price of our domestic thermal product. Historically, declines in the price of natural gas have caused demand for coal to decrease and have adversely affected the price of our coal. Sustained periods of low natural gas prices have, coupled with social policy decisions, also contributed to utilities phasing out or closing existing coal-fired power plants, and could reduce or eliminate construction of any new coal-fired power plants. This longer-term trend has, and could continue to have, a material adverse effect on demand and prices for our thermal coal. Moreover, the construction of new pipelines and other natural gas distribution channels may increase competition within regional markets and thereby decrease the demand for and price of our thermal coal.

In addition to other fuel sources, we compete with numerous other domestic and foreign coal producers for domestic and international sales. Overcapacity and increased production within the coal industry, both domestically and internationally, and decelerating steel demand have at times, and could in the future, materially reduce coal prices and therefore materially reduce our revenues and profitability. In addition, our ability to ship our coal to international customers depends on port capacity. Increased competition within the coal industry for international sales could result in us not being able to obtain throughput capacity at port facilities, or the rates for such throughput capacity could increase to a point where it is not economically feasible to export our coal.

Decreases in steel production from blast furnaces or advancement of alternative steel production technologies may reduce demand for our metallurgical product.

Our principal product is a premium High-Vol metallurgical coal for blast furnace steel producers. Premium High-Vol metallurgical coal generally commands a significant price premium over other forms of coal because of its value in use in blast furnaces for steel production. Premium High-Vol metallurgical coal is a scarce commodity and has specific physical and chemical properties that can impact the efficiency of blast furnace operation. Alternative technologies are continually being investigated and developed with a view to reducing production costs or for other reasons, such as minimizing environmental or social impact. If competitive technologies emerge or are increasingly utilized that use other materials in place of our product or that diminish the required amount of our product, such as electric arc furnaces or pulverized coal injection processes, demand and price for our metallurgical coal might fall. Many of these alternative technologies are designed to use lower quality coals or other sources of carbon instead of higher cost High-Vol metallurgical coal. While conventional blast furnace technology has been the most economic large-scale steel production technology for several decades, and while emergent technologies typically take many years to commercialize, there can be no assurance that, over the longer term, competitive technologies not reliant on High-Vol metallurgical coal could emerge which could reduce demand and price premiums for High-Vol metallurgical coal.

Our profitability depends upon the coal supply agreements we have with our customers. Changes in purchasing patterns in the coal industry could make it difficult for us to extend our existing coal supply agreements or to enter into new agreements in the future.

The success of our business depends on our ability to retain our current customers, renew our existing customer contracts, and solicit new customers. Our ability to do so generally depends on a variety of factors, including the quality and price of our products, our ability to market these products effectively, our ability to deliver on a timely basis and the level of competition that we face. If current customers do not honor contract commitments, or if they terminate agreements or exercise *force majeure* provisions allowing for the temporary suspension of their performance, our revenues will be adversely affected. There are a variety of reasons that may cause some of our customers not to renew, extend or enter into new coal supply agreements or to enter into agreements to purchase fewer tons of coal or on different terms or prices than in the past. In addition, uncertainty caused by federal and state regulations, including under the U.S. Clean Air Act, could deter our customers from entering into coal supply agreements. Also, the availability and price of competing fuels, such as natural gas, as well as the use of tax incentives and public policy for renewable energy sources to deter coal consumption could influence the volume of coal a customer is willing to purchase under contract.

Our coal supply agreements typically contain *force majeure* provisions allowing the parties to temporarily suspend performance during specified events beyond their control. Most of our coal supply agreements also contain provisions requiring us to deliver coal that satisfies certain quality specifications, such as heat value, sulfur content, ash content, volatile matter, hardness and ash fusion temperature, among other attributes. These provisions in our coal supply agreements could result in negative economic consequences to us, including price adjustments, having to purchase replacement coal in a higher-priced open market, the rejection of deliveries or, in the extreme, contract termination. Our profitability may be negatively affected if we are unable to seek protection during adverse economic conditions or if we incur financial or other economic penalties as a result of these provisions of our coal supply agreements. For more information about our long-term coal supply agreements, you should see the section entitled “Long-Term Coal Supply Arrangements” under Item 1.

Serious cyber-attacks or other security incidents that disrupt our operations or compromise proprietary or confidential information could expose us to significant liability, reputational harm, loss of revenue, increased costs and material risks to our business and results.

We are dependent on computer systems, hardware, software, technology infrastructure, networks and other information technology systems (collectively, “IT Systems”) to operate our business and to comply with regulatory, legal and tax requirements. Some of these IT Systems are owned and operated by us, but we also rely on many third parties, such as services providers and others in the supply chain, for critical products and services, including but not limited to

software, hardware and cloud computing. In addition, in the ordinary course of our business, we and various third parties generate, collect, process, transmit and store data, such as proprietary business information and personally identifiable information (collectively, "Confidential Information").

We and certain of our business partners and service providers have experienced and expect to continue to experience cyberattacks and other security incidents in the future. Such future attacks and incidents may cause material adverse impacts on our business. There can be no assurance that our cybersecurity risk management program and processes, including our policies, controls or procedures, will be fully implemented, complied with or effective in protecting our IT Systems and Confidential Information. We are in an industry and business involving energy-related assets that is at a relatively greater risk of cyber-attacks by sophisticated adversaries, such as nation state actors, as compared to other targets in the United States. Our IT Systems and those of important third parties are vulnerable to malicious and intentional cyberattacks involving malware (such as ransomware) and viruses, accidental or inadvertent incidents, the exploitation of security vulnerabilities or "bugs" in software or hardware, social engineering/phishing attacks, and malfeasance by insiders, among other scenarios. Both the frequency and magnitude of cyberattacks is expected to increase, and attackers are increasingly sophisticated. As a result, we may be unable to anticipate, detect or prevent future attacks, particularly as the methodologies utilized by attackers change frequently or are not recognized until launched, and we may be unable to investigate or remediate incidents because attackers are increasingly using techniques and tools (such as artificial intelligence) designed to circumvent controls, avoid detection, and remove or obfuscate forensic evidence.

A serious compromise to the confidentiality, integrity or availability of our IT Systems, or the IT Systems of our business partners or service providers, whether caused maliciously or inadvertently, may cause significant operational disruptions, unauthorized physical access to one or more of our facilities or locations, or electronic access to, or corruption or destruction or loss of Confidential Information. Such attacks or incidents could result in, among other things, unfavorable publicity and reputational damage, litigation (including class actions), disruptions to our operations, loss of customers, financial obligations that may not be covered by our insurance for damages, regulatory investigations and enforcement, and fines or penalties related to the theft, release or misuse of information, any or all of which could have a material adverse impact on our results of operations, financial condition or cash flow. In addition, as cyber threats continue to evolve, we may be required to expend significant additional resources to modify or enhance our protective measures or to investigate and remediate any system vulnerabilities or for compliance purposes. This is particularly the case given fast evolving legislative and regulatory changes to data privacy, data security and data protection laws globally. Any losses, costs or liabilities directly or indirectly related to cyberattacks or other incidents may not be covered by, or may exceed the coverage limits of, any or all of our applicable insurance policies.

Our inability to acquire additional coal reserves or our inability to develop coal reserves in an economically feasible manner may adversely affect our business.

Our profitability depends substantially on our ability to mine and process, in a cost-effective manner, coal reserves that possess the quality characteristics desired by our customers. As we mine, our coal reserves deplete. As a result, our future success depends upon our ability to obtain, through acquisition or development of owned reserves, coal that is economically recoverable. If we fail to acquire or develop additional coal reserves, our existing reserves will eventually be depleted. We may not be able to obtain replacement reserves when we require them. Even if available, replacement reserves may not be available at favorable prices, or we may not be capable of mining those reserves at costs that are comparable with our existing coal reserves. In certain locations, leases for oil, natural gas and coalbed methane reserves are located on, or adjacent to, some of our reserves, potentially creating conflicting interests between us and lessees of those interests. Other lessees' rights relating to these mineral interests could prevent, delay or increase the cost of developing our coal reserves. These lessees may also seek damages from us based on claims that our coal mining operations impair their interests.

Our ability to obtain coal reserves in the future could also be limited by the availability of cash we generate from our operations or available financing, restrictions under our existing or future financing arrangements, competition from other coal producers, limited opportunities or the inability to acquire coal properties on commercially reasonable terms. Increased opposition from non-governmental organizations and other third parties may also lengthen, delay or adversely

impact the acquisition process. If we are unable to acquire replacement reserves, our future production may decrease significantly and our operating results may be negatively affected. In addition, we may not be able to mine future reserves as profitably as we do at our current operations.

Inaccuracies in our estimates of our coal reserves could result in decreased profitability from lower than expected revenues or higher than expected costs.

Our future performance depends on, among other things, the accuracy of our estimates of our proven and probable coal reserves. We base our estimates of reserves on engineering, economic and geological data assembled, analyzed and reviewed by internal and third-party engineers and consultants. We update our estimates of the quantity and quality of proven and probable coal reserves annually to reflect the production of coal from the reserves, updated geological models and mining recovery data, the tonnage contained in new lease areas acquired and estimated costs of production and sales prices. There are numerous factors and assumptions inherent in estimating the quantities and qualities of, and costs to mine, coal reserves, including many factors beyond our control, including the following:

- quality of the coal;
- geological and mining conditions, which may not be fully identified by available exploration data and / or may differ from our experiences in areas where we currently mine;
- historical production from the area compared with production from other similar producing areas;
- the percentage of coal ultimately recoverable;
- the assumed effects of regulation, including the issuance of required permits, taxes, including severance and excise taxes, and royalties, and other payments to governmental agencies;
- assumptions concerning the timing for the development of the reserves;
- assumptions concerning physical access to the reserves; and
- assumptions concerning equipment and productivity, future coal prices, operating costs, including for critical supplies such as fuel, tires and explosives, capital expenditures and development and reclamation costs.

As a result, estimates of the quantities and qualities of economically recoverable coal attributable to any particular group of properties, classifications of reserves based on risk of recovery, estimated cost of production and estimates of future net cash flows expected from these properties, as prepared by different engineers, or by the same engineers at different times, may vary materially due to changes in the above factors and assumptions. Actual production recovered from identified reserve areas and properties, and revenues and expenditures associated with our mining operations, may vary materially from estimates. Any inaccuracy in our estimates related to our reserves could result in decreased profitability from lower-than-expected revenues and/or higher than expected costs.

A defect in title or the loss of a leasehold interest in certain properties or surface rights could limit our ability to mine our coal reserves or result in significant unanticipated costs.

We conduct a significant part of our coal mining operations on properties that we own as well as on properties we lease from third parties. A title defect, the loss of a lease or surface rights or a dispute over subsidence could adversely affect our ability to mine the associated coal reserves. We may not verify title to our leased properties or associated coal reserves until we have committed to developing those properties or coal reserves. We may not commit to develop properties or coal reserves until we have obtained necessary permits and completed exploration. As such, the title to properties that we intend to lease or coal reserves that we intend to mine may contain defects prohibiting our ability to conduct mining operations. Similarly, our leasehold interests may be subject to superior property rights of other third parties. In order to conduct our mining operations on properties where these defects exist, we may incur unanticipated costs. In addition, some leases require us to produce a minimum quantity of coal and require us to pay minimum production royalties. Our inability to satisfy those requirements may cause the leasehold interest to terminate, which could negatively impact our business, financial condition, results of operations and cash flows.

Failure to obtain or renew surety bonds on acceptable terms could affect our ability to secure reclamation and coal lease obligations and, therefore, our ability to mine or lease coal.

Federal and state laws require us to obtain surety bonds or post other financial security to secure performance or payment of certain long-term obligations, such as mine closure or reclamation costs, federal and state workers' compensation and black lung benefits costs, coal leases and other obligations. The amount of security required to be obtained can change as the result of new federal or state laws, as well as changes to the factors used to calculate the bonding or security amounts. We may have difficulty procuring or maintaining our surety bonds. Our bond issuers may demand higher fees or additional collateral, including letters of credit or other terms less favorable to us upon those renewals.

Because we are required by state and federal law to have these surety bonds or other acceptable security in place before mining can commence or continue, our failure to maintain surety bonds, letters of credit or other guarantees or security arrangements would materially and adversely affect our ability to mine or lease metallurgical coal. That failure could result from a variety of factors, including lack of availability, higher expense or unfavorable market terms, the exercise by third-party surety bond issuers of their right to refuse to renew the sureties and restrictions on availability of collateral for current and future third-party surety bond issuers under the terms of our financing arrangements.

As of December 31, 2023, we had approximately $552.5 million in surety bonds backed by $70.5 million of letters of credit outstanding. Any further issuances of letters of credit to satisfy the increased collateral demands or any replacement surety bonds would immediately reduce the borrowing capacity under our credit facilities. At December 31, 2023, the Company established a fund for asset retirement obligations and thus far has contributed $142.3 million that will serve to defease the long-term asset retirement obligation for its Powder River Basin Mines.

We may not have adequate insurance coverage for some business risks.

Our operations are generally subject to a number of hazards and risks that could result in personal injury or damage to, or destruction of, equipment, property or facilities. Depending on the nature and extent of a loss, the insurance that we maintain to address risks that are typical in our businesses may not be adequate or available to fully protect or reimburse us, or our insurance coverage may be limited, canceled or otherwise terminated. Insurance against some risks, such as liabilities for environmental pollution, or certain hazards or interruption of certain business activities, may not be available at an economically reasonable cost, or at all. Even if available, we may self-insure where we determine it is most cost effective to do so. As a result, despite the insurance coverage that we carry, accidents or other negative developments involving our production, mining, processing or transportation activities causing losses in excess of policy limits, or losses arising from events not covered under insurance policies, could have a material adverse effect on our financial condition and cash flows. The risk of increased insurance costs may have greater impact where the adverse event results in us asserting an insurance claim, the cost of which our insurers may seek to recoup during a future insurance renewal through increased premiums or limitations on coverage.

Disruptions in the quantities of coal purchased from other third parties could temporarily impair our ability to fill customer orders or increase our operating costs.

From time to time, we purchase coal from third parties that we sell to our customers. Operational difficulties at mines operated by third parties from whom we purchase coal, changes in demand from other coal producers and other factors beyond our control could affect the availability, pricing, and quality of coal purchased by us. Disruptions in the quantities of coal purchased by us could impair our ability to fill our customer orders or require us to purchase coal from other sources to satisfy those orders. If we are unable to fill a customer order or if we are required to purchase coal from other sources at higher prices and / or lower quality, in order to satisfy a customer order, we could lose existing customers and our operating costs could increase.

Decreases in the coal consumption of electric power generators could result in less demand and lower prices for thermal coal, which could materially and adversely affect our revenues and results of operations.

Thermal coal accounted for 88% of our coal sales by volume and 42% of the coal sales revenue during 2023. The majority of these sales were to electric power generators. The amount of coal consumed for electric power generation is affected primarily by the overall demand for electricity, the availability, quality and price of competing fuels (particularly

natural gas) for power generation and governmental regulations which may dictate an alternate source of fuel regardless of economics such as subsidized renewables. Overall economic activity and the associated demand for power by industrial users can have significant effects on overall electricity demand and can be impacted by a number of factors. An economic slowdown can significantly slow the growth of electricity demand and could result in reduced demand for coal. Weather patterns also greatly affect electricity demand. Extreme temperatures, both hot and cold, cause increased power usage and, therefore, increase generating requirements from all sources. Mild temperatures, on the other hand, result in lower electrical demand, which allows generators to choose the source of power generation that is most cost efficient.

Other sources of generation have the potential to displace coal-fueled generation, particularly from older, less efficient coal-powered generators and this has occurred to date. We expect that the new power plants constructed in the United States, to meet increasing demand for electricity generation, will not be fueled by coal, given the relative cost and permitting difficulties now associated with coal as compared to other sources of energy. State and federal mandates for increased use of electricity from renewable energy sources also have an impact on the market for our coal. Several states have enacted legislative mandates requiring electricity suppliers to use renewable energy sources to generate a certain percentage of power. There have been numerous proposals to establish a similar uniform national standard, although none of these proposals have been enacted to date; however, the Biden Administration has set a goal of a carbon pollution-free power sector by 2035. Additionally, many utilities have established their own emissions reduction goals, which may lead to the phase-out of coal-fired plants in favor of other energy sources. The costs of certain renewable energy sources have become increasingly competitive to coal, and possible advances in technologies and incentives, such as tax credits, to enhance the economics of renewable energy sources, could make these sources even more competitive. Any reduction in the amount of coal consumed by electric power generators could reduce the price of coal that we mine and sell, thereby reducing our revenues and materially and adversely affecting our business and results of operations.

We may not be able to pay dividends or repurchase shares of our common stock in accordance with our announced intent or at all.

The Board of Directors' determinations regarding fixed or variable dividends and share repurchases will depend on a variety of factors, including our net income, cash flow generated from operations or other sources, liquidity position, changes in working capital, potential alternative uses of cash, such as acquisitions and organic growth opportunities, and a desire to increase cash on our balance sheet, as well as economic conditions and expected future financial results.

Our ability to declare future dividends and make future share repurchases will depend on our future financial performance, which in turn depends on the successful implementation of our strategy and on financial, competitive, regulatory, technical and other factors, general economic conditions, demand and selling prices for our products, working capital adjustments, decisions related to the amount and timing of contributions to the thermal reclamation fund and other factors specific to our industry, many of which are beyond our control. Therefore, our ability to generate cash depends on the performance of our operations and could be limited by decreases in our profitability or increases in costs, regulatory changes, capital expenditures, debt servicing requirements or an increase in collateral requirements.

The frequency and amount of dividends, if any, may vary significantly from amounts paid in previous periods. The Company can provide no assurance that it will continue to pay fixed or variable dividends or repurchase shares. Any failure to pay dividends or repurchase shares of our common stock could negatively impact our reputation, lessen investor confidence in us, and cause the market price of our common stock to decline.

Our ability to operate our business effectively could be impaired if we lose key personnel or fail to attract qualified personnel.

We manage our business with several key personnel, the loss of whom could have a material adverse effect on us, absent the completion of an orderly transition. Efficient mining using modern techniques and equipment requires skilled laborers with mining experience and proficiency as well as qualified managers and supervisors. The demand for skilled employees sometimes causes a significant constriction of the labor supply resulting in higher labor costs. When coal producers compete for skilled miners, recruiting challenges can occur and employee turnover rates can increase, which negatively affect operating efficiency and costs. If a shortage of skilled workers exists and we are unable to train or retain the necessary number of miners, it could adversely affect our productivity, costs and ability to expand production.

Our executive officers and other key personnel have significant experience in the coal business and the loss of certain of these individuals could harm our business. Moreover, there may be a limited number of persons with the requisite experience and skills to serve in our senior management positions. There can be no assurance that we will continue to be successful in attracting and retaining enough qualified personnel in the future or that we will be able to do so on acceptable terms. The loss of key management personnel could harm our ability to successfully manage our business functions, prevent us from executing our business strategy and have a material adverse effect on our results of operations and cash flows.

Public health emergencies, such as pandemics or epidemics, could have an adverse effect on our business, results of operations, financial condition, and cash flows

Our operations expose us to risks associated with pandemics, epidemics, or other public health emergencies. Such events could lead to restrictions and mandates, which could differ across jurisdictions, and there could be global impacts resulting directly or indirectly from such an event or events, including labor shortages, logistical challenges, and supply chain disruptions such as increased port congestion, and increases in costs for certain goods and services. For instance, the onset of the COVID-19 pandemic that began in the first quarter of 2020 negatively affected our business, sales volumes, operating costs, and financial results to varying degrees and could continue to negatively affect our results of operations, cash flows, and financial position in the future.

Risks Related to Environmental Regulation, Other Regulations and Legislation

Extensive environmental regulations, including existing and potential future regulatory requirements relating to air emissions, affect our customers and could reduce the demand for coal as a fuel source and cause coal prices and sales of our coal to materially decline.

Coal contains impurities, including but not limited to sulfur, mercury, chlorine and other elements or compounds, many of which are released into the air when coal is combusted by our customers dependent on their site specific pollution control equipment. The operations of our customers are subject to extensive environmental regulation particularly with respect to air emissions. For example, the federal Clean Air Act and similar state and local laws extensively regulate the amount of sulfur dioxide, particulate matter, nitrogen oxide, and other compounds emitted into the air from electric power plants, which are the largest end-users of our coal. A series of more stringent requirements relating to particulate matter, ozone, haze, mercury, sulfur dioxide, nitrogen oxide and other air pollutants may be developed and implemented. For instance, the Clean Power Plan promulgated under the Obama administration, would have severely limited emissions of carbon dioxide which would adversely affect our ability to sell coal. However, in April 2017, the EPA announced that it was initiating a review of the Clean Power Plan consistent with President Trump's Executive Order 13783, and, in October 2017, the EPA published a proposed rule to formally repeal the Clean Power Plan. In June 2019, the EPA issued the final Affordable Clean Energy rule, which revised the agency's interpretation of Clean Air Act section 111(d). In January 2021, the D.C. Circuit Court of Appeals vacated the Affordable Clean Energy rule and its implied repeal of the Clean Power Plan, remanding to the EPA for further proceedings. The Supreme Court then heard the case and decided against the EPA and the Clean Power Plan, holding that the Clean Power Plan's attempt to force an overall shift in power generation from higher-emitting to lower-emitting sources exceeded the EPA's statutory authority. The Court therefore reversed the D.C. Circuit's vacatur of the Affordable Clean Energy rule. On October 27, 2022, the D.C. Circuit issued an order effectively reinstating the Affordable Clean Energy rule, but the court placed the case in abeyance pending the EPA's completion of a rulemaking to replace the rule. On March 10, 2023, the EPA published a direct final rule extending until April 15, 2024 the deadline for state plans required to be submitted under the Affordable Clean Energy rule. On May 23, 2023, the EPA proposed revised NSPS under Clean Air Act section 111(b) for greenhouse gas emissions from new and reconstructed fossil fuel-fired stationary combustion turbine electric generating units and from fossil fuel-fired steam generating units that undertake a large modification.

In addition, the change in presidential administration has resulted in a further shift in policy by the EPA. As explained above, in December 2015, the United States and 195 other countries entered into the "Paris Agreement" during the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, a long-term, international framework convention designed to address climate change over the next several decades. The Trump administration formally withdrew the United States from the Paris Agreement, effective November 2020. However,

President Biden has recommitted the United States to the Paris Agreement and the United States has officially submitted to the United Nations a Nationally Determined Contribution of reducing its net greenhouse gas emissions by 50-52% below 2005 levels by 2030. Since then, the United States and other signatories to the Paris Agreement have taken further steps toward reducing greenhouse gas emissions and addressing climate change, as further discussed above. The impacts of these orders, pledges, agreements and any legislation or regulation promulgated to fulfill the United States' commitments under the Paris Agreement, the UN Framework Convention on Climate Change, or other international conventions cannot be predicted at this time. However, any efforts to control and/or reduce greenhouse gas emissions by the United States or other countries that have also pledged "Nationally Determined Contributions," or concerted conservation efforts that result in reduced electricity consumption, could adversely impact coal prices, our ability to sell coal and, in turn, our financial position and results of operations.

In addition, a January 21, 2021 executive order from the Biden administration directed all federal agencies to review and take action to address any federal regulations, orders, guidance documents, policies and any similar agency actions promulgated during the prior administration that may be inconsistent with the administration's policies. The executive order also established an Interagency Working Group on the Social Cost of Greenhouse Gases ("Working Group"), which is called on to, among other things, develop methodologies for calculating the "social cost of carbon," "social cost of nitrous oxide" and "social cost of methane." The Working Group published a Technical Support Document with interim values and initial recommendations in February 2021. Building on the Working Group's interim values for social cost of greenhouse gases, the EPA released for public review, in November 2022, a September 2022 draft report with a social cost of carbon of $190 per metric ton of carbon dioxide emitted in 2020 at a 2% discount rate. That figure is intended to be used to guide federal decisions on the costs and benefits of various policies and approvals, although such efforts have been the subject of a series of judicial challenges. In November 2023, the EPA released a final Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances on the Social Cost of Greenhouse Gases setting estimated Social Cost of CO_2 at $120, $190 or $340, the Social Cost of CH_4 at $1,300, $1,600 or $2,300 and the Social Cost of N_2O at $35,000, $54,000 or $87,000, each per metric ton and each depending on the discount rate used. On December 22, 2023, the Working Group published a memorandum recommending that agencies "use their professional judgment to determine which estimates of the social cost of greenhouse gasses reflect the best available evidence, are most appropriate for particular analytical contexts, and best facilitate sound decision-making." At this time, we cannot determine whether the administration's efforts on social cost or other interagency climate efforts will lead to any particular actions that give rise to a material adverse effect on our business, financial condition and results of operations. The Biden administration issued another executive order on January 27, 2021, that was specifically focused on addressing climate change. Further regulation of air emissions at the federal level, as well as uncertainty regarding the future course of federal regulation, could reduce demand for coal and negatively impact our financial position and results of operations.

In March 2021, the Biden Administration announced a framework for the "Build Back Better" agenda. The proposed framework included policies to address climate change across the federal government through the tax code, an energy efficiency and clean energy standard, and research and development, among other areas of focus.

"Build Back Better" has been on two tracks in Congress, with a bipartisan "infrastructure" bill that has passed in the Senate and House of Representatives and was signed into law on November 15, 2021, which includes climate provisions focused on transportation and resiliency and an expected multi-trillion-dollar budget social spending bill that is being advanced under the reconciliation process to address additional priorities, including the climate impacts of energy production. On August 16, 2022, President Biden signed into law the Inflation Reduction Act, which was originally introduced as an amendment to the Build Back Better Act, which will provide incentives and programs to a range of renewable energy, decarbonization, and energy efficiency projects. A Clean Electricity Standard, or similar program, remains a goal of the Biden Administration, despite an unclear political path forward, and we are closely monitoring both legislative and executive agency action.

We are also subject to state and local regulations, which may be more stringent than federal rules. For example, certain United States cities and states have announced their intention to satisfy their proportionate obligations under the Paris Agreement. In addition, almost one-half of states have taken measures to track and reduce emissions of greenhouse gases, and some states have elected to participate in voluntary regional cap-and-trade programs like the Regional Greenhouse Gas Initiative in the northeastern United States. Many State and local governments have also passed legislation and/or regulations requiring electricity suppliers to use renewable energy sources to generate a certain percentage of power, or provide financial incentives to electricity suppliers for using renewable energy sources. State and local governments

may pass additional laws mandating the use of alternative energy sources, such as wind power and solar energy, or imposing additional costs on the use of coal for electricity generation which may decrease demand for our coal products. State and local commitments and regulations could have a material adverse effect on our business, financial condition and results of operations.

Considerable uncertainty is associated with these air emissions initiatives, and the content of regulatory requirements in the United States and other countries continues to evolve and develop, which could require significant emissions control expenditures for many coal-fueled power plants. As a result, these power plants may switch to other fuels that generate fewer of these emissions, may install more effective pollution control equipment that reduces the need for low sulfur coal, or may cease operations, possibly reducing future demand for coal and a reduced need to construct new coal-fueled power plants. Any switching of fuel sources away from coal, closure of existing coal-fired plants or reduced construction of new plants could have a material adverse effect on demand for, and prices received for, our coal. Alternatively, less stringent air emissions limitations, particularly related to sulfur, to the extent enacted, could make low sulfur coal less attractive, which could also have a material adverse effect on the demand for and prices received for our coal.

You should see Item 1, "Environmental and Other Regulatory Matters" for more information about the various governmental regulations affecting the market for our products.

Increased pressure from political and regulatory authorities, along with environmental and climate change activist groups, and lending and investment policies adopted by financial institutions and insurance companies to address concerns about the environmental impacts of coal combustion, including climate change, may potentially materially and adversely impact our future financial results, liquidity and growth prospects.

Global climate issues continue to attract significant public and scientific attention. For example, the Assessment Reports of the Intergovernmental Panel on Climate Change have expressed concern about the impacts of human activity, especially from fossil fuel combustion, on the global climate. As a result of the public and scientific attention, several governmental bodies increasingly are focusing on climate issues and, more specifically, levels of emissions of carbon dioxide from coal combustion by power plants. Although the Supreme Court held that the EPA did not have the statutory authority to issue the Clean Power Plan, there remains considerable political will for laws and regulations restricting emissions, including emissions from our industry and the industries of our customers. As such, the final status of any regulatory requirements is uncertain.

Future regulation of greenhouse gas emissions in the United States could occur pursuant to future treaty obligations, statutory or regulatory changes at the federal, state or local level or otherwise. The enactment of laws or the passage of regulations regarding greenhouse gas emissions from the combustion of coal by the U.S., some of its states or other countries, or other actions to limit emissions have resulted in, and may continue to result in, electricity generators switching from coal to other fuel sources or coal-fueled power plant closures. Further, policies limiting available financing for the development of new coal-fueled power plants could adversely impact the global demand for coal in the future. You should see Item 1, "Environmental and Other Regulatory Matters-Climate Change" for more information about governmental regulations relating to greenhouse gas emissions.

There have been recent efforts by members of the general financial and investment communities, such as investment advisors, sovereign wealth funds, public pension funds, universities and other groups, to divest themselves and to promote the divestment of securities issued by companies involved in the fossil fuel extraction market, such as coal producers. In California, for example, legislation was signed into law in October 2015 requiring California's state pension funds to divest investments in companies that generate 50% or more of their revenue from coal mining. Also, in December 2017, the Governor of New York announced that the New York Common Fund would immediately cease all new investments in entities with "significant fossil fuel activities," and the World Bank announced that it would no longer finance upstream oil and gas after 2019, except in "exceptional circumstances." Other activist campaigns have urged banks to cease financing coal-driven businesses. As a result, numerous banks, other financing sources and insurance companies have taken actions to limit available financing and insurance coverage for the development of new coal-fueled power plants and coal mines and utilities that derive a majority of their revenue from thermal coal. However, various states have enacted, or are considering enacting, laws to sanction, or require public funds to divest from, financial institutions that restrict investments in fossil fuel companies based off of extra-regulatory environmental or social factors, or to require

such institutions to provide "fair access" to financial services to companies regardless of industry. While similar regulations had been developed by the federal government under the Trump Administration, the Biden Administration has either suspended or repealed such rulemakings. For example, in November 2022, the Department of Labor published a final rule clarifying that consideration of ESG factors in investment decisions is permissible for ERISA fiduciaries. As such, the final status of efforts to divest or promote the divestment from the fossil fuel extraction market is unclear, but any such efforts may adversely affect the demand for and price of our securities and impact our access to the capital and financial markets.

Additionally, in March 2022, the SEC proposed new rules relating to the disclosure of a range of climate-related risks and other information. To the extent this rule is finalized as proposed, we and/or our customers could incur increased costs related to the assessment and disclosure of climate-related information. Certain states are also adopting or considering adopting climate change-related disclosure requirements, for example California recently adopted legislation regarding climate change-related risk and greenhouse gas emissions disclosures, and other states are looking at similar legislation or regulation. Enhanced climate disclosure requirements could also accelerate any trend by certain stakeholders and capital providers to restrict or seek more stringent conditions with respect to their financing of certain carbon intensive sectors.

Any future laws, regulations or other policies of the nature described above may adversely impact our business in material ways. The degree to which any particular law, regulation or policy impacts us will depend on several factors, including the substantive terms involved, the relevant time periods for enactment and any related transition periods. We routinely attempt to evaluate the potential impact on us of any proposed laws, regulations or policies, which requires that we make several material assumptions. From time to time, we determine that the impact of one or more such laws, regulations or policies, if adopted and ultimately implemented as proposed, may result in materially adverse impacts on our operations, financial condition or cash flow. In general, it is likely that any future laws, regulations or other policies aimed at reducing greenhouse gas emissions will negatively impact demand for our coal and future laws, regulations and other policies expanding our reporting obligations are likely to increase costs associated with our legal compliance, which may become significantly burdensome for our business.

Increased attention to ESG matters could adversely impact our business and the value of the company.

Increasing attention to climate change, societal expectations on companies to address climate change, investor and societal expectations regarding voluntary ESG disclosures, and consumer demand for alternative forms of energy, including changes in general energy consumption patterns attributable to energy conservation trends, may result in negative views with respect to ESG that could result in a low ESG scores or ratings for the Company, which could harm the perception of our Company by certain investors, or could result in the exclusion of our securities from consideration by those investors.

Certain financial institutions, including banks and insurance companies, have taken actions to limit available financing, insurance and other services to entities that produce or use fossil fuels. Additionally, some investors and financial institutions use ESG or sustainability scores, ratings and benchmarking studies provided by various organizations that assess corporate performance and governance related to environmental and social matters, including climate change, in making their financing and voting decisions. Companies in the energy industry, and in particular those focused on coal, natural gas or petroleum extraction and refining unsurprisingly often have lower ESG or sustainability scores or ratings compared to companies in other industries. These lower scores or ratings may have adverse consequences including, but not limited to:

- restricting our ability to access capital and financial markets in the future or increasing our cost of capital;
- reducing the demand and price for our securities;
- increasing the cost of borrowing;
- causing a decline in our credit ratings or a substantially lower credit rating than a company with a similar balance sheet in a different industry;
- reducing the availability, and/or increasing the cost of, third-party insurance;
- increasing our retention of risk through self-insurance; and
- making it more difficult to obtain surety bonds, letters of credit, bank guarantees or other financing.

ESG expectations, including both the matters in focus and the management of such matters, continue to evolve rapidly. For example, in addition to climate change, there is increasing attention on topics such as diversity and inclusion, human rights, and human and natural capital, in companies' own operations as well as their supply chains. In addition, perspectives on the efficacy of ESG considerations continue to evolve, and we cannot currently predict how regulators', investors' and other stakeholders' views on ESG matters may affect the regulatory and investment landscape and affect our business, financial condition, and results of operations. While we may publish voluntary disclosures regarding ESG matters or take other actions from time to time, in an effort to improve the ESG profile of our operations or products, we cannot guarantee that these efforts will have the desired effect. For example, our voluntary disclosures may include statements based on assumptions, estimates or third-party information we currently believe to be reasonable, but which may subsequently be erroneous or misinterpreted. In addition, we may commit to certain ESG initiatives over time, and we may not ultimately be able to achieve our goals or reach our commitments, either on the timeframes or costs initially anticipated or at all, due to factors that within or outside of our control. If we do not, or are perceived to not, adapt or comply with investor or stakeholder expectations and standards on ESG matters, we may suffer from reputational damage and an increased risk of litigation or activism, and our business, financial condition and results of operations could be materially and adversely affected. Any reputational damage associated with ESG factors may also adversely impact our ability to recruit and retain employees and customers. In addition, we anticipate that there may be increased levels of regulation, disclosure-related and otherwise, with respect to ESG matters, which will likely lead to increased compliance costs, as well as scrutiny that could heighten all of the risks identified in this risk factor. Such ESG matters may also affect our suppliers or customers, which could augment or cause additional impacts to our business or operations.

Our failure to obtain and renew permits necessary for our mining operations could negatively affect our business.

Mining companies must obtain numerous permits that impose strict regulations on various environmental and operational matters in connection with coal mining. These include permits issued by various federal, state and local agencies and regulatory bodies. The permitting rules, and the interpretations of these rules, are complex, change frequently and are often subject to discretionary interpretations by the regulators, all of which may make compliance more difficult or impractical, and may possibly preclude the continuance of ongoing operations or the development of future mining operations. The public, including non-governmental organizations, anti-mining groups and individuals, have certain statutory rights to comment upon and submit objections to requested permits and environmental impact statements prepared in connection with applicable regulatory processes, and otherwise engage in the permitting process, including bringing citizens' lawsuits to challenge the issuance of permits, the validity of environmental impact statements or the performance of mining activities. Accordingly, required permits may not be issued or renewed in a timely fashion or at all, or permits issued or renewed may be conditioned in a manner that may restrict our ability to efficiently and economically conduct our mining activities, any of which could materially reduce our production, cash flow and profitability.

Federal or state regulatory agencies have the authority to order certain of our mines to be temporarily or permanently closed under certain circumstances, which could materially and adversely affect our ability to meet our customers' demands.

Federal and state regulatory agencies each have the authority, under certain circumstances following significant health and safety incidents, such as fatalities, to order a mine to be temporarily or permanently closed. If this occurred, we may be required to incur capital expenditures to re-open the mine. In the event that these agencies order the closing of our mines, our coal sales contracts generally permit us to issue *force majeure* notices which suspend our obligations to deliver coal under these contracts. However, our customers may challenge our issuances of *force majeure* notices. If these challenges are successful, we may have to purchase coal from third-party sources, if it is available, to fulfill these obligations, incur capital expenditures to re-open the mines and/or negotiate settlements with the customers, which may include price or commitment reductions, extensions of time for delivery or terminations of customers' contracts. Any of these actions could have a material adverse effect on our business and results of operations.

Extensive environmental regulations impose significant costs on our mining operations, and future regulations could materially increase those costs or limit our ability to produce and sell coal.

The coal mining industry is subject to increasingly strict regulation by federal, state and local authorities with respect to environmental matters such as:

- limitations on land use;
- mine permitting and licensing requirements;
- reclamation and restoration of mining properties after mining is completed and required surety bonds or other instruments to secure those reclamation and restoration obligations;
- management of materials generated by mining operations;
- the storage, treatment and disposal of wastes;
- remediation of contaminated soil and groundwater;
- air quality standards;
- water pollution;
- protection of human health, plant-life and wildlife, including endangered or threatened species;
- protection of wetlands;
- the discharge of materials into the environment;
- subsidence;
- the effects of mining on surface water and groundwater quality and availability; and
- the management of electrical equipment containing polychlorinated biphenyls.

The costs, liabilities and requirements associated with the laws and regulations related to these and other environmental matters may be costly and time-consuming and may delay commencement or continuation of exploration or production operations. Failure to comply with these laws and regulations may result in the assessment of administrative, civil and criminal penalties, the imposition of cleanup and site restoration costs and liens, the issuance of injunctions to limit or cease operations, the suspension or revocation of permits and other enforcement measures that could have the effect of limiting production from our operations. We may incur material costs and liabilities resulting from claims for damages to property or injury to persons arising from our operations. If we are pursued for sanctions, costs or liabilities in respect of these matters, our profitability could be materially and adversely affected.

New legislation or administrative regulations or new judicial interpretations or administrative enforcement of existing laws and regulations, including proposals related to the protection of the environment that would further regulate and tax the coal industry, may also require us to change operations significantly or incur increased costs, which could have a material adverse effect on our financial condition and results of operations. Please refer to the section entitled “Environmental and Other Regulatory Matters” in Item 1 for more information about the various governmental regulations affecting us.

If the assumptions underlying our estimates of reclamation and mine closure obligations are inaccurate, our costs could be greater than anticipated.

SMCRA and counterpart state laws and regulations establish operational, reclamation and closure standards for all aspects of surface mining, as well as most aspects of underground mining. We base our estimates of reclamation and mine closure liabilities on permit requirements, engineering studies and our engineering expertise related to these requirements. Our management and engineers periodically review these estimates. Actual costs can vary from our original estimates if our assumptions are incorrect, major operational changes are implemented, or if governmental regulations change significantly. We are required to record new obligations as liabilities at fair value under U.S. GAAP. In estimating fair value, we consider the estimated current costs of reclamation and mine closure and applied inflation rates, together with third-party profit, as required. The third-party profit is an estimate of the approximate markup that would be charged by contractors for work performed on our behalf. The resulting estimated reclamation and mine closure obligations could change significantly if actual amounts change significantly from our assumptions, which could have a material adverse effect on our results of operations and financial condition.

Our operations may impact the environment or cause exposure to hazardous substances, and our properties may have environmental contamination, which could result in material liabilities to us.

Our operations currently use hazardous materials and generate hazardous wastes from time to time. We could become subject to claims for toxic torts, natural resource damages and other damages as well as for the investigation and cleanup of soil, surface water, groundwater, and other media. Such claims may arise, for example, out of conditions at sites that we currently own or operate, as well as at sites that we previously owned or operated, or at sites that we may acquire. Under certain federal and state environmental laws, our liability for such conditions may be joint and several with other owners/operators, so that we may be held responsible for more than our share of the contamination or other damages, or even for the entire share. Liability under these laws is generally strict. Accordingly, we may incur liability without regard to fault or to the legality of the conduct giving rise to the conditions.

We maintain extensive coal refuse areas and slurry impoundments at a number of our mining complexes. Such areas and impoundments are subject to extensive regulation. Slurry impoundments can fail, which could release large volumes of coal slurry into the surrounding environment. Structural failure of an impoundment can result in extensive damage to the environment and natural resources, such as bodies of water that the coal slurry reaches, as well as liability for related personal injuries and property damages, and injuries to wildlife. Some of our impoundments overlie mined-out areas, which can pose a heightened risk of failure and of damages arising out of failure. If one of our impoundments were to fail, we could be subject to substantial claims for the resulting environmental contamination and associated liability, as well as for fines and penalties.

Drainage flowing from or caused by mining activities can be acidic with elevated levels of dissolved metals, a condition referred to as “acid mine drainage,” which we refer to as AMD. The treating of AMD can be costly. Although we do not currently face material costs associated with AMD, it is possible that we could incur significant costs in the future.

These and other similar unforeseen impacts that our operations may have on the environment, as well as exposures to hazardous substances or wastes associated with our operations, could result in costs and liabilities that could materially and adversely affect our business, financial condition and results of operations.

Changes in the legal and regulatory environment could complicate or limit our business activities, increase our operating costs or result in litigation.

The conduct of our businesses is subject to various laws and regulations administered by federal, state and local governmental agencies in the United States. These laws and regulations may change, sometimes dramatically, as a result of political, economic or social events or in response to significant events. Environmental and other non-governmental organizations and activists, many of which are well funded, continue to exert pressure on regulators and other government bodies to enact more stringent laws and regulations. For instance, increasing attention to global climate change has resulted in an increased possibility of governmental investigations and, potentially, private litigation against us and our customers. For example, claims have been made against certain energy companies alleging that greenhouse gas emissions constitute a public nuisance or that such companies have been aware of the adverse effects of greenhouse gas emissions for some time but failed to adequately disclose such impacts to consumers or investors. While our business is not a party to any such litigation, we could be named in actions making similar allegations. Moreover, the proliferation of successful climate change litigation could adversely impact demand for coal and ultimately have a material adverse effect on our business, financial condition and results of operations. Changes in the legal and regulatory environment in which we operate may impact our results, increase our costs or liabilities, complicate or limit our business activities or result in litigation. Such legal and regulatory environment changes may include changes in such items as: the processes for obtaining or renewing permits; federal Lease By Application (“LBA”) programs; costs associated with providing healthcare benefits to employees; health and safety standards; accounting standards; disclosure requirements; taxation requirements; competition laws; and trade policies, including policies concerning tariffs, quotas, trade barriers and other trade protection measures.

Risks Related to Income Taxes

Our ability to use net operating losses is subject to a current limitation, and may be subject to additional limitations in the future.

Our ability to use our net operating losses ("NOLs") in existence immediately prior to our emergence from bankruptcy in 2016 has been limited by the "ownership change" under Section 382 of the Internal Revenue Code (the "Code") that occurred as a result of such emergence (the "Emergence Ownership Change"). NOLs generated after the Emergence Ownership Change are generally not subject to limitations, except as noted below.

For U.S. federal income tax purposes, NOLs generated in taxable years beginning after December 31, 2017 are not subject to expiration; however, such NOLs are limited to offsetting 80% of our U.S. federal taxable income.

If we undergo an additional "ownership change" under Section 382 of the Code (very generally defined as a greater than 50% change, by value, in equity ownership by certain shareholders or groups of shareholders over a rolling three-year period), such ownership change may impose further limitations on our ability to use any NOLs in existence immediately prior to such ownership change. We may experience ownership changes as a result of subsequent shifts in our stock ownership. Future legal or regulatory changes could also limit our ability to utilize our NOLs. To the extent we are not able to offset future taxable income with our NOLs, our net income and cash flows may be adversely affected.

U.S. tax legislation may materially adversely affect our financial condition, results of operations and cash flows.

Our consolidated effective income tax rate could be materially adversely affected by changing tax laws and regulations (such as the enactment of the Inflation Reduction Act which, among other changes, introduced a 15% corporate minimum tax on certain United States corporations and a 1% excise tax on certain stock repurchases by United States corporations) or the interpretation thereof, the practices of tax authorities in jurisdictions in which we operate, and the resolution of issues arising from tax audits or examinations and any related interest or penalties.

We are unable to predict what tax reforms may be proposed or enacted in the future or what effect such changes would have on our business, but such changes, to the extent they are brought into tax legislation, regulations, policies or practices in jurisdictions in which we operate, could adversely affect our future results of operations, reduce post-tax returns to our stockholders and increase the complexity, burden and cost of tax compliance.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

None.

ITEM 1C. CYBERSECURITY

Cybersecurity Risk Management and Strategy

We have developed and implemented a cybersecurity risk management program intended to protect the confidentiality, integrity, and availability of our critical systems and information.

We design and assess our program based on the National Institute of Standards and Technology Cybersecurity Framework (NIST CSF). This does not imply that we meet any particular technical standards, specifications, or requirements, but rather that we use the NIST CSF as a guide to help us identify, assess, and manage cybersecurity risks relevant to our business.

Our cybersecurity risk management program is integrated into our overall enterprise risk management program, and shares common methodologies, reporting channels and governance processes that apply across the enterprise risk management program to other legal, compliance, strategic, operational, and financial risk areas.

Key aspects of our cybersecurity risk management program include:

- risk assessments designed to help identify material cybersecurity risks to our critical systems and information;
- a security team principally responsible for managing (1) our cybersecurity risk assessment processes, (2) our security controls, and (3) our response to cybersecurity incidents;
- the use of external service providers, where appropriate, to assess, test or otherwise assist with aspects of our security controls;
- cybersecurity awareness training for our employees, incident response personnel, and senior management;
- a cybersecurity incident response plan that includes procedures for responding to cybersecurity incidents; and
- a process to review the cybersecurity risk profile and operational criticality of the key service providers and to seek appropriate contractual cybersecurity protections.

We have not identified risks from known cybersecurity threats, including as a result of any prior cybersecurity incidents, that have materially affected us, including our operations, business strategy, results of operations, or financial condition. We face ongoing risks from certain cybersecurity threats that, if realized, are reasonably likely to materially affect us, including our operations, business strategy, results of operations, or financial condition. See Item 1A, "Risk Factors – Serious cyber-attacks or other security incidents that disrupt our operations or compromise proprietary or confidential information could expose us to significant liability, reputational harm, loss of revenue, increased costs and material risks to our business and results."

Cybersecurity Governance

Our Board of Directors considers cybersecurity risk as part of its risk oversight function and has delegated to its Audit Committee oversight of cybersecurity and other information technology risks. Our Audit Committee oversees management's implementation of our cybersecurity risk management program.

Our Audit Committee receives periodic reports from management on our cybersecurity risks. In addition, management updates our Audit Committee, as necessary, regarding significant cybersecurity incidents. Our Audit Committee reports to the full Board of Directors regarding its activities, including those related to cybersecurity. Our Board of Directors also receives briefings from management on our cybersecurity risk management program. Board members receive presentations on cybersecurity topics from IT leadership, which includes our Senior Vice President & Chief Administrative Officer and our Vice President of IT and CIO, or external experts as part of the Board's continuing education on topics that impact public companies.

Our Computer Security Incident Response Team ("CSIRT") is responsible for coordinating and executing on the cybersecurity response procedures and for seeking assistance from other Company stakeholders and external advisors. Our CSIRT includes IT leadership, an Incident Commander, our Senior Vice President & Chief Financial Officer, Legal counsel, Human Resources, and Internal Audit. The team has primary responsibility for our overall cybersecurity risk management program and supervises both our internal cybersecurity personnel and our retained external cybersecurity consultants. Our management team includes our Vice President of IT and CIO, who has over 20 years of experience in IT with direct experience overseeing our IT security team for the past two years.

Our management team and IT leadership stay informed about and monitor efforts to prevent, detect, mitigate, and remediate cybersecurity risks and incidents through various means, which may include briefings from internal security personnel, threat intelligence and other information obtained from governmental, public or private sources, including external consultants engaged by us, and alerts and reports produced by security tools deployed in the IT environment.

ITEM 2. PROPERTIES.

Disclosure of Mineral Reserves and Resources

In October 2018, the Securities and Exchange Commission ("SEC") adopted amendments to its current disclosure rules to modernize the mineral property disclosure requirements for mining registrants. The amendments include the adoption of S-K 1300, which will govern disclosure for mining registrants (the "SEC Mining Modernization Rules"). The SEC Mining Modernization Rules replace the historical property disclosure requirements for mining registrants that were included in the SEC's Industry Guide 7 and better align disclosure with international industry and regulatory practices.

Descriptions in this report of our mineral deposits are prepared in accordance with S-K 1300, as well as similar information provided by other issuers in accordance with S-K 1300, may not be comparable to similar information that is presented elsewhere outside of this report. Leer, Leer South, and Black Thunder were considered material properties. The Leer South Technical Report Summary was updated in 2023 because there was a material change in the mine plan. As there have been no material changes in the mineral reserves or mineral resources for our Leer Mine and Black Thunder Mine, we are not filing updated technical summary reports for those locations in connection with this annual report on form 10-K. Please refer to the Technical Report Summaries filed as exhibits hereto for additional information with respect to our material properties and Material Mining Properties section below.

The qualified persons that have reviewed and approved the scientific and technical information contained in this annual report are identified in the footnotes to the tables summarizing the mineral reserves and resources estimates below. Our coal reserve estimates at December 31, 2023 were prepared by our engineers and geologists and reviewed by
Weir International, Inc. and Marshall Miller and Associates, Inc., which are third party mining and geological consultants. Internally qualified personnel were used for all non-material properties and selected resources.

Refer to Item 1. Business "Our Mining Operations" for further discussion regarding our active mining complexes as of December 31, 2023, including the total tons sold associated with these complexes, mining type, mining equipment, location, existing infrastructure, total cost of property, plant and equipment of each mining complex.

Presentation of information concerning Mineral Reserves

The estimates of proven and probable reserves at our mines and the estimates of mine life included in this annual report have been prepared by the qualified persons referred to herein, and in accordance with the technical definitions established by the SEC. Under S-K 1300:

- Proven mineral reserves are the economically mineable part of a measured mineral resource and can only result from conversion of a measured mineral resource.
- Probable mineral reserves are the economically mineable part of an indicated and, in some cases, a measured mineral resource.
- Indicated mineral resource is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of adequate geological evidence and sampling. The level of geological certainty associated with an indicated mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit. Because an indicated mineral resource has a lower level of confidence than the level of confidence of a measured mineral resource, an indicated mineral resource may only be converted to a probable mineral reserve.
- Inferred mineral resource is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. The level of geological uncertainty associated with an inferred mineral resource is too high to apply relevant technical and economic factors

likely to influence the prospects of economic extraction in a manner useful for evaluation of economic viability. Because an inferred mineral resource has the lowest level of geological confidence of all mineral resources, which prevents the application of the modifying factors in a manner useful for evaluation of economic viability, an inferred mineral resource may not be considered when assessing the economic viability of a mining project, and may not be converted to a mineral reserve.

- Measured mineral resource is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of conclusive geological evidence and sampling. The level of geological certainty associated with a measured mineral resource is sufficient to allow a qualified person to apply modifying factors, as defined in S-K 1300, in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit. Because a measured mineral resource has a higher level of confidence than the level of confidence of either an indicated mineral resource or an inferred mineral resource, a measured mineral resource may be converted to a proven mineral reserve or to a probable mineral reserve.

We periodically revise our reserves and resources estimates when we have new geological data, economic assumptions or mining plans. During 2023, we performed an analysis of our reserves and resources estimates for certain operations, which is reflected in new estimates as of December 31, 2023. Reserves and resource estimates for each operation assume that we either have or expect to obtain all the necessary rights and permits to mine, extract and process mineral reserves or resources at each mine. Certain figures in the tables, discussions and notes have been rounded. For a description of risks relating to our estimates of mineral reserves and resources, see our “Risk Factors” within Item 1A.

Our Properties

The following table provides a summary of information regarding our active mining complexes as of December 31, 2023:

Mine[1]	Location	Ownership	Operator	Stage of Development	Mine Type	Processing Plant
Leer[2]	Taylor County, WV	100%	ICG Tygart Valley	Production	Underground	Yes
Leer South[3]	Barbour County, WV	100%	Wolf Run Mining LLC	Production	Underground	Yes
Beckley	Raleigh County, WV	100%	ICG Beckley LLC	Production	Underground	Yes
Mountain Laurel	Logan County, WV	100%	Mingo Logan LLC	Production	Underground	Yes
Black Thunder[4]	Campbell County, WY	100%	Thunder Basin Coal Company L.L.C.	Production	Surface	No
Coal Creek	Campbell County, WY	100%	Thunder Basin Coal Company L.L.C.	Production	Surface	No
West Elk	Gunnison County, CO	100%	Mountain Coal Company L.L.C.	Production	Underground	Yes

(1) The Mineral Reserve estimates with respect to our mines have been prepared by the qualified persons referred to herein. Refer to Item 1. Business “Our Mining Operations” on the title process. Refer to Item 1. Business “Environmental and Other Regulatory Matters” for discussion on the permitting process.

(2) Subpart 1300 of Regulation S-K definitions were followed for Mineral Reserves. The qualified person for Mineral Reserves is Weir Consulting, an independent mining firm. Mineral reserves are estimated at average sales price per short ton FOB mine of $110.18 and average cash cost per short ton of $59.94. Refer to Exhibit 96.1 Technical Report Summary for Leer Mine – S-K 1300 Report.

(3) Subpart 1300 of Regulation S-K definitions were followed for Mineral Reserves. The qualified person for Mineral Reserves is Marshall Miller & Associates, an independent mining firm. Mineral reserves are estimated at average sales price per short ton FOB mine of $150.30 and average cash cost per short ton of $75.99. Refer to Exhibit 96.1 Technical Report Summary for Leer South Mine – S-K 1300 Report.

(4) Subpart 1300 of Regulation S-K definitions were followed for Mineral Reserves. The qualified person for Mineral Reserves is Weir Consulting, an independent mining firm. Mineral reserves are estimated at average sales price per short ton FOB mine of $14.67 and average cash cost per short ton of $12.46. Refer to Exhibit 96.1 Technical Report Summary for Black Thunder Mine – S-K 1300 Report.

At December 31, 2023, we owned or controlled, primarily through long-term leases, approximately 28,292 acres of coal land in Ohio, 952 acres of coal land in Maryland, 10,095 acres of coal land in Virginia, 303,811 acres of coal land in West Virginia, 75,874 acres of coal land in Wyoming, 230,607 acres of coal land in Illinois, 32,667 acres of coal land in Kentucky, 362 acres of coal land in Montana, 248 acres of coal land in Pennsylvania, and 19,018 acres of coal land in Colorado. In addition, we also owned or controlled through long-term leases smaller parcels of property in Alabama, Indiana, Washington, Arkansas, California, Utah and Texas. We lease approximately 57,863 acres of our coal land from the federal government and approximately 15,318 acres of our coal land from various state governments. Certain of our preparation plants or loadout facilities are located on properties held under leases which expire at varying dates over the next 30 years. Most of the leases contain options to renew. Our remaining preparation plants and loadout facilities are located on property owned by us or for which we have a special use permit.

Our executive headquarters occupies leased office space at 1 CityPlace Drive, in St. Louis, Missouri. Our subsidiaries currently own or lease the equipment utilized in their mining operations. You should see Item 1, “Our Mining Operations” for more information about our mining operations, mining complexes and transportation facilities.

Our Coal Reserves

We estimate that we owned or controlled approximately 0.9 billion tons of recoverable mineral reserves and 1.2 billion tons of measurable and indicated resources at December 31, 2023. Our coal reserve estimates at December 31, 2023 were prepared by our engineers and geologists and reviewed by Weir International, Inc., a mining and geological consultant. Our coal reserve estimates are based on data obtained from our drilling activities and other available geologic data. Our coal reserve estimates are periodically updated to reflect past coal production and other geologic and mining data. Acquisitions or sales of coal properties will also change these estimates. Changes in mining methods or the utilization of new technologies may increase or decrease the recovery basis for a coal seam.

Our coal reserve estimates include reserves that can be economically and legally extracted or produced at the time of their determination. In determining whether our reserves meet this standard, we take into account, among other things, our potential inability to obtain a mining permit, the possible necessity of revising a mining plan, changes in estimated future costs, changes in future cash flows caused by changes in costs required to be incurred to meet regulatory requirements and obtaining mining permits, variations in quantity and quality of coal, and varying levels of demand and their effects on selling prices. We use various assumptions in preparing our estimates of our coal reserves. You should see “Inaccuracies in our estimates of our coal reserves could result in decreased profitability from lower than expected revenues or higher than expected costs” contained in Item 1A, “Risk Factors.”

The following table shows our estimates of Mineral Reserves as of December 31, 2023 prepared in accordance with Subpart 1300 of Regulation S-K.

Total Mineral Reserves
(Tons in millions)

Product / Region / Mine	Representative Coal Quality	Recoverable Mineral Reserves (million tons) Proven	Probable	Total
Metallurgical Coal				
Central Appalachia				
Beckley	1	21.9	3.4	25.3
Mountain Laurel	3	9.3	7.3	16.6
VA, Royalty	2	0.4	—	0.4
Total Central Appalachia		31.6	10.7	42.3
Northern Appalachia				
Leer	3	11.4	24.7	36.1
Leer South	3	44.7	18.0	62.7
Other Northern Appalachia	3	47.8	31.0	78.8
Total Northern Appalachia		103.9	73.7	177.6
Total Metallurgical Coal		135.5	84.4	219.9
Thermal Coal				
Colorado				
West Elk	4	35.0	3.2	38.2
Illinois Basin, Royalty	5	137.9	33.5	171.4
Wyoming				
Black Thunder	6	419.0	1.0	420.0
Total Wyoming		419.0	1.0	420.0
Total Thermal Coal		591.9	37.7	629.6
Total Coal		727.4	122.1	849.5

(1) Low-Vol
(2) Mid-Vol
(3) High-Vol
(4) 11,500 BTU/lbs.; 0.90 lbs. SO2/MMBTU
(5) 11,200 BTU/lbs.; 4.95 lbs. SO2/MMBTU
(6) 8,900 BTU/lbs.; 0.66 lbs. SO2/MMBTU
(7) The Mineral Reserve estimates with respect to our mines have been prepared by the qualified persons referred to herein.

The following table shows our estimates of Mineral Resources as of December 31, 2023 prepared in accordance with Subpart 1300 of Regulation S-K.

		Total Mineral Resources (Tons in millions)			
		In-Place Mineral Resources (million tons)			
Product / Region / Mine	Representative Coal Quality	Measured	Indicated	Measured + Indicated	Inferred
Metallurgical Coal					
Central Appalachia					
Mountain Laurel	3	2.5	17.4	19.9	22.5
VA, Royalty	2	16.3	—	16.3	—
Total Central Appalachia		18.8	17.4	36.2	22.5
Northern Appalachia					
Leer	3	2.6	12.6	15.2	4.9
Leer South	3	8.9	4.0	12.9	—
Other Northern Appalachia	3	77.5	105.0	182.6	0.9
Total Northern Appalachia		89.0	121.6	210.7	5.8
Total Metallurgical Coal		107.8	139.0	246.9	28.3
Thermal Coal					
Colorado					
West Elk Mine	4	51.2	10.7	61.9	—
Illinois Basin					
Macoupin County, IL	5	—	170.6	170.6	—
Other Illinois Basin	6	21.4	106.0	127.4	56.2
Total Illinois Basin		21.4	276.6	298.0	56.2
Wyoming					
Black Thunder	7	200.0	5.0	205.0	—
Coal Creek	8	126.5	1.2	127.7	—
Other Campbell County	9	266.0	10.4	276.4	—
Total Wyoming		592.5	16.6	609.1	—
Total Thermal Coal		665.1	303.9	969.0	56.2
Total Coal		772.9	442.9	1,215.9	84.5

(1) Low-Vol
(2) Mid-Vol
(3) High-Vol
(4) 11,390 Btu/lb; 0.9 lb SO2/Mbtu
(5) 11,565 BTU/lbs, 9.7 lbs. SO2/MMBTU
(6) 10,200 - 11,900 BTU/lbs; 6.1 - 9.3 lbs. SO2/MMBTU
(7) 8,985 BTU/lbs.; 0.6 lbs. SO2/MMBTU
(8) 8,175 BTU/lbs.; 0.8 lbs. SO2/MMBTU
(9) 8,200 – 9,100 BTU/lbs.; 0.6 - 0.9 lbs. SO2/MMBTU
(10) The estimation of Mineral Resources involves assumptions about future commodity prices and technical mining matters. Resources are not mineral reserves and do not have demonstrated economic viability.

Federal and state legislation controlling air pollution affects the demand for certain types of coal by limiting the amount of sulfur dioxide which may be emitted as a result of fuel combustion and encourages a greater demand for low-sulfur coal. All of our identified coal reserves have been subject to preliminary coal seam analysis to test sulfur content. Of these reserves, approximately 56% consist of compliance coal, or coal which emits 1.2 pounds or less of sulfur dioxide per million Btus upon combustion, while an additional approximately 15% could be sold as low-sulfur coal. The balance is classified as high-sulfur coal. Most of our reserves are suitable for the domestic steam coal markets. A substantial portion of the low-sulfur and compliance coal reserves at a number of our Appalachian mining complexes may also be used as metallurgical coal.

The carrying cost of our coal reserves at December 31, 2023 was $221.0 million, consisting of $5.5 million of prepaid royalties and a net book value of coal lands and mineral rights of $215.5 million.

Our coal reserve and resource estimates are updated periodically to reflect coal production, acquisitions and dispositions of mineral interests, new drilling, mine or geological data, and changes in regulations, market conditions or other economic factors. As coal seams in the United States have been mined for many years and are well established, we do not conduct material exploration activity. However, we periodically conduct drilling of additional core holes to provide additional geological evidence as part of our routine mine permitting and planning processes. The following is a summary of the changes in our coal reserves and resources for the year-ended December 31, 2023:

Change in Coal Reserves (Tons in millions)

Mine	Year ended December 31, 2022	Acquired/Leased	Production	Change in Mine Plan	Other	Year ended December 31, 2023
Product / Region / Mine						
Metallurgical Coal						
Central Appalachia						
Beckley	19.6	0.1	(1.1)	5.9	0.8	25.3
Mountain Laurel	16.7	-	(1.0)	0.9	0.0	16.6
VA, Royalty	0.6	-	(0.2)	-	-	0.4
Total Central Appalachia	36.9	0.1	(2.3)	6.8	0.8	42.3
Northern Appalachia						
Leer	42.4	-	(4.4)	0.4	(2.3)	36.1
Leer South	66.6	-	(2.8)	(1.7)	0.6	62.7
Other Northern Appalachia	78.7	-	-	-	0.1	78.8
Total Northern Appalachia	187.7	-	(7.2)	(1.3)	(1.6)	177.6
Total Metallurgical Coal	224.6	0.1	(9.5)	5.5	(0.8)	219.9
Thermal Coal						
Colorado						
West Elk	48.1	-	(3.2)	(6.5)	(0.2)	38.2
Illinois Basin, Royalty	175.0	-	(3.6)	-	-	171.4
Wyoming						
Black Thunder	480.0	-	(60.5)	-	0.5	420.0
Total Wyoming	480.0	-	(60.5)	-	0.5	420.0
Total Thermal Coal	703.1	-	(67.3)	(6.5)	0.3	629.6
Total Coal	927.7	0.1	(76.8)	(1.0)	(0.5)	849.5

Change in Coal Resources (Tons in millions)

Mine	Year ended December 31, 2022	Acquired/Leased	Production	Change in Mine Plan	Other	Year ended December 31, 2023
Product / Region / Mine						
Metallurgical Coal						
Central Appalachia						
Mountain Laurel	42.8	-	-	-	(0.4)	42.4
VA, Royalty	16.3	-	-	-	-	16.3
Total Central Appalachia	59.1	-	-	-	(0.4)	58.7
Northern Appalachia						
Leer	19.4	-	-	-	0.7	20.1
Leer South	12.9	-	-	-	-	12.9
Other Northern Appalachia	193.8	-	-	-	(10.3)	183.5
Total Northern Appalachia	226.1	-	-	-	(9.6)	216.5
Total Metallurgical Coal	285.2	-	-	-	(10.0)	275.2
Thermal Coal						
Colorado						
West Elk Mine	-	-	-	-	61.9	61.9
Illinois Basin						
Macoupin County, IL	170.6	-	-	-	-	170.6
Other Illinois Basin	183.6	-	-	-	-	183.6
Total Illinois Basin	354.2	-	-	-	-	354.2
Wyoming						
Black Thunder	205.0	-	-	-	-	205.0
Coal Creek	130.3	-	(2.6)	-	-	127.7
Other Campbell County	276.4	-	-	-	-	276.4
Total Wyoming	611.7	-	(2.6)	-	-	609.1
Total Thermal Coal	965.9	-	(2.6)	-	61.9	1,025.2
Total Coal	1,251.1	-	(2.6)	-	51.9	1,300.4

Material Mining Properties

The information that follows relating our material properties: Leer, Leer South, Black Thunder – is derived from, and in some instances is an extract from, the technical report summaries ("TRSs") relating to such properties prepared in compliance with Item 601(b)(96) and subpart 1300 of Regulation S-K. Portions of the following information are based on assumptions, qualifications and procedures that are not fully described herein. Reference should be made to the full text of the TRSs, incorporated herein by reference and made a part of this Annual Report on Form 10-K.

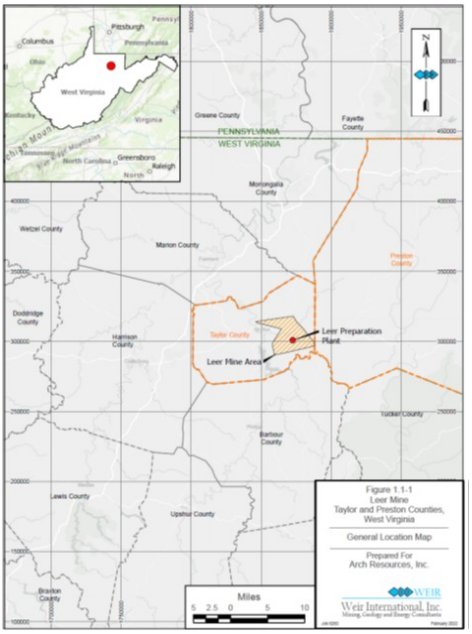
The following table shows our estimates of Mineral Reserves as of December 31, 2023 prepared in accordance with Subpart 1300 of Regulation S-K for our material mining properties:

	Recoverable Mineral Reserves (As-Received) (million tons)				Percentage	
Product / Region / Mine	**Proven**	**Probable**	**2023 Total**	**2022 Total**	**Change**	**Notes**
Metallurgical Coal						
Northern Appalachia						
Leer	11.4	24.7	36.1	42.4	(14.9)%	1,2
Leer South	44.7	18.0	62.7	66.6	(5.9)%	1,2
Thermal Coal						
Wyoming						
Black Thunder	419.0	1.0	420.0	480.0	(12.5)%	1,2

(1) Year 2023 production
(2) Modifications to Life of Mine Plan

Leer

Leer is located at approximately 39° 19' 59.8584" N Latitude and 79° 57' 30.7584" W Longitude, which is approximately 25 miles south of Morgantown, West Virginia, primarily in Taylor County, with minimal extension into Preston County, within the Northern West Virginia coal field of the NAPP Region of the United States. The USGS 7.5-minute quadrangle map sheets are Fairmont East, Gladesville, Grafton, and Thornton.



Leer is a permitted underground longwall mine that commenced production of metallurgical coal in the fourth quarter of 2011. The longwall mining method has been successfully utilized in the Northern Appalachia Region, and in other coal producing regions of the United States, since the 1960s. Longwall mining has the highest mining recovery of modern-day underground mining methods. Longwall mining includes room and pillar continuous mining to develop main entries, longwall headgates and tailgates, and retreat mining production panels.

Leer is mining the Lower Kittanning Seam and parting interval within the seam utilizing continuous miners to develop longwall panels to be mined using a longwall mining system. Leer is primarily sold as High-Vol A, and is part of approximately 93,000 acres that is considered our Tygart Valley area. Leer develops longwall districts (sets of adjacent longwall panels) with alphabetic designations.

Prior to the development of Leer, there was very little mining that occurred on the property. A small underground coal mine operated by the Thornton Fire Brick Company was located in the Upper Freeport Seam to the southeast of Thornton, West Virginia. This mine was located off of Three Fork Creek and operated in the early 1900s. The Thornton Fire Brick Company also operated a surface mine or “clay pit” near Thornton, West Virginia, mining fireclay for brickmaking in the early 1900s. Available maps show an underground mine, of limited extent, in the Lower

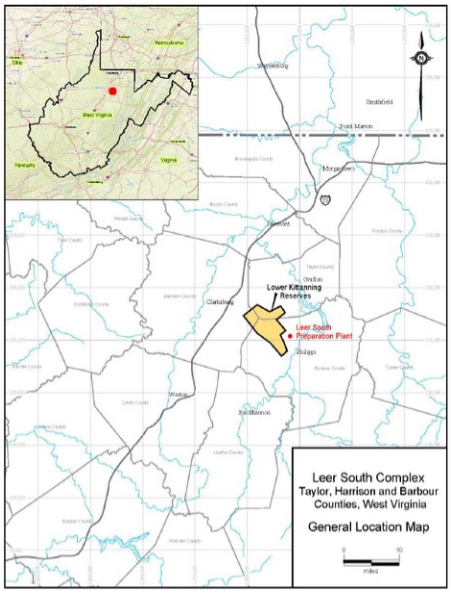
Kittanning Seam to the south of Leer on the east side of Frog Run. Available data shows this as Sterling Coal Company's Cecil coal mine, with mining shown to have occurred in the early 1900s.

Leer's surface facilities are located within the Leer permit area, near central area of the mid-north boundary of the permit. The surface facilities include mine administration, engineering and operations offices, coal preparation plant, rail loadout, mine maintenance facilities, warehouse facilities, parking lots, preparation plant waste disposal, settling ponds, and Leer slope portal access. The total disturbed area for the Leer surface facilities is approximately 200 acres.

All the production is processed through a 1,400 ton-per-hour preparation plant and loaded on the CSX railroad. A 15,000-ton train can be loaded in less than four hours. Sources of electrical power, water, supplies, and materials are readily available. Electrical power is provided to the mines and facilities by regional utility companies. Water is supplied by public water services, surface impoundments, or water wells. A total of approximately 553 non-unionized salary and hourly employees are assigned to Leer. The hourly labor force remains non-union and no change in this labor arrangement is anticipated in the short term. The total cost of Leer and its associated plant and equipment as of December 31, 2023 is approximately $363.2 million.

Leer South

Leer South is located at approximately 39° 11' 55.0572" N Latitude and 80° 3' 33.5088" W Longitude, which is approximately located near Barbour, Harrison, and Taylor Counties in West Virginia. Leer South office is located north of the town of Philippi, the county seat of Barbour County, West Virginia. The nearest cities are Clarksburg and Bridgeport, approximately 17 miles to the northwest. The city of Buckhannon is located 26 miles to the south of the mine. Charleston, the state capital of West Virginia, is located approximately 136 miles southwest of the Property.



Leer South is a permitted underground longwall mine that commenced production of metallurgical coal in the third quarter of 2021. Leer South operation mines in the Lower Kittanning seam, has a preparation plant and a loadout facility located on approximately 26,600 acres in Barbour County, West Virginia.

Arch has obtained all mining and discharge permits to operate its mine and processing, loadout, and related support facilities. A significant portion of the reserves at Leer South are owned rather than leased from third parties. Since 1974, the Property has been controlled by various mining companies including (in chronological order: Republic Steel Corporation, Old Ben Coal Company, Black Diamond Energy Inc., Anker Mining Company (Anker), International Coal Group (ICG), and Arch. Mine development in the Clarion seam was started by ICG in 2006, and expansion into the Lower Kittanning seam was begun by Arch in 2018.

Due to its coal reserve and seam characteristics, Leer South operates using longwall mining methods. Resource and reserve models were therefore generated with longwall mining constraints in mind for Leer South's underground resources. The mine produces coal that is suitable for the high-volatile metallurgical coal markets and also produces a middlings product for consumption in thermal markets.

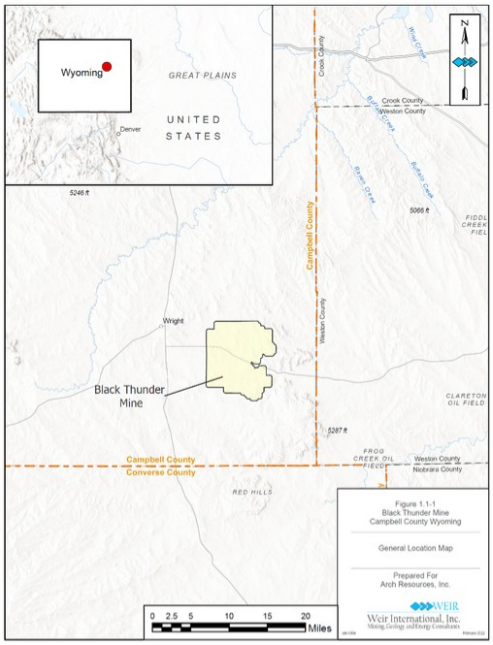
All the production is processed through a 1,600 ton-per-hour preparation plant and loaded on the CSX railroad. A 15,000-ton train can be loaded in less than four hours. Sources of electrical power, water, supplies, and materials are readily available. Electrical power is provided to the mines and facilities by regional utility companies. Water is supplied by public water services, surface impoundments, or water wells. The total cost of Leer South and its associated plant and equipment as of December 31, 2023 is approximately $713.9 million. A total of approximately 611 non-unionized salary and hourly employees are assigned to Leer South.

Black Thunder

Black Thunder is located at approximately 43° 41' 49.8012" N Latitude and 105° 17' 20.3496" W Longitude, which is approximately 50 miles south of Gillette, Wyoming in Campbell County, within the PRB coal producing region of the United States. The United States Geological Survey (USGS) 7.5-minute quadrangle map sheets, upon which the Black Thunder can be found, are Hilight, Open A Ranch, Reno Reservoir, Piney Canyon NW, Teckla and Piney Canyon SW. The Black Thunder permit area includes approximately 35,300 acres of controlled mineral property.

Black Thunder surface facilities are located within the Black Thunder permit area, near the central area of the mid-north boundary of the permit. The surface facilities include mine administration, engineering, and operations offices, mine roads, laydown areas, ponds, crushers, rail loadouts, mine maintenance facilities, warehouse facilities, parking lots.

The total disturbed area for Black Thunder surface facilities is approximately 3,230 acres. The coal, backfill, and topsoil stockpiles represent approximately 5,300 additional acres of disturbed area.



We control a significant portion of the coal reserves through federal and state leases. All of the leases have a production royalty rate of 12.5 percent of the Gross Sales Price (GSP). The leases have a minimum royalty that must be paid annually in order to maintain the lease, with the exception of one lease, which has a one-time minimum royalty payment.

Prior to the development of Black Thunder, there was no mining that occurred on the property. Black Thunder is a surface coal mine utilizing draglines and truck/shovel mining equipment for overburden removal. The mine was opened by Atlantic Richfield Company (ARCO) in 1977 and has been operated under Thunder Basin Coal Company, LLC since that time. In 1998, Arch purchased all of ARCO's domestic coal operations, which included the Thunder Basin Coal Company, Black Thunder. In 2004, Arch purchased the adjacent North Rochelle Mine from Triton Coal Company and merged it into Black Thunder. The former North Rochelle Mine facilities and reserves were subsequently sold to Peabody Coal Company in 2006. In 2009, Arch purchased the adjacent Jacobs Ranch Mine from Rio Tinto Coal and merged it into Black Thunder, which created a mining complex that produced 116.2 million tons of coal in 2010.

Black Thunder currently consists of four active pit areas and two active loadout facilities. We ship all of the coal raw to our customers via the Burlington Northern Santa Fe and Union Pacific railroads. We do not process the coal mined at this complex. Each of the loadout facilities can load a 15,000-ton train in less than two hours.

Mine facilities built by Atlantic Richfield Company included a rail spur and loadout loop, a loadout with two 12,500-ton silos, a 100,000-ton slot storage barn, two crusher locations, a coal analysis lab, maintenance shop, warehouse, bathhouse, reclamation shop, and an administrative building. Initial pit development was conducted with truck/shovel mining equipment, but ARCO subsequently added three draglines by the time the mine was acquired by Arch. The Jacobs

Ranch Mine also constructed mine facilities similar to those constructed by ARCO, however, as time progressed and mining moved farther west, these facilities, including the loadout, have been idled. The Jacobs Ranch Mine was historically one of the larger truck/shovel mines until a Bucyrus-Erie 2570W dragline with a 121 cubic yard bucket was brought on-line in 2006. Water is supplied by public water services, surface impoundments, or water wells. A total of approximately 1,010 non-unionized salary and hourly employees are assigned to Black Thunder. The total cost of Black Thunder and its associated plant and equipment as of December 31, 2023 is approximately $260.2 million.

Internal Control Disclosure

Quality control procedures followed by Arch geologists are clearly defined. These procedures include the field geologist to be on site wherever drilling is occurring. On completion of a core run, the core is logged and the samples are sealed in plastic sample bags. These samples do not leave the geologists possession once they have been removed from the core barrel. The geologist is required to keep a written detailed log of each drill hole. Rock quality designation logs are to be prepared for roof and floor start for all underground mineable seams. The geologist's seam thickness measurements are checked against the geophysical logs for thickness accuracy and to confirm core recovery. In order to keep the chain of custody clear, the core samples are stored in a locked facility, that only Arch geologists have access to, until the core is delivered to the laboratory for analysis.

In our exploration and mineral resource and reserve estimation efforts, we utilize an American National Standards Institute (ANSI) certified third party laboratory, which has in-house quality control and assurance procedures. Once in possession of the samples, the laboratory standard sample preparation and security procedures are followed. After the sample has been tested, reviewed, and accepted, the disposal of the sample is done in accordance with local, state and EPA approved methods.

Weir International, Inc. (WEIR), an independent mining and geology engineering firm, has reviewed Arch's procedures and determined the sample preparation, security and analysis procedures used for the drill hole samples meet coal industry standards and practices for quality testing, with laboratory results suitable to use for geological modeling, mineral resource estimation and economic evaluation.

Year-end reserve estimates are and will continue to be reviewed by our Chief Executive Officer and other senior management, and revisions are communicated to our board of directors. Inaccuracies in our estimates of our coal reserves could result in decreased profitability from lower than expected revenue or higher than expected costs. Actual production recovered from identified reserve areas and properties, and revenue and expenditures associated with our mining operations, may vary materially from estimates.

Title to Coal Property

Title to coal properties held by lessors or grantors to us and our subsidiaries and the boundaries of properties are normally verified at the time of leasing or acquisition. However, in cases involving less significant properties and consistent with industry practices, title and boundaries are not completely verified until such time as our independent operating subsidiaries prepare to mine such reserves. If defects in title or boundaries of undeveloped reserves are discovered in the future, control of and the right to mine such reserves could be adversely affected. You should see "A defect in title or the loss of a leasehold interest in certain property or surface rights could limit our ability to mine our coal reserves or result in significant unanticipated costs" contained in Item 1A, "Risk Factors" for more information.

At December 31, 2023, approximately 33% of our coal reserves were held in fee, with the balance controlled by leases, most of which do not expire until the exhaustion of mineable and merchantable coal. Under current mining plans, substantially all reported leased reserves will be mined out within the period of existing leases or within the time period of assured lease renewals. Royalties are paid to lessors either as a fixed price per ton or as a percentage of the gross sales price of the mined coal. The majority of the significant leases are on a percentage royalty basis. In some cases, a payment is required, payable either at the time of execution of the lease or in annual installments. In most cases, the prepaid royalty amount is applied as a credit against future production royalty obligations.

From time to time, lessors or sublessors of land leased by our subsidiaries have sought to terminate such leases on the basis that such subsidiaries have failed to comply with the financial terms of the leases or that the mining and related operations conducted by such subsidiaries are not authorized by the leases. Some of these allegations relate to leases upon which we conduct operations material to our consolidated financial position, results of operations and liquidity, but we do not believe any pending claims by such lessors or sublessors have merit or will result in the termination of any material lease or sublease.

We leased approximately 73,431 acres of property to other coal operators in 2023. We received royalty income of $9.1 million during 2023 from the mining of approximately 4.1 million tons, $6.0 million during 2022 from the mining of approximately 3.1 million tons and $5.2 million during 2021 from the mining of approximately 2.9 million tons on those properties. We have included reserves at properties leased by us to other coal operators in the reserve figures set forth in this report.

ITEM 3. LEGAL PROCEEDINGS.

We are involved in various claims and legal actions arising in the ordinary course of business, including employee injury claims. After conferring with counsel, it is the opinion of management that the ultimate resolution of these claims, to the extent not previously provided for, will not have a material effect on our consolidated financial condition, results of operations or liquidity.

ITEM 4. MINE SAFETY DISCLOSURES.

The statement concerning mine safety violations or 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 Annual Report on Form 10-K for the period ended December 31, 2023.

PART II

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

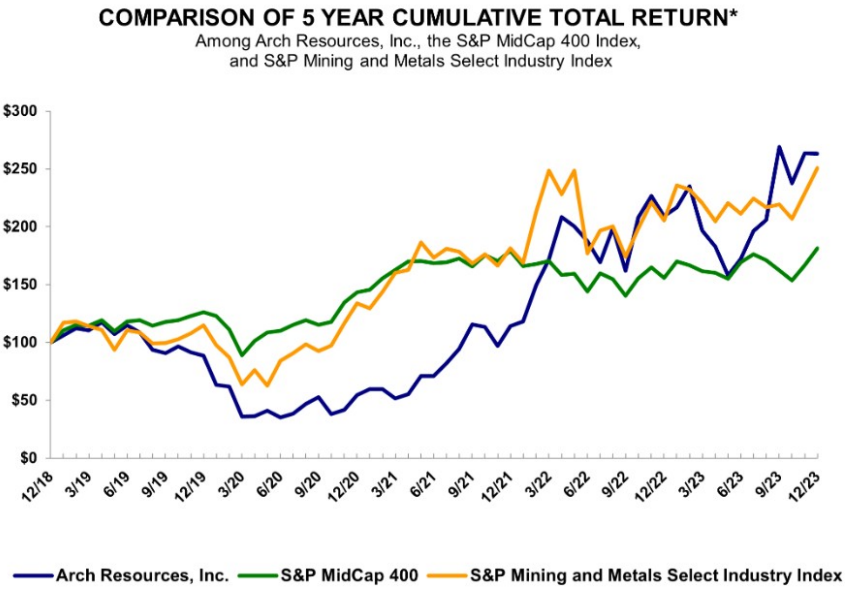
Our common stock is listed on the New York Stock Exchange ("NYSE") under the symbol "ARCH" and has been trading since October 5, 2016 upon our emergence from bankruptcy. No prior established public trading market existed for this newly issued common stock prior to this date. Based upon information provided by our transfer agent, as of January 8, 2024, we had 5 stockholders of Class A common stock and 1 stockholder of Class B common stock on record. As many of our shares are held by brokers and other institutions on behalf of shareholders, we are unable to estimate the total number of beneficial holders of our common stock represented by these record holders.

Holders of our common stock are entitled to receive dividends when they are declared by our Board of Directors. We paid dividends on our common stock totaling $206.1 million in 2023, or $10.66 per share. There is no assurance as to the amount or payment of dividends in the future because they will be subject to ongoing Board review and authorization will be based on a number of factors, including business and market conditions, the Company's future financial performance and other capital priorities.

Stockholder Return Performance Presentation

The following graph compares the cumulative five year total return of holders of Arch Resources, Inc.'s common stock with the cumulative total returns of the S&P Midcap 400 index and the S&P Metals and Mining Select Industry index. The graph assumes that the value of the investment in our common stock, the S&P Midcap 400 index,

and the S&P Metals and Mining Select Industry index (including reinvestment of dividends) was $100 on December 31, 2018 and tracks it through December 31, 2023.



*$100 invested on 12/31/18 in stock or index, including reinvestment of dividends.
Fiscal year ending December 31.

	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22	12/31/23
Arch Resources, Inc.	100.00	88.37	54.49	114.04	209.16	263.32
S&P Midcap 400	100.00	126.20	143.44	178.95	155.58	181.15
S&P Metals and Mining Select Industry	100.00	114.83	133.71	181.14	205.53	250.59

The stock price performance included in this graph is not necessarily indicative of future stock price performance.

Issuer Purchases of Equity Securities

During the second quarter of 2022, the Board of Directors increased the remaining outstanding authorization for share repurchases to $500 million. The timing of any future share repurchases, and the ultimate number of shares of our common stock to be purchased, will depend on a number of factors, including business and market conditions, our future financial performance, and other capital priorities. The shares will be acquired in the open market or through private transactions in accordance with Securities and Exchange Commission requirements. The share repurchase program has no termination date, but may be amended, suspended or discontinued at any time and does not commit us to repurchase shares of our common stock. The actual number and value of the shares to be purchased will depend on the performance of our stock price and other market conditions.

During 2023, the Company repurchased 989,792 shares at an average price of $124.78 for an aggregate purchase price of approximately $123.5 million, with $125.5 million paid in 2023. As of December 31, 2023, the Company had repurchased 12,196,627 shares at an average share price of $90.98 per share for an aggregate purchase price of approximately $1,109.7 million since inception of the stock repurchase program, and the remaining authorized amount for stock repurchases under this program is approximately $217.7 million.

A summary of our common stock repurchases during the three months ended December 31, 2023 is set forth in the table below:

Date	Total Number Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plan (in thousands)
October 1 through October 31, 2023	19,781	$ 151.96	19,781	$ 217,703
November 1 through November 30, 2023	—	$ —	—	$ 217,703
December 1 through December 31, 2023	—	$ —	—	$ 217,703
Total	19,781	$ 151.96	19,781	

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

Overview

Our results for the year ended December 31, 2023, benefited from continued strength in global metallurgical coal markets, and, to a lesser degree, international thermal coal markets. Although these markets retreated from the historic highs achieved in the year ended December 31, 2022, they remain above long-term averages. Economic growth remained constrained, particularly in Europe and the Americas, due to continued inflationary pressure and tighter monetary policies from many nations' central banks designed to curb inflation. Slower economic growth negatively impacts end user demand for our products, but supply constraints have offset softer demand and supported global metallurgical and thermal coal markets.

Almost two years since the February 24, 2022, Russian invasion of Ukraine, the war continues with no indication any resolution is close. Major changes in energy trading patterns appear to be set while hostilities continue. Bans on the import of Russian coal by the European Union, the United Kingdom, Japan, and other nations continue to drive Russian coal into China, India, Turkey, and other Asian countries. These destinations have generally sourced Russian coals at discounts, sometimes significant discounts, from what similar quality coals from other origins would have required. We expect continued availability of discounted Russian coal into Asian markets. However, we believe most Russian coal is thermal and lower quality metallurgical. The availability of high quality Russian coking coal is minimal.

During the year ended December 31, 2023, China effectively lifted the ban on imports of coal from Australia. While Australian coal is once again flowing into China, it is at much lower volumes than before the ban. Increased Chinese domestic production and increased imports of discounted Russian coal continue to pressure import volumes from Australia. Australia remains the largest global exporter of coking coal, but Australian coking coal exports are on track to decline for the fourth straight year. Exports of high-quality coking coal from the United States and Canada, the second and third largest suppliers to the seaborne high quality coking coal markets, respectively, are on track to increase in the year ended December 31, 2023, versus the previous year. However, the North American increase does not make up for the Australian decrease, and all three countries remain below pre-pandemic 2019 export levels.

Some new coking coal supply has been added to the market, particularly in the United States. However, production and logistical disruptions, continue to constrain supply. The duration of specific supply disruptions is unknown. We believe that underinvestment in the sector in recent years underlies both the current and longer-term market dynamics. Underinvestment in the sector appears likely to persist, despite favorable markets, as government policies, including the significantly increased royalty structure in Queensland Australia, and diminished access to traditional capital markets, limits investment in the sector. In the current environment, we expect coking coal prices to remain volatile. Slowing economic growth, particularly in Europe, the Americas, and China, could negatively impact demand for finished steel products. Any reduction in demand for finished steel products or expectations for reductions would put downward pressure on coking coal indices. Conversely, increasing economic growth, particularly in India and other developing Asian countries, could positively impact demand for finished steel products. Longer term, we believe continued limited global capital investment in new coking coal production capacity, normal reserve depletion, and an eventual increase in economic growth will provide support to coking coal markets.

Domestic thermal coal consumption is on track to decline significantly in the year ended December 31, 2023, compared to the year ended December 31, 2022, and we believe stockpiles at many coal fired electric generators are well above desired levels. For much of the year ended December 31, 2023, natural gas prices were at levels such that the economic dispatch of gas versus thermal coal was dependent on region and plant specific parameters. We have firm sales commitments for the 2024 calendar year for our thermal segment at volume levels that provide for their economic operation. Longer term, we continue to believe thermal coal demand in the United States will remain pressured by continuing increases in subsidized renewable generation sources, particularly wind and solar, and planned retirements of coal-fueled generating facilities. Certain of our customers have deferred 2023 contracted volumes into 2024 and beyond. International thermal coal market indices remain above historical averages and continue to provide economic opportunity for our thermal operations.

We continue to pursue strategic alternatives for our thermal assets, including, among other things, potential divestiture. We are concurrently shrinking our operational footprint at our Powder River Basin operations. During the year ended December 31, 2023, we contributed $6.3 million to our fund for asset retirement obligations, representing interest earned, bringing our total to $142.3 million. Additionally, we performed approximately $15.9 million of reclamation work at our thermal operations in the year ended December 31, 2023. We plan to continue to grow the thermal mine reclamation fund through interest earnings. Currently, our planned production levels are in alignment with existing commitments. Longer term, we will maintain our focus on aligning our thermal production rates with the expected secular decline in domestic thermal coal demand and viable industrial and export opportunities, while adjusting our thermal operating plans to minimize future cash requirements and maintain flexibility to react to short-term market fluctuations.

During the first three months of 2023, we encountered adverse geologic conditions at our West Elk thermal coal operation. These conditions impacted both our volumes and coal quality. Due to this situation, we issued force majeure notices to our West Elk customers and logistics providers with shipments affected by that event. On September 1, 2023, we lifted the force majeure and believe geologic conditions at West Elk will allow normal operations going forward. We continue to communicate with customers and logistics providers, to manage the transition back to normal operations.

Results of Operations

The following discussion and analysis are for the year ended December 31, 2023, compared to the same period in 2022 unless otherwise stated. For a discussion and analysis of the year ended December 31, 2022, compared to the same period in 2021, please refer to Management's Discussion and Analysis of Financial Condition and Results of Operations included in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on February 16, 2023.

Year Ended December 31, 2023 and 2022

Revenues. Our revenues include sales to customers of coal produced at our operations and coal purchased from third parties. Transportation costs are included in cost of coal sales and amounts billed by us to our customers for transportation are included in revenues.

Coal sales. The following table summarizes information about our coal sales for the years ended December 31, 2023 and 2022:

	Year Ended December 31,		
	2023	2022	(Decrease) / Increase
		(In thousands)	
Coal sales	$ 3,145,843	$ 3,724,593	$ (578,750)
Tons sold	74,935	78,274	(3,339)

On a consolidated basis, coal sales in 2023 decreased $578.8 million or 15.5% from 2022, and tons sold decreased 3.3 million tons, or 4.3%. Coal sales from Metallurgical operations decreased $265.4 million due primarily to lower realized pricing offset by increased volume. Thermal segment coal sales decreased $313.4 million due primarily to lower realized pricing coupled with decreased volume. See discussion in "Operational Performance" for further information about segment results.

Costs, expenses and other. The following table summarizes costs, expenses and other components of operating income for the years ended December 31, 2023 and 2022:

	Year Ended December 31,		
	2023	2022	Increase (Decrease) in Net Income
		(In thousands)	
Cost of sales (exclusive of items shown separately below)	$ 2,341,956	$ 2,338,863	$ (3,093)
Depreciation, depletion and amortization	146,418	133,300	(13,118)
Accretion on asset retirement obligations	21,170	17,721	(3,449)
Change in fair value of coal derivatives, net	1,572	1,274	(298)
Selling, general and administrative expenses	98,871	105,355	6,484
Other operating (income) expense, net	(10,598)	18,669	29,267
Total costs, expenses and other	$ 2,599,389	$ 2,615,182	$ 15,793

Cost of sales. Our cost of sales for the year ended December 31, 2023 increased $3.1 million, or 0.1%, compared to the year ended December 31, 2022. The increase in cost of sales is due to increased compensation costs of approximately $52.7 million, increased repairs and supplies costs of approximately $46.4 million, partially offset by decreased transportation costs of approximately $94.9 million. See discussion in “Operational Performance” for further information about segment results.

Depreciation, depletion and amortization. The increase in depreciation, depletion, and amortization for the year ended December 31, 2023 primarily relates to increased amortization within the Thermal segment related to the annual re-costing exercise on asset retirement obligations completed during the fourth quarter of 2022.

Accretion on asset retirement obligations. The increase in accretion expense for the year ended December 31, 2023 is primarily related to the results of our annual recosting exercise completed during the fourth quarter of 2022.

Change in fair value of coal derivatives, net. The costs in both the year ended December 31, 2023 and 2022 are primarily related to mark-to-market losses on coal derivatives that are used to hedge our price risk for international thermal coal shipments.

Selling, general and administrative expenses. Selling, general and administrative expenses in the year ended December 31, 2023 decreased compared to the year ended December 31, 2022 due primarily to decreased compensation costs of approximately $10.7 million, primarily related to higher incentive compensation accruals recorded in the year ended December 31, 2022, offset by increased contract services of approximately $3.1 million, and increased travel expenses of approximately $0.4 million.

Other operating (income) expense, net. The increase in other operating (income) expense, net in the year ended December, 31, 2023 as compared to the year ended December, 31, 2022 is primarily due to the net favorable impact of certain coal derivative settlements of approximately $48.3 million ($6.3 million income in 2023 compared to $42.0 million in expense in 2022) partially offset by the net unfavorable impact of mark to market movements on heating oil positions of approximately $12.4 million and a net unfavorable impact from equity investments of $4.1 million.

Non-operating expense. The following table summarizes non-operating expense for the years ended December 31, 2023 and 2022:

	Year Ended December 31,		
	2023	2022	Increase (Decrease) in Net Income
	(In thousands)		
Non-service related pension and postretirement benefit credits (costs)	$ 3,786	$ (2,841)	$ 6,627
Net loss resulting from early retirement of debt	(1,126)	(14,420)	13,294
Total non-operating expenses	$ 2,660	$ (17,261)	$ 19,921

Non-service related pension and postretirement benefit credits (costs). See Note 17, "Employee Benefit Plans" to the Consolidated Financial Statements for additional information regarding the termination of the Company's Cash Balance Pension.

Net loss resulting from early retirement of debt. In the year ended December 31, 2022, we repaid $273.8 million of our Term Loan and entered into privately negotiated exchanges and repurchases for approximately $142.1 million principal amount of our Convertible Notes. As a result of these transactions, we recorded losses of $14.4 million resulting from early debt extinguishment expenses. For further information regarding the Term Loan repurchases and the Convertible Notes exchanges and repurchases, see Note 10, "Debt and Financing Arrangements" to the Consolidated Financial Statements.

Provision for (benefit from) income taxes. The following table summarizes our provision for income taxes for the years ended December 31, 2023 and 2022:

	Year Ended December 31,		
	2023	2022	Increase (Decrease) in Net Income
	(In thousands)		
Provision for (benefit from) income taxes	$ 87,514	$ (251,926)	$ (339,440)

The benefit from income taxes in the year ended December 31, 2022 is related to the release of the valuation allowance we have held against the value of our net deferred tax assets due to the significant three-year cumulative income position caused in large part by record profitability in 2022. See Note 11, "Taxes" to the Consolidated Financial Statements for additional information and a reconciliation of the statutory federal income tax provision (benefit) at the statutory rate to the actual benefit from taxes.

Operational Performance

Year Ended December 31, 2023 and 2022

Our mining operations are evaluated based on Adjusted EBITDA, per-ton cash operating costs (defined as including all mining costs except depreciation, depletion, amortization, accretion on asset retirements obligations, and pass-through transportation expenses divided by segment tons sold), and on other non-financial measures, such as safety and environmental performance. Adjusted EBITDA is defined as net income attributable to the Company before the effect of net interest expense, income taxes, depreciation, depletion and amortization, the amortization of sales contracts, the accretion on asset retirement obligations, and non-operating income (expense). Adjusted EBITDA may also be adjusted for items that may not reflect the trend of future results by excluding transactions that are not indicative of our core operating performance. Adjusted EBITDA is not a measure of financial performance in accordance with generally accepted accounting principles, and items excluded from Adjusted EBITDA are significant in understanding and assessing our financial condition. Therefore, Adjusted EBITDA should not be considered in isolation, nor as an alternative to net income, income from operations, cash flows from operations or as a measure of our profitability, liquidity or performance under generally accepted accounting principles. Furthermore, analogous measures are used by

industry analysts to evaluate the Company's operating performance. Investors should be aware that our presentation of Adjusted EBITDA may not be comparable to similarly titled measures used by other companies.

The following table shows operating results of coal operations for the years ended December 31, 2023 and 2022.

	Year Ended December 31, 2023	Year Ended December 31, 2022	Variance
Metallurgical			
Tons sold (in thousands)	9,295	7,832	1,463
Coal sales per ton sold	$ 166.11	$ 223.91	$ (57.80)
Cash cost per ton sold	$ 89.08	$ 93.61	$ 4.53
Cash margin per ton sold	$ 77.03	$ 130.30	$ (53.27)
Adjusted EBITDA (in thousands)	$ 717,834	$ 1,021,932	$ (304,098)
Thermal			
Tons sold (in thousands)	65,640	70,442	(4,802)
Coal sales per ton sold	$ 17.48	$ 19.50	$ (2.02)
Cash cost per ton sold	$ 15.61	$ 14.57	$ (1.04)
Cash margin per ton sold	$ 1.87	$ 4.93	$ (3.06)
Adjusted EBITDA (in thousands)	$ 125,469	$ 353,884	$ (228,415)

This table reflects numbers reported under a basis that differs from U.S. GAAP. See the "Reconciliation of Non-GAAP measures" below for explanation and reconciliation of these amounts to the nearest GAAP figures. Other companies may calculate these per ton amounts differently, and our calculation may not be comparable to other similarly titled measures.

Metallurgical — Adjusted EBITDA for the year ended December 31, 2023, decreased from the year ended December 31, 2022, due to decreased coal sales per ton sold, partially offset by increased tons sold and decreased cash cost per ton sold. The decline in coal sales per ton sold over the prior year is due to global coking coal indices retreating from the historical highs seen in the year ended December 31, 2022, in the aftermath of the Russian invasion of Ukraine. Even with the decline from historical highs, as discussed previously in the "Overview," coking coal indices remained above long-term averages throughout the year ended December 31, 2023, due to supply constraints and a longer term, global lack of investment in the industry. Tons sold increased in the year ended December 31, 2023, compared to the year ended December 31, 2022, as production increased at all of our metallurgical operations. Cash cost per ton sold decreased compared to the prior year despite continued inflationary pressure on most goods and services, due to the increased production volume and decreased taxes and royalties that are based on a percentage of coal sales per ton sold.

Our Metallurgical segment sold 8.5 million tons of coking coal and 0.8 million tons of associated thermal coal in the year ended December 31, 2023, compared to 7.4 million tons of coking coal and 0.4 million tons of associated thermal coal in the year ended December 31, 2022. Longwall operations accounted for approximately 76% of our shipment volume in the year ended December 31, 2023, compared to approximately 78% of our shipment volume in the year ended December 31, 2022.

Thermal — Adjusted EBITDA for the year ended December 31, 2023, decreased compared to the year ended December 31, 2022, due to decreased coal sales per ton sold, decreased tons sold, and increased cash cost per ton sold. The decrease in coal sales per ton sold in the current year period is due to the annual roll off and replacement of high-priced domestic business we were able to contract during the second half of 2021, for the year ended December 31, 2022, when the prices of domestic thermal coal increased to historically high levels. Coal sales per ton sold were also negatively impacted by the retreat of global thermal coal indices from the historical highs seen in the year ended December 31, 2022. Tons sold decreased in the current year as domestic demand declined in response to lower natural gas prices that competed for economic dispatch of generation assets. Cash cost per ton sold increased due to the decline in tons sold and continued general inflationary pressure on most goods and services.

During the first three months of 2023, we encountered adverse geologic conditions at our West Elk thermal coal operation. These conditions impacted both our volumes and coal quality. Due to this situation, we issued force majeure notices to our West Elk customers and logistics providers with shipments affected by that event. On September 1, 2023, we lifted the force majeure, and believe geologic conditions at West Elk will allow normal operations going forward. We continue to communicate with customers and logistics providers, to manage the transition back to normal operations.

Reconciliation of NON-GAAP measures

Non-GAAP Segment coal sales per ton sold

Non-GAAP Segment coal sales per ton sold is calculated as segment coal sales revenues divided by segment tons sold. Segment coal sales revenues are adjusted for transportation costs, and may be adjusted for other items that, due to generally accepted accounting principles, are classified in "other income" on the Consolidated Income Statements, but relate to price protection on the sale of coal. Segment coal sales per ton sold is not a measure of financial performance in accordance with generally accepted accounting principles. We believe segment coal sales per ton sold provides useful information to investors as it better reflects our revenue for the quality of coal sold and our operating results by including all income from coal sales. The adjustments made to arrive at these measures are significant in understanding and assessing our financial condition. Therefore, segment coal sales revenues should not be considered in isolation, nor as an alternative to coal sales revenues under generally accepted accounting principles.

Year Ended December 31, 2023 (In thousands)	Metallurgical	Thermal	Idle and Other	Consolidated
GAAP Revenues in the Condensed Consolidated Income Statements	$ 1,892,326	$ 1,253,517	$ —	$ 3,145,843
Less: Adjustments to reconcile to Non-GAAP Segment coal sales revenue				
Coal risk management derivative settlements classified in "other income"	—	(6,254)	—	(6,254)
Transportation costs	348,321	112,386	—	460,707
Non-GAAP Segment coal sales revenues	$ 1,544,005	$ 1,147,385	$ —	$ 2,691,390
Tons sold	9,295	65,640		
Coal sales per ton sold	$ 166.11	$ 17.48		

Year Ended December 31, 2022 (In thousands)	Metallurgical	Thermal	Idle and Other	Consolidated
GAAP Revenues in the Condensed Consolidated Income Statements	$ 2,157,710	$ 1,566,883	$ —	$ 3,724,593
Less: Adjustments to reconcile to Non-GAAP Segment coal sales revenue				
Coal risk management derivative settlements classified in "other income"	—	42,068	—	42,068
Transportation costs	404,098	151,523	—	555,621
Non-GAAP Segment coal sales revenues	$ 1,753,612	$ 1,373,292	$ —	$ 3,126,904
Tons sold	7,832	70,442		
Coal sales per ton sold	$ 223.91	$ 19.50		

Non-GAAP Segment cash cost per ton sold

Non-GAAP Segment cash cost per ton sold is calculated as segment cash cost of coal sales divided by segment tons sold. Segment cash cost of coal sales is adjusted for transportation costs, and may be adjusted for other items that, due to generally accepted accounting principles, are classified in "other income" on the Consolidated Income Statements, but relate directly to the costs incurred to produce coal. Segment cash cost per ton sold is not a measure of financial performance in accordance with generally accepted accounting principles. We believe segment cash cost per ton sold better reflects our controllable costs and our operating results by including all costs incurred to produce coal. The adjustments made to arrive at these measures are significant in understanding and assessing our financial condition. Therefore, segment cash cost of coal sales should not be considered in isolation, nor as an alternative to cost of sales under generally accepted accounting principles.

Year Ended December 31, 2023 (In thousands)	Metallurgical	Thermal	Idle and Other	Consolidated
GAAP Cost of sales in the Condensed Consolidated Income Statements	$ 1,176,332	$ 1,133,789	$ 31,835	$ 2,341,956
Less: Adjustments to reconcile to Non-GAAP Segment cash cost of coal sales				
Diesel fuel risk management derivative settlements classified in "other income"		(3,215)	—	(3,215)
Transportation costs	348,321	112,386	—	460,707
Cost of coal sales from idled or otherwise disposed operations not included in segments	—	—	21,324	21,324
Other (operating overhead, certain actuarial, etc.)	—	—	10,511	10,511
Non-GAAP Segment cash cost of coal sales	$ 828,011	$ 1,024,618	$ —	$ 1,852,629
Tons sold	9,295	65,640		
Cash Cost Per Ton Sold	$ 89.08	$ 15.61		

Year Ended December 31, 2022 (In thousands)	Metallurgical	Thermal	Idle and Other	Consolidated
GAAP Cost of sales in the Condensed Consolidated Income Statements	$ 1,137,240	$ 1,187,603	$ 14,020	$ 2,338,863
Less: Adjustments to reconcile to Non-GAAP Segment cash cost of coal sales				
Diesel fuel risk management derivative settlements classified in "other income"	—	9,956	—	9,956
Transportation costs	404,098	151,523	—	555,621
Cost of coal sales from idled or otherwise disposed operations not included in segments	—	—	2,610	2,610
Other (operating overhead, certain actuarial, etc.)	—	—	11,410	11,410
Non-GAAP Segment cash cost of coal sales	$ 733,142	$ 1,026,124	$ —	$ 1,759,266
Tons sold	7,832	70,442		
Cash Cost Per Ton Sold	$ 93.61	$ 14.57		

Reconciliation of Segment Adjusted EBITDA to Net Income

The discussion in "Results of Operations" above includes references to our Adjusted EBITDA for each of our reportable segments. Adjusted EBITDA is defined as net income attributable to the Company before the effect of net interest expense, income taxes, depreciation, depletion and amortization, the amortization of sales contracts, and the accretion on asset retirement obligations. Adjusted EBITDA may also be adjusted for items that may not reflect the trend of future results by excluding transactions that are not indicative of our core operating performance. We use Adjusted EBITDA to measure the operating performance of our segments and allocate resources to our segments. Adjusted EBITDA is not a measure of financial performance in accordance with generally accepted accounting principles, and items excluded from Adjusted EBITDA are significant in understanding and assessing our financial condition. Therefore, Adjusted EBITDA should not be considered in isolation, nor as an alternative to net income, income from operations, cash flows from operations or as a measure of our profitability, liquidity or performance under generally accepted accounting principles. Investors should be aware that our presentation of Adjusted EBITDA may not be comparable to similarly titled measures used by other companies. The table below shows how we calculate Adjusted EBITDA.

	Year Ended December 31, 2023	Year Ended December 31, 2022
Net income	$ 464,038	$ 1,330,914
Provision for (benefit from) income taxes	87,514	(251,926)
Interest (income) expense, net	(2,438)	13,162
Depreciation, depletion and amortization	146,418	133,300
Accretion on asset retirement obligations	21,170	17,721
Non-service related pension and postretirement benefit (credits) costs	(3,786)	2,841
Net loss resulting from early retirement of debt	1,126	14,420
Adjusted EBITDA	714,042	1,260,432
EBITDA from idled or otherwise disposed operations	15,986	(828)
Selling, general and administrative expenses	98,871	105,355
Other	14,404	10,857
Segment Adjusted EBITDA from coal operations	$ 843,303	$ 1,375,816

Other includes primarily income from our equity investments, certain changes in the fair value of coal derivatives and coal trading activities, certain changes in fair value of heating oil derivatives we use to manage our exposure to diesel fuel pricing, net EBITDA provided by our land company, and certain miscellaneous revenue.

For the year ended December 31, 2023, Other decreased Adjusted EBITDA by approximately $3.5 million as compared to the year ended December 31, 2022, primarily due to the net unfavorable impact from equity investments of $4.1 million.

Liquidity and Capital Resources

Our primary sources of liquidity are proceeds from coal sales to customers and certain financing arrangements. Excluding significant investing activity, we intend to satisfy our working capital requirements and fund capital expenditures and debt-service obligations with cash generated from operations and cash on hand. We remain focused on prudently managing costs, including capital expenditures, maintaining a strong balance sheet, and ensuring adequate liquidity.

Given the volatile nature of coal markets, we believe it remains important to take a prudent approach to managing our balance sheet and liquidity. Additionally, banks and other lenders have become increasingly unwilling to provide financing to coal producers, especially those with significant thermal coal exposure. Due to the nature of our business, we may be limited in accessing debt capital markets or obtaining additional bank financing, or the cost of accessing this financing could become more expensive.

Our priority is to maintain our strong financial position with substantial liquidity and low levels of debt and other liabilities, while returning significant value to our stockholders. We ended the year with cash, cash equivalents, and short-term investments of $320.5 million and total liquidity of $444.4 million inclusive of availability under our credit facilities. During the year ended December 31, 2023, capital expenditures were approximately $176.0 million, and we expect our capital spending to remain at maintenance levels for the foreseeable future. During the year ended December 31, 2023, we repurchased $13.2 million in principal amount of our Convertible Notes for consideration of $58.4 million and received approximately $44.2 million for warrants that were exercised. During the year ended December 31, 2023, our working capital increased by approximately $84.3 million. We believe our current liquidity level is sufficient to fund our business and meet both our short-term (the next twelve months) and reasonably foreseeable long-term requirements and obligations including our variable rate dividend policy. We expect to maintain minimum liquidity levels of approximately $250 million to $300 million, with a substantial portion of that held in cash. In addition, we expect to hold additional cash at the end of each quarter in an amount that represents a substantial portion of the following quarter's dividend payment.

We believe we have significantly increased our future cash-generating capabilities, and as a result, in the second quarter of 2022, we launched a comprehensive capital return program that includes both a variable rate cash dividend and share repurchases. Additionally, the Board maintains the flexibility to consider other alternatives, including capital preservation. For the year ended December 31, 2023, we have paid approximately $206.1 million to our stockholders in the form of dividends and spent approximately $125.5 million to repurchase our common stock. Any future dividends and all of these potential uses of capital are subject to board approval and declaration.

Based on the fourth quarter discretionary cash flow, a combined fixed and variable dividend payment of $1.65 per share will be made to stockholders of record as of February 29, 2024, payable on March 15, 2024.

The table below summarizes our fourth quarter discretionary cash flow and total dividend payout:

	Three Months Ended December 31, 2023
Cash flow from operating activities	$ 181,556
Less: Capital expenditures	(55,007)
Discretionary cash flow	$ 126,549
Variable dividend percentage	25%
Total dividend to be paid	$ 31,637
Total dividend per share (variable and fixed)	$ 1.65

During the second quarter of 2022, the Board of Directors increased the remaining outstanding authorization for share repurchases to $500 million. During the year ended December 31, 2023, we repurchased 989,792 shares of our

stock for approximately $123.5 million, with $125.5 million paid in 2023, bringing total repurchases to 12,196,627 shares for approximately $1,109.7 million since the inception of the program in 2017. The timing of any future share repurchases, and the ultimate number of shares to be purchased, will depend on a number of factors, including business and market conditions, our future financial performance, and other capital priorities. The shares will be acquired in the open market or through private transactions in accordance with Securities and Exchange Commission requirements. Our share repurchase program may be amended, suspended or discontinued at any time and does not commit us to repurchase shares of our common stock.

On January 18, 2023, the Office of Workers' Compensation Programs ("OWCP") proposed revisions to regulations under the Black Lung Benefits Act governing authorization of self-insurers. The revisions seek to codify the practice of basing a self-insured operator's security requirement on an actuarial assessment of its total present and future black lung liability. A material change to the regulations is the requirement that all self-insured operators must post security equal to 120% of their projected black lung liabilities. The proposed regulations were posted to the Federal Register on January 19, 2023 with written comments to be accepted within 60 days of this date. A subsequent extended comment period expired on April 19, 2023; however, the final regulations have not yet been published. The revisions proposed by the OWCP were a material deviation from their bulletin issued in December 2020 that would have required the majority of coal operators to post security equal to 70% of their projected black lung liabilities, which, at the time, equated to the Company posting additional collateral of $71.1 million. If the above regulation is codified into law, the Company will be required to post additional collateral to maintain its self-insured status. The Company is evaluating alternatives to self-insurance, including the purchase of commercial insurance to cover these claims. Additionally, the Company is assessing additional sources of liquidity and other items to satisfy the proposed regulations. Any of these outcomes will require additional collateral and would reduce our available liquidity.

During the year ended December 31, 2022, we repaid $273.8 million of our Term Loan and as of December 31, 2023 the remaining balance was $3.5 million. On February 8, 2024, the Company entered into a new senior secured term loan credit agreement in the principal amount of $20.0 million. The new term loan requires quarterly principal amortization payments of $3.3 million and matures on June 30, 2025. The loan is guaranteed by substantially all of the domestic subsidiaries of the Company. Additionally, the loan is secured by substantially all of the assets of the Company and the guarantors, subject to customary exceptions (including an exclusion for owned and leased real property). The proceeds from the new term loan were used to pay off the $3.5 million balance of the existing term loan debt facility.

During the first half of 2023, the Company repurchased the remaining Convertible Notes with a principal amount of $13.2 million for aggregate consideration consisting of $58.4 million in cash. For further information regarding the Convertible Notes and the Convertible Notes exchanges and repurchases, see Note 10, "Debt and Financing Arrangements" to the Consolidated Financial Statements.

We have an aggregate of outstanding $98.1 million of Tax Exempt Bonds issued by the West Virginia Economic Development Authority. The proceeds of the Tax Exempt Bonds were used to finance certain costs of the acquisition, construction, reconstruction, and equipping of solid waste disposal facilities at our Leer South development, and for capitalized interest and certain costs related to the issuance of the Tax Exempt Bonds. For further information regarding the Tax Exempt Bonds, see Note 10 "Debt and Financing Arrangements" to the Consolidated Financial Statements.

On August 3, 2022, we amended and extended our existing trade accounts receivable securitization facility provided to Arch Receivable Company, LLC, a special-purpose entity that is a wholly owned subsidiary of Arch Resources ("Arch Receivable") (the "Securitization Facility"), which supports the issuance of letters of credit and requests for cash advances. The amendment to the Securitization Facility increased the size of the facility from $110 million to $150 million of borrowing capacity and extended the maturity date to August 1, 2025. For further information regarding the Securitization Facility see Note 10, "Debt and Financing Arrangements" to the Consolidated Financial Statements.

On August 3, 2022, we amended the $50 million senior secured inventory-based revolving credit facility (the "Inventory Facility") with Regions Bank ("Regions") as administrative agent and collateral agent, as lender and swingline lender (in such capacities, the "Lender") and as letter of credit issuer. The facility has a minimum liquidity

requirement of $100 million and a maturity date of August 3, 2025. For further information regarding the Inventory Facility, see Note 10, “Debt and Financing Arrangements” to the Consolidated Financial Statements.

The table below summarizes our availability under our credit facilities as of December 31, 2023:

	Face Amount	Borrowing Base	Letters of Credit Outstanding	Availability	Contractual Expiration
	(Dollars in thousands)				
Securitization Facility	$ 150,000	$ 150,000	$ 50,194	$ 99,806	August 1, 2025
Inventory Facility	50,000	50,000	26,200	23,800	August 3, 2025
Total	$ 200,000	$ 200,000	$ 76,394	$ 123,606	

The above standby letters of credit outstanding have primarily been issued to satisfy certain insurance-related collateral requirements. The amount of collateral required by counterparties is based on their assessment of our ability to satisfy our obligations and may change at the time of policy renewal or based on a change in their assessment. Future increases in the amount of collateral required by counterparties would reduce our available liquidity.

Contractual Obligations

The table below summarizes our contractual obligations as of December 31, 2023:

	Payments Due by Period				
	2024	2025-2026	2027-2028	after 2028	Total
	(Dollars in thousands)				
Long-term debt, including related interest	$ 40,778	$ 108,093	$ —	$ —	$ 148,871
Leases	4,491	8,457	1,533	—	14,481
Coal lease rights	3,425	6,363	4,907	36,482	51,177
Unconditional purchase obligations	221,176	—	—	—	221,176
Total contractual obligations	$ 269,870	$ 122,913	$ 6,440	$ 36,482	$ 435,705

The related interest on long-term debt was calculated using rates in effect at December 31, 2023, for the remaining term of outstanding borrowings.

Coal lease rights represent non-cancelable royalty lease agreements, as well as lease bonus payments due.

Unconditional purchase obligations include open purchase orders and other purchase commitments, which have not been recognized as a liability. The commitments in the table above relate to contractual commitments for the purchase of materials and supplies, payments for services and capital expenditures.

The table above excludes our asset retirement obligations. Our consolidated balance sheet reflects a liability of $261.8 million including amounts classified as a current liability for asset retirement obligations that arise from SMCRA and similar state statutes, which require that mine property be restored in accordance with specified standards and an approved reclamation plan. Asset retirement obligations are recorded at fair value when incurred and accretion expense is recognized through the expected date of settlement. Determining the fair value of asset retirement obligations involves a number of estimates, as discussed in the section entitled “Critical Accounting Estimates” below, including the timing of payments to satisfy the obligations. The timing of payments to satisfy asset retirement obligations is based on numerous factors, including mine closure dates. Additionally, through December 31, 2023, the Company has contributed $142.3 million to a fund to defease the long-term asset retirement obligation for its thermal asset base; this amount is recorded as “Fund for asset retirement obligations” on the Consolidated Balance Sheets. The funds will be utilized for final mine closure reclamation activities. Please see Note 12, “Asset Retirement Obligations” to our Consolidated Financial Statements for further information about our asset retirement obligations.

The table above also excludes certain other obligations reflected in our consolidated balance sheet, including estimated funding for pension and postretirement benefit plans and worker’s compensation obligations.

Please see Note 16, “Workers’ Compensation Expense”, and Note 17, “Employee Benefit Plans” to our Consolidated Financial Statements for more information about the amounts we have recorded for workers’ compensation and pension and postretirement benefit obligations, respectively.

Off-Balance Sheet Arrangements

In the normal course of business, we are a party to certain off-balance sheet arrangements. These arrangements include guarantees, indemnifications, financial instruments with off-balance sheet risk, such as bank letters of credit and performance or surety bonds. Liabilities related to these arrangements are not reflected in our consolidated balance sheets, and we do not expect any material adverse effects on our financial condition, results of operations or cash flows to result from these off-balance sheet arrangements.

We use a combination of surety bonds and letters of credit to secure our financial obligations for reclamation, workers’ compensation, coal lease obligations and other obligations as follows as of December 31, 2023:

	Reclamation Obligations	Lease Obligations	Workers’ Compensation Obligations	Other	Total
			(Dollars in thousands)		
Surety bonds	$ 455,698	$ 40,411	$ 50,028	$ 6,366	$ 552,503
Letters of credit	—	—	69,170	1,354	70,524

Cash Flow

The following is a summary of cash provided by or used in each of the indicated types of activities during the years ended December 31, 2023 and 2022:

	Year Ended December 31,	
(In thousands)	2023	2022
Cash provided by (used in):		
Operating activities	$ 635,374	$ 1,209,540
Investing activities	(185,622)	(203,794)
Financing activities	(398,004)	(1,094,882)

Cash provided by operating activities declined in the year ended December 31, 2023 versus the year ended December 31, 2022, mainly due to the decrease in results from operations discussed in the “Overview” and “Operational Performance” sections above, coupled with a net unfavorable change in working capital of $180.3 million, partially offset by decreased funding of our fund for asset retirement obligations of approximately $109 million.

Cash used in investing activities declined in the year ended December 31, 2023 versus the year ended December 31, 2022, primarily due to a net decrease in cash used in short term investments of approximately $27 million, partially offset by an approximate $8 million increase in cash used for investments in and advances to affiliates.

Cash used in financing activities declined $696.9 million compared to the prior period due to a decrease of approximately $412 million in overall debt payments compared to prior year, a reduction in dividends paid of approximately $250 million, and a decrease in share repurchases of $31 million.

Critical Accounting Estimates

We prepare our financial statements in accordance with accounting principles that are generally accepted in the United States. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses as well as the disclosure of contingent assets and liabilities. Management bases our estimates and judgments on historical experience and other factors that are believed to

be reasonable under the circumstances. Additionally, these estimates and judgments are discussed with our audit committee on a periodic basis. Actual results may differ from the estimates used under different assumptions or conditions. We have provided a description of all significant accounting policies in the notes to our Consolidated Financial Statements. We believe that of these significant accounting policies, the following may involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on our financial condition or results of operations:

Impairment of Long-lived Assets

We review our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. These events and circumstances include, but are not limited to, a current expectation that a long-lived asset will be disposed of significantly before the end of its previously estimated useful life, a significant adverse change in the extent or manner in which we use a long-lived asset or a change in its physical condition.

When such events or changes in circumstances occur, a recoverability test is performed comparing projected undiscounted cash flows from the use and eventual disposition of an asset or asset group to its carrying amount. If the projected undiscounted cash flows are less than the carrying amount, an impairment is recorded for the excess of the carrying amount over the estimate fair value, which is generally determined using discounted future cash flows. If we recognize an impairment loss, the adjusted carrying amount of the asset becomes the new cost basis. For a depreciable long-lived asset, the new cost basis will be depreciated (amortized) over the remaining estimated useful life of the asset.

We make various assumptions, including assumptions regarding future cash flows in our assessments of long-lived assets for impairment. The assumptions about future cash flows and growth rates are based on the current and long-term business plans related to the long-lived assets. Discount rate assumptions are based on an assessment of the risk inherent in the future cash flows of the long-lived assets. These assumptions require significant judgments on our part, and the conclusions that we reach could vary significantly based upon these judgments.

As of December 31, 2023, there were no indicators of impairment identified.

Asset Retirement Obligations

Our asset retirement obligations arise from SMCRA and similar state statutes, which require that mine property be restored in accordance with specified standards and an approved reclamation plan. Significant reclamation activities include reclaiming refuse and slurry ponds, reclaiming the pit and support acreage at surface mines, and sealing portals at deep mines. Our asset retirement obligations are initially recorded at fair value, or the amount at which the obligations could be settled in a current transaction between willing parties. This involves determining the present value of estimated future cash flows on a mine-by-mine basis based upon current permit requirements and various estimates and assumptions, including estimates of disturbed acreage, reclamation costs and assumptions regarding equipment productivity. We estimate disturbed acreage based on approved mining plans and related engineering data. Since we plan to use internal resources to perform the majority of our reclamation activities, our estimate of reclamation costs involves estimating third-party profit margins, which we base on our historical experience with contractors that perform certain types of reclamation activities. We base productivity assumptions on historical experience with the equipment that we expect to utilize in the reclamation activities. In order to determine fair value, we discount our estimates of cash flows to their present value. We base our discount rate on the rates of treasury bonds with maturities similar to expected mine lives, adjusted for our credit standing.

Accretion expense is recognized on the obligation through the expected settlement date. On at least an annual basis, we review our entire reclamation liability and make necessary adjustments for permit changes as granted by state authorities, changes in the timing and extent of reclamation activities, and revisions to cost estimates and productivity assumptions, to reflect current experience. Any difference between the recorded amount of the liability and the actual cost of reclamation will be recognized as a gain or loss when the obligation is settled. We expect our actual cost to reclaim our properties will be less than the expected cash flows used to determine the asset retirement obligation. At December 31, 2023, our balance sheet reflected asset retirement obligation liabilities of $261.8 million, including

amounts classified as a current liability. As of December 31, 2023, we estimate the aggregate uninflated and undiscounted cost of final mine closures to be approximately $454.4 million. Additionally, through December 31, 2023, the Company has contributed $142.3 million to a fund to defease the long-term asset retirement obligation for its thermal asset base; this amount is recorded as "Fund for asset retirement obligations" on the Consolidated Balance Sheets. The funds will be utilized for final mine closure reclamation activities.

See the roll forward of the asset retirement obligation liability in Note 12, "Asset Retirement Obligations" to the Consolidated Financial Statements.

Employee Benefit Plans

We currently provide certain postretirement medical and life insurance coverage for eligible employees. Generally, covered employees who terminate employment after meeting eligibility requirements are eligible for postretirement coverage for themselves and their dependents. The salaried employee postretirement benefit plans are contributory, with retiree contributions adjusted periodically, and contain other cost-sharing features such as deductibles and coinsurance.

Actuarial assumptions are required to determine the amounts reported as obligations and costs related to the postretirement benefit plan. The discount rate assumption reflects the rates available on high-quality fixed-income debt instruments at year-end and is calculated in the same manner as discussed above for the pension plan.

Income Taxes

We provide for deferred income taxes related to tax attribute carryforwards and temporary differences arising from differences between the financial statement and tax basis of assets and liabilities existing at each balance sheet date using enacted tax rates expected to be in effect when the related taxes are expected to be paid or recovered. We initially recognize the effects of a tax position when it is more than 50% likely, based on the technical merits, that the position will be sustained upon examination, including resolution of the related appeals or litigation processes, if any. Our determination of whether or not a tax position has met the recognition threshold considers the facts, circumstances, and information available at the reporting date.

We assess the realizability of our deferred tax assets by analyzing all positive and negative evidence available, including but not limited to three years of pre-tax operating results, available tax planning strategies, reversal of taxable temporary differences and future taxable income. A valuation allowance is recorded against deferred tax assets if the preponderance of evidence suggests that it is not more likely than not that all or a portion of the deferred tax assets will be realized.

As of December 31, 2023, we have a valuation allowance recorded against certain state NOLs and capital losses, totaling $82.8 million.

See Note 11, "Taxes" to the Consolidated Financial Statements, for further disclosures about income taxes.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

We manage our commodity price risk for our non-trading, thermal coal sales through the use of long-term coal supply agreements, and to a limited extent, through the use of derivative instruments. Sales commitments in the metallurgical coal market are typically not long-term in nature, and we are therefore subject to fluctuations in market pricing.

Our commitments for 2024 are as follows as of December 31, 2023:

	2024	
	Tons	$ per ton
Metallurgical	(in millions)	
Committed, North America Priced Coking	1.5	$ 157.65
Committed, North America Unpriced Coking	—	
Committed, Seaborne Priced Coking	0.1	201.35
Committed, Seaborne Unpriced Coking	2.7	
Committed, Priced Thermal	0.2	28.75
Committed, Unpriced Thermal	0.3	
Thermal		
Committed, Priced	52.8	$ 17.09
Committed, Unpriced	1.4	

We have exposure to price risk for supplies that are used directly or indirectly in the normal course of production, such as diesel fuel, steel, explosives and other items. We manage our risk for these items through strategic sourcing contracts in normal quantities with our suppliers. We may sell or purchase forward contracts, swaps and options in the over-the-counter market in order to manage our exposure to price risk related to these items.

We are exposed to price risk with respect to diesel fuel purchased for use in our operations. We anticipate purchasing approximately 30 to 35 million gallons of diesel fuel for use in our operations during 2024. To protect our cash flows from increases in the price of diesel fuel, we have purchased heating oil call options. At December 31, 2023, we had protected the price of expected diesel fuel purchases for 2024 with approximately 24 million gallons of heating oil call options with an average strike price of $2.96 per gallon. These positions are not designated as hedges for accounting purposes, and therefore, changes in the fair value are recorded immediately to earnings.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The Consolidated Financial Statements and consolidated financial statement schedule of Arch Resources, Inc. and subsidiaries are included in this Annual Report on Form 10-K beginning on page F-1.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES.

We performed an evaluation under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2023, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended. Based on that evaluation, our management, including our chief executive officer and chief financial officer, concluded that the disclosure controls and procedures were effective as of such date. There were

no changes in our internal control over financial reporting during the fiscal quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

We incorporate by reference the opinion of independent registered public accounting firm and management's report on internal control over financial reporting included within the Financial Statement section of this Annual Report on Form 10-K.

ITEM 9B. OTHER INFORMATION.

During the three months ended December 31, 2023, no director or officer of the Company adopted, modified or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408 of Regulation S-K. However, in Part II, Item 5 of the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2023, the table containing Rule 10b5-1 trading arrangements included an incorrect number of shares for John W. Lorson. The "Total Shares to be Sold" for Mr. Lorson should have stated "Up to 2,715".

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

Except for the disclosures contained in Part I of this report under the caption "Information about our Executive Officers," the information required under this item is incorporated herein by reference to "Director Biographies," "Corporate Governance Practices" and, if applicable, "Delinquent Section 16(a) Reports" in our Proxy Statement for the 2024 Annual Meeting of Stockholders, which is expected to be filed with the SEC within 120 days after the close of our fiscal year.

ITEM 11. EXECUTIVE COMPENSATION.

The information required under this item is incorporated herein by reference to "Executive Compensation," "Director Compensation," "Compensation Committee Interlocks and Insider Participation" and "Personnel and Compensation Committee Report" in our Proxy Statement for the 2024 Annual Meeting of Stockholders, which is expected to be filed with the SEC within 120 days after the close of our fiscal year.

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

The information required under this item is incorporated herein by reference to "Equity Compensation Plan Information," "Security Ownership of Directors and Executive Officers" and "Security Ownership of Certain Beneficial Owners" in our Proxy Statement for the 2024 Annual Meeting of Stockholders, which is expected to be filed with the SEC within 120 days after the close of our fiscal year.

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

The information required under this item is incorporated herein by reference to "Certain Relationships and Related Transactions" and "Director Independence" in our Proxy Statement for the 2024 Annual Meeting of Stockholders, which is expected to be filed with the SEC within 120 days after the close of our fiscal year.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

The information required under this item is incorporated herein by reference to "Fees Paid to Auditors" in our Proxy Statement for the 2024 Annual Meeting of Stockholders, which is expected to be filed with the SEC within 120 days after the close of our fiscal year.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

Financial Statements

Reference is made to the index set forth on page F-1 of this report.

Financial Statement Schedules

The following financial statement schedule of Arch Resources, Inc. is at the page indicated:

Schedule	Page
Valuation and Qualifying Accounts	F-49

All other financial statement schedules listed under SEC rules but not included in this report are omitted because they are not applicable or the required information is provided in the notes to our Consolidated Financial Statements.

Exhibits

Reference is made to the Exhibit Index on the following page.

ITEM 16. FORM 10-K SUMMARY.

None.

Exhibits to be included in 10-K

	Description
2.1	Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (incorporated by reference to Exhibit 2.1 of Arch Resources' Current Report on Form 8-K filed on September 15, 2016).
2.2	Order Confirming Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code on September 13, 2016 (incorporated by reference to Exhibit 2.2 of Arch Resources' Current Report on Form 8-K filed on September 15, 2016).
3.1	Restated Certificate of Incorporation of Arch Resources, Inc. (incorporated by reference to Exhibit 3.2 of Arch Resources' Current Report on Form 8-K filed on May 15, 2020).
3.2	Amended and Restated Bylaws of Arch Resources, Inc. (incorporated by reference to Exhibit 3.1 of Arch Resources' Current Report on Form 8-K filed on December 16, 2022).
4.1	Form of specimen Class A Common Stock certificate (incorporated by reference to Exhibit 4.1 of Arch Resources' Current Report on Form 8-K filed on October 11, 2016).
4.2	Form of specimen Class B Common Stock certificate (incorporated by reference to Exhibit 4.2 of Arch Resources' Current Report on Form 8-K filed on October 11, 2016).
4.3	Form of specimen Series A Warrant certificate (incorporated by reference to Exhibit A of Exhibit 10.5 of Arch Resources' Current Report on Form 8-K filed on October 11, 2016).
4.4	Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (incorporated by reference to Exhibit 4.4 of Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2019).
4.5	Indenture, dated as of November 3, 2020, between Arch Resources, Inc. and UMB Bank, National Association, as trustee (incorporated by reference to Exhibit 4.1 of Arch Resources' Current Report on Form 8-K filed on November 4, 2020).
4.6	Form of certificate representing the 5.25% Convertible Senior Notes due 2025 (incorporated by reference to Exhibit A of Exhibit 4.1 of Arch Resources' Current Report on Form 8-K filed on November 4, 2020).
10.1	Credit Agreement, dated as of February 8, 2024, among Arch Resources, Inc. as borrower, the guarantors party thereto, the lenders from time to time party thereto and PNC Bank, National Association, in its capacity as administrative agent.
10.2	Credit Agreement, dated as of April 27, 2017, among Arch Resources, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto and Regions Bank, in its capacities as administrative agent and as collateral agent (incorporated by reference to Exhibit 10.1 of Arch Resources' Current Report on Form 8-K filed on May 2, 2017).
10.3	First Amendment to Credit Agreement dated November 19, 2018 by and among Arch Resources, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto and Regions Bank, in its capacities as administrative agent and as collateral agent (incorporated by reference to Exhibit 10.5 to Arch Resources' Annual Report on Form 10-K for the year ended 2018).
10.4	Waiver Letter Agreement and Second Amendment to Credit Agreement dated June 17, 2020 by and among Arch Resources, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto and Regions Bank, in its capacities as administrative agent and as collateral agent (incorporated by reference to Exhibit 10.6 of Arch Resources' Quarterly Report on Form 10-Q for the period ended September 30,2020).
10.5	Third Amendment to Credit Agreement dated September 30, 2020, by and among Arch Resources, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto and Regions Bank, in its capacities as administrative agent and collateral agent (incorporated by reference to Exhibit 10.7 of Arch Resources' Quarterly Report on Form 10-Q for the period ended September 30, 2020).
10.6	Fourth Amendment to Credit Agreement dated May 27, 2021, by and among Arch Resources, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto and Regions Bank, in its capacities as administrative agent and as collateral agent (incorporated by reference to Exhibit 10.08 of Arch Resources' Quarterly Report on Form 10-Q for the period ended June 30, 2021).

10.7	Fifth Amendment to Credit Agreement dated August 3, 2022, by and among Arch Resources, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto and Regions Bank, in its capacities as administrative agent and as collateral agent (incorporated by reference to Exhibit 10.9 of Arch Resources' Quarterly Report on Form 10-Q for the period ended September 30, 2022).
10.8	Sixth Amendment to Credit Agreement dated February 8, 2024, by and among Arch Resources, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto and Regions Bank, in its capacities as administrative agent and as collateral agent.
10.9	Third Amended and Restated Receivables Purchase Agreement, dated October 5, 2016, among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as initial servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.2 of Arch Resources' Current Report on Form 8-K filed on October 11, 2016).
10.10	First Amendment to Third Amended and Restated Receivables Purchase Agreement, dated as of April 27, 2017, among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.2 of Arch Resources' Current Report on Form 8-K filed on May 2, 2017).
10.11	Second Amendment to Third Amended and Restated Receivables Purchase Agreement, dated as of August 27, 2018, among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.7 of Arch Resources' Quarterly Report on Form 10-Q for the period ended September 30, 2018).
10.12	Third Amendment to Third Amended and Restated Receivables Purchase Agreement, dated as of May 14, 2019, among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.9 of Arch Resources' Quarterly Report on Form 10-Q for the period ended June 30, 2019).
10.13	Fourth Amendment to Third Amended and Restated Receivables Purchase Agreement, dated September 30, 2020, among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.12 of Arch Resources' Quarterly Report on Form 10-Q for the period ended September 30, 2020).
10.14	Fifth Amendment to Third Amended and Restated Receivables Purchase Agreement dated as of December 4, 2020 among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.13 of Arch Resources' Quarterly Report on Form 10-Q for the period ended March 31, 2021).
10.15	Sixth Amendment to Third Amended and Restated Receivables Purchase Agreement dated as of October 8, 2021 among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.15 of Arch Resources Quarterly Report on Form 10-Q for the period ended September 30, 2021).
10.16	Seventh Amendment to Third Amended and Restated Receivables Purchase Agreement dated August 3, 2022 among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers (incorporated by reference to Exhibit 10.17 of Arch Resources' Quarterly Report on Form 10-Q for the period ended September 30, 2022).
10.17	Eighth Amendment to Third Amended and Restated Receivables Purchase Agreement dated February 8, 2024 among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers.

10.18	Second Amended and Restated Purchase and Sale Agreement among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.3 of Arch Resources' Current Report on Form 8-K filed on October 11, 2016).
10.19	First Amendment to the Second Amended and Restated Purchase and Sale Agreement, dated as of December 21, 2016, among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.7 of Arch Resources' Quarterly Report on Form 10-Q filed for the period ended September 30, 2017).
10.20	Second Amendment to the Second Amended and Restated Purchase and Sale Agreement, dated as of April 27, 2017, among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.3 of Arch Resources' Current Report on Form 8-K filed on May 2, 2017).
10.21	Third Amendment to Second Amended and Restated Purchase and Sale Agreement, dated as of September 14, 2017, among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.16 of Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2020).
10.22	Fourth Amendment to Second Amended and Restated Purchase and Sale Agreement, dated as of December 13, 2019, among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.17 of Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2020).
10.23	Fifth Amendment and Waiver to Second Amended and Restated Purchase and Sale Agreement dated June 17, 2020, among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.18 of Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2020).
10.24	Sixth Amendment to Second Amended and Restated Purchase and Sale Agreement dated December 31, 2020, among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.19 of Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2020).
10.25	Seventh Amendment to Second Amended and Restated Purchase and Sale Agreement dated March 13, 2023, among Arch Resources, Inc. and certain subsidiaries of Arch Resources, Inc., as originators (incorporated by reference to Exhibit 10.25 of Arch Resources' Quarterly Report on Form 10-Q for the period ended on March 31, 2023).
10.26	Second Amended and Restated Sale and Contribution Agreement between Arch Resources, Inc., as the transferor, and Arch Receivable Company, LLC (incorporated by reference to Exhibit 10.4 of Arch Resources' Current Report on Form 8-K filed on October 11, 2016).
10.27	First Amendment to the Second Amended and Restated Sale and Contribution Agreement, dated as of April 27, 2017, between Arch Resources, Inc., as the transferor, and Arch Receivable Company, LLC (incorporated by reference to Exhibit 10.4 of Arch Resources' Current Report on Form 8-K filed on May 2, 2017).
10.28	Warrant Agreement, dated as of October 5, 2016, between Arch Resources, Inc. and American Stock Transfer & Trust Company, LLC, as Warrant Agent (incorporated by reference to Exhibit 10.5 of Arch Resources' Current Report on Form 8-K filed on October 11, 2016).
10.29	Indemnification Agreement between Arch Resources, Inc. and the directors and officers of Arch Resources, Inc. and its subsidiaries (form incorporated by reference to Exhibit 10.28 of Arch Resources' Annual Report on Form 10-K for the year ended 2022).
10.30	Registration Rights Agreement between Arch Resources, Inc. and Monarch Alternative Capital LP and certain other affiliated funds (incorporated by reference to Exhibit 10.1 of Arch Resources' Current Report on Form 8-K filed on November 21, 2016).
10.31	Coal Lease Agreement dated as of March 31, 1992, among Allegheny Land Company, as lessee, and UAC and Phoenix Coal Corporation, as lessors, and related guarantee (incorporated by reference to the Current Report on Form 8-K filed by Ashland Coal, Inc. on April 6, 1992).
10.32	Federal Coal Lease dated as of January 24, 1996 between the U.S. Department of the Interior and the Thunder Basin Coal Company (incorporated by reference to Exhibit 10.20 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 1998).

10.33	Federal Coal Lease dated as of November 1, 1967 between the U.S. Department of the Interior and the Thunder Basin Coal Company (incorporated by reference to Exhibit 10.21 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 1998).
10.34	Federal Coal Lease effective as of May 1, 1995 between the U.S. Department of the Interior and Mountain Coal Company (incorporated by reference to Exhibit 10.22 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 1998).
10.35	Federal Coal Lease dated as of January 1, 1999 between the Department of the Interior and Ark Land Company (incorporated by reference to Exhibit 10.23 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 1998).
10.36	Federal Coal Lease effective as of March 1, 2005 by and between the United States of America and Ark Land LT, Inc. covering the tract of land known as "Little Thunder" in Campbell County, Wyoming (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Arch Resources on February 10, 2005).
10.37	Modified Coal Lease (WYW71692) executed January 1, 2003 by and between the United States of America, through the Bureau of Land Management, as lessor, and Triton Coal Company, LLC, as lessee, covering a tract of land known as "North Rochelle" in Campbell County, Wyoming (incorporated by reference to Exhibit 10.24 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2004).
10.38	Coal Lease (WYW127221) executed January 1, 1998 by and between the United States of America, through the Bureau of Land Management, as lessor, and Triton Coal Company, LLC, as lessee, covering a tract of land known as "North Roundup" in Campbell County, Wyoming (incorporated by reference to Exhibit 10.25 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2004).
10.39*	Letter Agreement dated October 25, 2023 by and between Arch Resources, Inc. and John W. Eaves (incorporated by reference to Exhibit 10.39 of Arch Resources' Quarterly Report on Form 10-Q for the period ended September 30, 2023).
10.40*	Form of Employment Agreement for Executive Officers of Arch Resources, Inc. (incorporated by reference to Exhibit 10.4 of Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2011).
10.41*	Arch Resources, Inc. Deferred Compensation Plan (incorporated by reference to Exhibit 10.26 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2014).
10.42	Arch Resources, Inc. Outside Directors' Deferred Compensation Plan (incorporated by reference to Exhibit 10.4 of Arch Resources' Current Report on Form 8-K filed on December 12, 2008).
10.43*	Arch Resources, Inc. Supplemental Retirement Plan (as amended on December 5, 2008) (incorporated by reference to Exhibit 10.2 to Arch Resources' Current Report on Form 8-K filed on December 12, 2008).
10.44*	Arch Resources, Inc. 2016 Omnibus Incentive Plan (incorporated by reference to Exhibit 99.1 to Arch Resources' Registration Statement on Form S-8 filed on November 1, 2016).
10.45*	Form of Restricted Stock Unit Contract (Time-Based Vesting) (incorporated by reference to Exhibit 10.1 to Arch Resources' Current Report on Form 8-K filed on November 30, 2016).
10.46*	Form of Restricted Stock Unit Contract (Performance-Based Vesting) (incorporated by reference to Exhibit 10.2 to Arch Resources' Current Report on Form 8-K filed on November 30, 2016).
10.47	Stock Repurchase Agreement dated September 13, 2017, among Arch Resources, Inc. and Monarch Alternative Solutions Master Fund Ltd, Monarch Capital Master Partners III LP, MCP Holdings Master LP, Monarch Debt Recovery Master Fund Ltd and P Monarch Recovery Ltd. (incorporated by reference to Exhibit 10.1 of Arch Resources' Current Report on Form 8-K filed on September 19, 2017).
10.48	Stock Repurchase Agreement dated December 8, 2017, among Arch Resources, Inc. and Monarch Alternative Solutions Master Fund Ltd, Monarch Capital Master Partners III LP, MCP Holdings Master LP and Monarch Debt Recovery Master Fund Ltd. (incorporated by reference to Exhibit 10.1 of Arch Resources' Current Report on Form 8-K filed on December 11, 2017).
10.49	Form of Confirmation of Base Capped Call Transaction (incorporated by reference to Exhibit 10.1 of Arch Resources' Current Report on Form 8-K filed on November 4, 2020).
10.50	Form of Exchange Agreement (incorporated by reference to Exhibit 10.1 of Arch Resources' Current Report on Form 8-K filed on May 23, 2022).

21.1	Subsidiaries of the registrant.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Weir International, Inc.
23.3	Consent of Marshall Miller & Associates, Inc.
24.1	Power of Attorney.
31.1	Rule 13a-14(a)/15d-14(a) Certification of Paul A. Lang.
31.2	Rule 13a-14(a)/15d-14(a) Certification of Matthew C. Giljum.
32.1**	Section 1350 Certification of Paul A. Lang.
32.2**	Section 1350 Certification of Matthew C. Giljum.
95	Mine Safety Disclosure Exhibit.
96.1	Technical Report Summary for Leer Mine – S-K 1300 Report. (incorporated by reference to Exhibit 96.1 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2021.)
96.2	Technical Report Summary for Leer South Mine – S-K 1300 Report.
96.3	Technical Report Summary for Black Thunder Mine – S-K 1300 Report. (incorporated by reference to Exhibit 96.3 to Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2021.)
97.1	Arch Resources, Inc. Amended and Restated Compensation Recoupment Policy effective October 2, 2023.
101	The following financial statements from the Company's Annual Report on Form 10-K for the year ended December 31, 2023, formatted in Inline XBRL: (1) Consolidated Statements of Operations, (2) Consolidated Statements of Comprehensive Income (Loss), (3) Consolidated Balance Sheets, (4) Consolidated Statements of Cash Flows, (5) Consolidated Statements of Stockholders' Equity and (6) Notes to Consolidated Financial Statements, tagged as blocks of text and including detailed tags.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Denotes a management contract or compensatory plan or arrangement.
** Furnished herein

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.

Arch Resources, Inc.

/s/ Paul A. Lang

Paul A. Lang

Chief Executive Officer, Director

February 15, 2024

Signatures	Capacity	Date
/s/ Paul A. Lang Paul A. Lang	Chief Executive Officer, Director (Principal Executive Officer)	February 15, 2024
/s/ Matthew C. Giljum Matthew C. Giljum	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	February 15, 2024
/s/ John W. Lorson John W. Lorson	Vice President and Chief Accounting Officer (Principal Accounting Officer)	February 15, 2024
* John W. Eaves	Executive Chairman	February 15, 2024
* Pamela R. Butcher	Director	February 15, 2024
* James N. Chapman	Director	February 15, 2024
* Patrick A. Kriegshauser	Director	February 15, 2024
* Richard A. Navarre	Director	February 15, 2024
* Holly Keller Koeppel	Director	February 15, 2024
* Molly P. Zhang	Director	February 15, 2024

*By /s/ Rosemary L. Klein
Rosemary L. Klein,
Attorney-in-Fact

FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Index to Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Arch Resources, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Arch Resources, Inc. and subsidiaries (the Company) as of December 31, 2023 and 2022, the related consolidated income statements, and statements of comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2023, and the related notes and the financial statement schedule listed in the Index at Item 15 (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated February 15, 2024, expressed an unqualified opinion thereon.

Basis for Opinion

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

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

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter 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 account or disclosures to which it relates.

Asset Retirement Obligation (ARO) Liability

Description of Critical Audit Matter	At December 31, 2023, the Company's asset retirement obligations totaled $261.8 million. As discussed in Note 2 and Note 12 of the consolidated financial statements, the Company's obligations associated with the retirement of long-lived assets are recognized at fair value at the time the obligations are incurred. Upon initial recognition of a liability, a corresponding amount is capitalized as part of the carrying value of the related long-lived asset. The Company reviews its asset retirement obligations at least annually and makes necessary adjustments for permit changes as granted by state authorities and for revisions of estimates of the timing and extent of reclamation activities and cost estimates. Management's estimate involves a high degree of subjectivity and auditing the significant assumptions utilized by management in estimating the fair value of the liability requires judgement. In particular, the obligation's fair value is determined using a discounted cash flow technique and is based upon mining permit requirements and various assumptions including estimates of disturbed acreage, reclamation costs and assumptions regarding equipment productivity.
How we addressed the Matter in our Audit	We obtained an understanding, evaluated the design and tested the operating effectiveness of the controls over the Company's accounting for asset retirement obligations, including controls over management's review of the significant assumptions described above. We assessed the work of the Company's engineering specialists in identifying asset retirement obligation activities against legislative requirements and assessing their timing and likely cost. We compared the Company's methodology to calculate the asset retirement obligations with industry practice and our understanding of the business. We evaluated management's assumptions by validating the underlying inputs within the calculations and recosting studies, including those listed above. We involved a specialist to assist in our evaluation of the accuracy of management's assumptions within the Company's asset retirement obligation estimate including reviewing mine closure regulatory requirements, mine plans and engineering drawings for consistency with permit requirements and conducting observations of mining and reclamation areas.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 1997.

St. Louis, Missouri

February 15, 2024

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Arch Resources, Inc.

Opinion on Internal Control over Financial Reporting

We have audited Arch Resources, Inc. and subsidiaries internal control over financial reporting as of December 31, 2023, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Arch Resources, Inc and subsidiaries (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2023 and 2022, the related consolidated income statements, and statements of comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2023, and the related notes and financial statement schedule listed in the Index at Item 15, and our report dated February 15, 2024 expressed an unqualified opinion thereon.

Basis for Opinion

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ Ernst & Young LLP

St. Louis, Missouri
February 15, 2024

REPORT OF MANAGEMENT

The management of Arch Resources, Inc. and subsidiaries (the "Company") is responsible for the preparation of the consolidated financial statements and related financial information in this annual report. The financial statements are prepared in accordance with accounting principles generally accepted in the United States and necessarily include some amounts that are based on management's informed estimates and judgments, with appropriate consideration given to materiality.

The Company maintains a system of internal accounting controls designed to provide reasonable assurance that financial records are reliable for purposes of preparing financial statements and that assets are properly accounted for and safeguarded. The concept of reasonable assurance is based on the recognition that the cost of a system of internal accounting controls should not exceed the value of the benefits derived. The Company has a professional staff of internal auditors who monitor compliance with and assess the effectiveness of the system of internal accounting controls.

The Audit Committee of the Board of Directors, comprised of independent directors, meets regularly with management, the internal auditors, and the independent auditors to discuss matters relating to financial reporting, internal accounting control, and the nature, extent and results of the audit effort. The independent auditors and internal auditors have full and free access to the Audit Committee, with and without management present.

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

The management of Arch Resources, Inc. and subsidiaries (the "Company") is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Securities Exchange Act Rule 13a-15(f). Our internal control over financial reporting is a process designed under the supervision of our principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America.

Because of its inherent limitations, internal control over financial reporting may not detect or prevent misstatements. Projections of any evaluation of the 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 processes may deteriorate.

Under the supervision and with the participation of the Company's management, including its principal executive officer and principal financial officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting as of December 31, 2023 based on the criteria set forth in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its evaluation, management concluded that the Company's internal control over financial reporting is effective as of December 31, 2023.

The Company's independent registered public accounting firm, Ernst & Young LLP, has issued an attestation report on the Company's internal control over financial reporting as of December 31, 2023.

Arch Resources, Inc. and Subsidiaries
Consolidated Income Statements
(in thousands, except per share data)

	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Revenues	$ 3,145,843	$ 3,724,593	$ 2,208,042
Costs, expenses and other operating			
Cost of sales (exclusive of items shown separately below)	2,341,956	2,338,863	1,579,836
Depreciation, depletion and amortization	146,418	133,300	120,327
Accretion on asset retirement obligations	21,170	17,721	21,748
Change in fair value of coal derivatives, net	1,572	1,274	(2,392)
Selling, general and administrative expenses	98,871	105,355	92,342
Loss on divestitures	—	—	24,225
Other operating (income) expense, net	(10,598)	18,669	4,826
	2,599,389	2,615,182	1,840,912
Income from operations	546,454	1,109,411	367,130
Interest income (expense), net			
Interest expense	(14,821)	(20,461)	(23,972)
Interest and investment income	17,259	7,299	628
	2,438	(13,162)	(23,344)
Income before nonoperating expenses	548,892	1,096,249	343,786
Nonoperating expense			
Non-service related pension and postretirement benefit credits (costs)	3,786	(2,841)	(4,339)
Net loss resulting from early retirement of debt	(1,126)	(14,420)	—
	2,660	(17,261)	(4,339)
Income before income taxes	551,552	1,078,988	339,447
Provision for (benefit from) income taxes	87,514	(251,926)	1,874
Net income	$ 464,038	$ 1,330,914	$ 337,573
Net income per common share			
Basic earnings per share	$ 25.45	$ 77.67	$ 22.04
Diluted earnings per share	$ 24.20	$ 63.88	$ 19.20
Weighted average shares outstanding			
Basic weighted average shares outstanding	18,233	17,136	15,318
Diluted weighted average shares outstanding	19,183	20,985	17,579

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

Arch Resources, Inc. and Subsidiaries
Consolidated Statements of Comprehensive Income
(in thousands)

	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Net income	$ 464,038	$ 1,330,914	$ 337,573
Derivative instruments			
Comprehensive income before tax	—	1,763	2,128
Provision for income taxes	—	—	—
	—	1,763	2,128
Pension, postretirement and other post-employment benefits			
Comprehensive (loss) income before tax	(24,364)	57,930	47,562
Provision for (benefit from) income taxes	1,662	(12,548)	—
	(22,702)	45,382	47,562
Available-for-sale securities			
Comprehensive income before tax	39	161	169
Provision for (benefit from) income taxes	16	(35)	—
	55	126	169
Total other comprehensive (loss) income	(22,647)	47,271	49,859
Total comprehensive income	$ 441,391	$ 1,378,185	$ 387,432

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

Arch Resources, Inc. and Subsidiaries
Consolidated Balance Sheets
(in thousands, except per share data)

	December 31, 2023	December 31, 2022
Assets		
Current assets		
Cash and cash equivalents	$ 287,807	$ 236,059
Short-term investments	32,724	36,993
Restricted cash	1,100	1,100
Trade accounts receivable (net of $0 allowance at December 31, 2023 and December 31, 2022)	273,522	236,999
Other receivables	13,700	18,301
Inventories	244,261	223,015
Other current assets	64,653	71,384
Total current assets	917,767	823,851
Property, plant and equipment		
Coal lands and mineral rights	402,387	406,085
Plant and equipment	1,099,511	968,420
Deferred mine development	509,637	475,037
	2,011,535	1,849,542
Less accumulated depreciation, depletion and amortization	(782,644)	(662,514)
Property, plant and equipment, net	1,228,891	1,187,028
Other assets		
Deferred income taxes	124,024	209,470
Equity investments	22,815	17,267
Fund for asset retirement obligations	142,266	135,993
Other noncurrent assets	48,410	59,499
Total other assets	337,515	422,229
Total assets	$ 2,484,173	$ 2,433,108
Liabilities and Stockholders' Equity		
Current Liabilities		
Accounts payable	$ 205,001	$ 211,848
Accrued expenses and other current liabilities	127,617	157,043
Current maturities of debt	35,343	57,988
Total current liabilities	367,961	426,879
Long-term debt	105,252	116,288
Asset retirement obligations	255,740	235,736
Accrued pension benefits	878	1,101
Accrued postretirement benefits other than pension	47,494	49,674
Accrued workers' compensation	154,650	155,756
Other noncurrent liabilities	72,742	82,094
Total liabilities	1,004,717	1,067,528
Stockholders' equity		
Common stock, $0.01 par value, authorized 300,000 shares, issued 30,557 and 28,761 shares at December 31, 2023 and December 31, 2022, respectively	306	288
Paid-in capital	720,029	724,660
Retained earnings	1,830,018	1,565,374
Treasury stock, 12,197 and 11,207 shares at December 31, 2023 and December 31, 2022, respectively, at cost	(1,109,679)	(986,171)
Accumulated other comprehensive income	38,782	61,429
Total stockholders' equity	1,479,456	1,365,580
Total liabilities and stockholders' equity	$ 2,484,173	$ 2,433,108

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

Arch Resources, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Operating activities			
Net income	$ 464,038	$ 1,330,914	$ 337,573
Adjustments to reconcile to cash from operating activities:			
Depreciation, depletion and amortization	146,418	133,300	120,327
Accretion on asset retirement obligations	21,170	17,721	21,748
Deferred income taxes	87,091	(222,023)	8
Employee stock-based compensation expense	25,443	27,383	20,539
Amortization relating to financing activities	1,751	2,459	6,549
(Gain) loss on disposals and divestitures, net	(731)	(997)	23,276
Reclamation work completed	(21,456)	(13,720)	(39,047)
Contribution to fund for asset retirement obligations	(6,273)	(115,993)	(20,000)
Changes in:			
Receivables	(31,763)	77,274	(212,950)
Inventories	(21,246)	(66,281)	(30,726)
Accounts payable, accrued expenses and other current liabilities	(31,323)	84,947	45,547
Income taxes, net	(938)	(30,507)	1,820
Coal derivative assets and liabilities, including margin account	1,572	1,274	(3,553)
Asset retirement obligations	3,441	(1,193)	(13,697)
Pension, postretirement and other postemployment benefits	(10,434)	(25,537)	4,571
Other	8,614	10,519	(23,701)
Cash provided by operating activities	635,374	1,209,540	238,284
Investing activities			
Capital expenditures	(176,037)	(172,728)	(245,440)
Minimum royalty payments	(1,175)	(1,069)	(1,186)
Proceeds from disposals and divestitures	4,055	1,972	21,228
Purchases of short-term investments	(35,412)	(39,731)	—
Proceeds from sales of short-term investments	40,292	17,337	87,486
Investments in and advances to affiliates, net	(17,345)	(9,575)	(3,303)
Cash used in investing activities	(185,622)	(203,794)	(141,215)
Financing activities			
Payments on term loan due 2024	(3,000)	(273,788)	(7,895)
Proceeds from equipment financing	—	—	19,438
Proceeds from tax exempt bonds	—	—	44,985
Payments on convertible debt	(58,430)	(208,130)	—
Net payments on other debt	(18,943)	(11,235)	(11,195)
Debt financing costs	—	(1,035)	(2,057)
Purchases of treasury stock	(125,508)	(156,790)	—
Dividends paid	(206,125)	(456,392)	(3,830)
Payments for taxes related to net share settlement of equity awards	(30,240)	(7,052)	(4,840)
Proceeds from warrants exercised	44,242	19,540	1,175
Cash (used in) provided by financing activities	(398,004)	(1,094,882)	35,781
Increase (decrease) in cash and cash equivalents, including restricted cash	51,748	(89,136)	132,850
Cash and cash equivalents, including restricted cash, beginning of period	$ 237,159	$ 326,295	193,445
Cash and cash equivalents, including restricted cash, end of period	$ 288,907	$ 237,159	$ 326,295
Cash and cash equivalents, including restricted cash, end of period			
SUPPLEMENTAL CASH FLOW INFORMATION			
Cash and cash equivalents	$ 287,807	$ 236,059	$ 325,194
Restricted Cash	1,100	1,100	1,101
Cash paid during the period for interest	$ 10,466	$ 18,820	$ 31,568

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

Arch Resources, Inc. and Subsidiaries
Consolidated Statements of Stockholders' Equity
Three Years Ended December 31, 2023

	Common Stock	Paid-In Capital	Treasury Stock, at Cost	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
	(In thousands, except per share data)					
BALANCE AT DECEMBER 31, 2020	$ 253	$ 767,484	$ (827,381)	$ 378,906	$ (35,701)	$ 283,561
Dividends on common shares	—	—	—	(4,001)	—	(4,001)
Issuance of 157,609 shares of common stock under long-term incentive plan	2	—	—	—	—	2
Employee stock-based compensation	—	20,539	—	—	—	20,539
Common stock withheld related to net share settlement of equity awards	—	(4,842)	—	—	—	(4,842)
Warrants exercised	—	1,175	—	—	—	1,175
Total comprehensive income	—	—	—	337,573	$ 49,859	387,432
BALANCE AT DECEMBER 31, 2021	$ 255	$ 784,356	$ (827,381)	$ 712,478	$ 14,158	$ 683,866
Cumulative effect of accounting change on convertible debt	—	(39,239)	—	6,718	—	(32,521)
Dividends on common shares	—	—	—	(456,459)	—	(456,459)
Dividend equivalents earned on RSU grants	—	826	—	(28,277)	—	(27,451)
Purchase of 1,118,457 shares of common stock under share repurchase program	—	—	(158,790)	—	—	(158,790)
Employee stock-based compensation	—	27,383	—	—	—	27,383
Cash paid for convertible debt repurchased	—	(61,124)	—	—	—	(61,124)
Issuance of 92,314 shares of common stock under long-term incentive plan	1	—	—	—	—	1
Issuance of 2,636,660 shares of common stock for convertible debt exchanged	26	(32)	—	—	—	(6)
Common stock withheld related to net share settlement of equity awards	—	(7,052)	—	—	—	(7,052)
Issuance of 561,561 shares of common stock for warrants exercised	6	19,542	—	—	—	19,548
Total comprehensive income	—	—	—	1,330,914	$ 47,271	1,378,185
BALANCE AT DECEMBER 31, 2022	$ 288	$ 724,660	$ (986,171)	$ 1,565,374	$ 61,429	$ 1,365,580
Dividends on common shares	—	—	—	(192,471)	—	(192,471)
Dividend equivalents earned on RSU grants	—	428	—	(6,923)	—	(6,495)
Issuance of 311,506 shares of common stock under long-term incentive plan	3	(3)	—	—	—	—
Purchase of 989,792 shares of common stock under share repurchase program	—	—	(123,508)	—	—	(123,508)
Employee stock-based compensation	—	25,443	—	—	—	25,443
Cash paid for convertible debt repurchased	—	(44,486)	—	—	—	(44,486)
Common stock withheld related to net share settlement of equity awards	—	(30,240)	—	—	—	(30,240)
Issuance of 1,484,226 shares of common stock for warrants exercised	15	44,227	—	—	—	44,242
Total comprehensive income	—	—	—	464,038	$ (22,647)	441,391
BALANCE AT DECEMBER 31, 2023	$ 306	$ 720,029	$ (1,109,679)	$ 1,830,018	$ 38,782	$ 1,479,456

Arch Resources, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

1. Basis of Presentation

The accompanying consolidated financial statements include the accounts of Arch Resources, Inc. ("Arch Resources") and its subsidiaries and controlled entities (the "Company"). Unless the context indicates otherwise, the terms "Arch" and the "Company" are used interchangeably in this Annual Report on Form 10-K. The Company's primary business is the production of metallurgical and thermal coal from underground and surface mines located throughout the United States, for sale to steel producers, utility companies, and industrial accounts both in the United States and around the world. The Company currently operates mining complexes in West Virginia, Wyoming and Colorado. All subsidiaries are wholly-owned. Intercompany transactions and accounts have been eliminated in consolidation.

2. Accounting Policies

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for financial reporting and U.S. Securities and Exchange Commission regulations.

Accounting Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and revenues and expenses in the accompanying consolidated financial statements and the disclosure of contingent assets and liabilities. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents are stated at cost. Cash equivalents consist of highly-liquid investments with an original maturity of three months or less when purchased and investments in commercial paper which the Company classifies as cash and cash equivalents.

Restricted Cash

Amounts included in restricted cash represent required deposits for a performance bid bond for a potential customer for $1.1 million as of both December 31, 2023 and 2022, respectively.

Accounts Receivable

Accounts receivable are recorded at amounts that are expected to be collected, based on past collection history, the economic environment and specified risks identified in the receivables portfolio.

Inventories

Coal and supplies inventories are valued at the lower of average cost or market. Coal inventory costs include labor, supplies, equipment costs, transportation costs incurred prior to the transfer of title to customers and operating overhead. The costs of removing overburden, called stripping costs, incurred during the production phase of the mine are considered variable production costs and are included in the cost of the coal extracted during the period the stripping costs are incurred.

Investments and Membership Interests in Joint Ventures

Investments and membership interests in joint ventures are accounted for under the equity method of accounting if the Company has the ability to exercise significant influence, but not control, over the entity. The Company's share of the entity's income or loss is reflected in "Other operating (income) expense, net" in the Consolidated Income Statements. Information about investment activity is provided in Note 7, "Equity Method Investments and Membership Interests in Joint Ventures" to the Consolidated Financial Statements.

Investments in debt securities are classified as available-for-sale and are recorded at their fair values. Unrealized gains and losses on these investments are recorded in other comprehensive income or loss. A decline in the value of an investment that is considered other-than-temporary would be recognized in operating expenses.

Exploration Costs

Costs to acquire permits for exploration activities are capitalized. Drilling and other costs related to locating coal deposits and evaluating the economic viability of such deposits are expensed as incurred.

Prepaid Royalties

Leased mineral rights are often acquired through royalty payments. When royalty payments represent prepayments recoupable against royalties owed on future revenues from the underlying coal, they are recorded as a prepaid asset, with amounts expected to be recouped within one year classified as current. When coal from these leases is sold, the royalties owed are recouped against the prepayment and charged to cost of sales. An impairment charge is recognized for prepaid royalties that are not expected to be recouped.

Property, Plant and Equipment

Plant and Equipment

Plant and equipment were recorded at fair value at emergence during fresh start accounting; subsequent purchases of property, plant and equipment have been recorded at cost. Interest costs incurred during the construction period for major asset additions are capitalized. The Company did not capitalize interest costs during the years ended December 31, 2023, and 2022, respectively. Expenditures that extend the useful lives of existing plant and equipment or increase the productivity of the asset are capitalized. The cost of maintenance and repairs that do not extend the useful life or increase the productivity of the asset is expensed as incurred.

Preparation plants and loadouts are depreciated using the units-of-production method over the estimated recoverable reserves, subject to a minimum level of depreciation. Other plant and equipment are depreciated principally using the straight-line method over the estimated useful lives of the assets, limited by the remaining life of the mine. The useful lives of mining equipment, including longwalls, draglines and shovels, range from 1 to 16 years. The useful lives of buildings and leasehold improvements generally range from 5 to 20 years.

Deferred Mine Development

Costs of developing new mines or significantly expanding the capacity of existing mines are capitalized and amortized using the units-of-production method over the estimated recoverable reserves that are associated with the property being benefited. Costs may include construction permits and licenses; mine design; construction of access roads, shafts, slopes and main entries; and removing overburden to access reserves in a new pit. Additionally, deferred mine development includes the asset cost associated with asset retirement obligations. Coal sales revenue related to incidental production during the development phase is recorded as coal sales revenue with an offset to cost of coal sales based on the estimated cost per ton sold for the mine when the asset is in place for its intended use.

Coal Lands and Mineral Rights

Rights to coal reserves may be acquired directly through governmental or private entities. A significant portion of the Company's coal reserves are controlled through leasing arrangements. Lease agreements are generally long-term in nature (original terms range from 10 to 50 years), and substantially all of the leases contain provisions that allow for automatic extension of the lease term providing certain requirements are met. Leases of mineral reserves and related land leases are exempt from the provisions of the leasing standard.

The net book value of the Company's coal interests was $215.6 million and $239.4 million at December 31, 2023 and 2022, respectively. Payments to acquire royalty lease agreements and lease bonus payments are capitalized as a cost of the underlying mineral reserves and depleted over the life of proven and probable reserves. Coal lease rights are depleted using the units-of-production method, and the rights are assumed to have no residual value.

The Company currently does not have any future lease bonus payments.

Depreciation, depletion and amortization

The depreciation, depletion and amortization related to long-lived assets is reflected in the Consolidated Income Statements as a separate line item. No depreciation, depletion or amortization are included in any other operating cost categories.

Impairment

If facts and circumstances suggest that the carrying value of a long-lived asset or asset group may not be recoverable, the asset or asset group is reviewed for potential impairment. If this review indicates that the carrying amount of the asset will not be recoverable through projected undiscounted cash flows generated by the asset and its related asset group over its remaining life, then an impairment loss is recognized by reducing the carrying value of the asset to its fair value. The Company may, under certain circumstances, idle mining operations in response to market conditions or other factors. Because an idling is not a permanent closure, it is not considered an automatic indicator of impairment.

Deferred Financing Costs

The Company capitalizes costs incurred in connection with new borrowings, the establishment or enhancement of credit facilities and the issuance of debt securities. These costs are amortized as an adjustment to interest expense over the life of the borrowing or term of the credit facility using the effective interest method. Debt issuance costs related to a recognized liability are presented in the balance sheet as a direct reduction from the carrying amount of that liability whereas debt issuance costs related to a credit facility with no balance outstanding are shown as an asset. The unamortized balance of deferred financing costs shown as an asset was $1.0 million at December 31, 2023, with $0.6 million classified as current; the unamortized balance of deferred financing costs shown as an asset at December 31, 2022 was $1.6 million with $0.6 million classified as current. The current amounts are classified within "Other current assets" and the noncurrent amounts are classified within "Other noncurrent assets." For information on the unamortized balance of deferred financing fees related to outstanding debt, see Note 10, "Debt and Financing Arrangements" to the Consolidated Financial Statements.

Revenue Recognition

Revenues include sales to customers of coal produced at Company operations and coal purchased from third parties. The Company recognizes revenue at the time risk of loss passes to the customer at contracted amounts. Transportation costs are included in cost of sales and amounts billed by the Company to its customers for transportation are included in revenues. Control of the goods may transfer and revenue may be recognized before, during or subsequent to the period in which final average pricing is determined. For all metallurgical coal sales under average pricing contracts where pricing is not finalized when revenue is recognized, revenue is recorded based on estimated consideration to be received at the date of the sale with reference to metallurgical coal price assessments.

Other Operating (Income) Expense, net

Other operating (income) expense, net in the accompanying Consolidated Income Statements reflects income and expense from sources other than physical coal sales, including: contract settlements; royalties earned from properties leased to third parties; income from equity investments (Note 7, "Equity Method Investments and Membership Interests in Joint Ventures"); non-material gains and losses from divestitures and dispositions of assets; and realized gains and losses on derivatives that do not qualify for hedge accounting and are not held for trading purposes (Note 8, "Derivatives"); and land management expenses.

Asset Retirement Obligations

The Company's legal obligations associated with the retirement of long-lived assets are recognized at fair value at the time the obligations are incurred. Accretion expense is recognized through the expected settlement date of the obligation. Obligations are incurred at the time development of a mine commences for underground and surface mines or construction begins for support facilities, refuse areas and slurry ponds. The obligation's fair value is determined using a discounted cash flow technique and is based upon permit requirements and various estimates and assumptions that would be used by market participants, including estimates of disturbed acreage, reclamation costs and assumptions regarding equipment productivity. Upon initial recognition of a liability, a corresponding amount is capitalized as a component of the carrying value of the related long-lived asset.

The Company reviews its asset retirement obligation at least annually and makes necessary adjustments for permit changes as granted by state authorities and for revisions of estimates of the amount and timing of costs. For ongoing operations, adjustments to the liability result in an adjustment to the corresponding asset. For idle operations, adjustments to the liability are recognized as income or expense in the period the adjustment is recorded. Any difference between the recorded obligation and the actual cost of reclamation is recorded in profit or loss in the period the obligation is settled. See additional discussion in Note 12, "Asset Retirement Obligations" to the Consolidated Financial Statements.

Loss Contingencies

The Company accrues for cost related to contingencies when a loss is probable and the amount is reasonably determinable. Disclosure of contingencies is included in the financial statements when it is at least reasonably possible that a material loss or an additional material loss in excess of amounts already accrued may be incurred. The amount accrued represents the Company's best estimate of the loss, or, if no best estimate within a range of outcomes exists, the minimum amount in the range.

Derivative Instruments

The Company generally utilizes derivative instruments to manage exposures to commodity prices and interest rate risk on long-term debt. Derivative financial instruments are recognized on the balance sheet at fair value. Certain coal contracts may meet the definition of a derivative instrument, but because they provide for the physical purchase or sale of coal in quantities expected to be used or sold by the Company over a reasonable period in the normal course of business, they are not recognized on the balance sheet.

See Note 8, "Derivatives" to the Consolidated Financial Statements for further disclosures related to the Company's derivative instruments.

Fair Value

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly hypothetical transaction between market participants at a given measurement date. Valuation techniques used must maximize the use of observable inputs and minimize the use of unobservable inputs. See Note 13, “Fair Value Measurements” to the Consolidated Financial Statements for further disclosures related to the Company’s recurring fair value estimates.

Income Taxes

Deferred income taxes are provided for temporary differences arising from differences between the financial statement and tax basis of assets and liabilities existing at each balance sheet date using enacted tax rates anticipated to be in effect when the related taxes are expected to be paid or recovered. A valuation allowance is established if it is more likely than not that a deferred tax asset will not be realized. Management reassesses the ability to realize its deferred tax assets annually in the fourth quarter or when circumstances indicate that the ability to realize deferred tax assets has changed. In determining the need for a valuation allowance, the Company considers projected realization of tax benefits based on expected levels of future taxable income, available tax planning strategies and the reversal of temporary differences. As it relates to changes in accumulated other comprehensive income (loss), the Company’s policy is to release tax effects from accumulated other comprehensive income (loss) when the underlying components affect earnings.

Benefits from tax positions that are uncertain are not recognized unless the Company concludes that it is more likely than not that the position would be sustained in a dispute with taxing authorities, should the dispute be taken to the court of last resort. The Company would measure any such benefit at the largest amount of benefit that is greater than 50% likely of being realized upon settlement with taxing authorities.

See Note 11, “Taxes” to the Consolidated Financial Statements for further disclosures about income taxes.

Benefit Plans

In February 2022, the Board of Directors approved the termination of the Company’s Cash Balance Pension Plan. The Company has executed plan amendments regarding the termination and filed an Application for Determination for Terminating Pension Plan with the Internal Revenue Service (“IRS”), which was approved by the IRS during the first quarter of 2023. The Company also prepared and filed appropriate notices and documents related to the Pension Plan's termination and wind-down with the Pension Benefit Guaranty Corporation (“PBGC”). To complete the termination of the plan, the Company made a $3.2 million cash contribution into the plan in order to complete lump sum payments and to purchase annuity contracts for plan participants. An immaterial gain was recognized on the plan termination, which is reflected in the Consolidated Income Statements line item “Non-service related pension and postretirement benefits credits (costs)”. The Company no longer administers or pays the retirement benefits of the Company’s Cash Balance Pension Plan going forward.

Stock-Based Compensation

The compensation cost of all stock-based awards is determined based on the grant-date fair value of the award, and is recognized over the requisite service period. The grant-date fair value of restricted stock awards with a market condition is determined using a Monte Carlo simulation. Compensation cost for an award with performance conditions is accrued if it is probable that the conditions will be met. The Company accounts for forfeitures as they occur. See further discussion in Note 15, “Stock-Based Compensation and Other Incentive Plans” to the Consolidated Financial Statements.

Recently Adopted Accounting Guidance

In August 2020, the FASB issued ASU 2020-06**,** Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)—Accounting for Convertible

Instruments and Contracts in an Entity's Own Equity. ASU 2020-06 reduces the number of accounting models for convertible debt instruments. Additionally, ASU 2020-06 amends the diluted earnings per share calculation for convertible instruments by requiring the use of the if-converted method. The if-converted method assumes the conversion of convertible instruments occurs at the beginning of the reporting period and diluted weighted average shares outstanding includes the common shares issuable upon conversion of the convertible instruments. ASU 2020-06 is effective for public business entities, for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. The Company adopted ASU 2020-06 on January 1, 2022 under the modified retrospective approach.

Upon issuance of the Company's $155.3 million principal amount of 5.25% convertible senior notes due 2025 (the "Convertible Notes" or “Convertible Debt”) in November 2020, the Company bifurcated the debt and equity components of the Convertible Notes to long-term debt and additional paid-in capital in its consolidated balance sheet. The amount recorded to additional paid-in capital represented a debt discount that was being amortized to interest expense over the life of the Convertible Notes. As part of the adoption of ASU 2020-06, the Company (i) reversed the equity component recorded to additional paid-in capital of $39.2 million, (ii) recorded a cumulative effect of the adoption of ASU 2020-06 of $6.7 million to retained earnings, representing a reversal of the debt discount that was amortized to interest expense, and (iii) recorded an offsetting increase in debt. See Note 10, “Debt and Financing Arrangements” for additional information.

Additionally, upon adoption of ASU 2020-06, the treasury stock method utilized by the Company to calculate earnings per share through December 31, 2021 is no longer permitted. Accordingly, the Company has transitioned to the if-converted method utilizing the modified retrospective approach. For the year ended December 31, 2022, under the previous treasury stock method, the diluted earnings per share would have been approximately $65.28. As a result of the adoption of ASU 2020-06, diluted earnings per share decreased by $1.40 for the year ended December 31, 2022. During 2023, the Company repurchased the remaining Convertible Notes with a principal amount of $13.2 million for aggregate consideration consisting of $58.4 million in cash.

Recently Adopted Accounting Guidance Not Yet Effective

In November 2023, the FASB issued ASU 2023-07 Segment Reporting – Improving Reportable Segment Disclosures (Topic 280). The update is intended to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant expenses. The ASU requires disclosure to include significant segment expenses that are regularly provided to the chief operating decision maker (CODM), a description of other segment items by reportable segment, and any additional measures of a segment’s profit or loss used by the CODM when deciding how to allocate resources. The ASU also requires all annual disclosures currently required by Topic 280 to be included in interim periods. The update is effective for fiscal years beginning after December 15, 2023 and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted and requires retrospective application to all prior periods presented in the financial statements. The Company is currently assessing the timing and impact of adopting the updated provisions.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which includes amendments that further enhance income tax disclosures, primarily through standardization and disaggregation of rate reconciliation categories and income taxes paid by jurisdiction. The amendments are effective for the Company’s annual periods beginning June 1, 2025, with early adoption permitted, and should be applied either prospectively or retrospectively. The Company is currently evaluating the ASU to determine its impact on the Company’s disclosures.

3. Accumulated Other Comprehensive Income (Loss)

The following items are included in accumulated other comprehensive income:

	Derivative Instruments	Pension, Postretirement and Other Post-Employment Benefits	Available-for-Sale Securities	Accumulated Other Comprehensive Income (loss)
		(In thousands)		
January 1, 2022	$ (1,763)	$ 16,103	$ (182)	$ 14,158
Unrealized gains (losses)	223	61,041	(21)	61,243
Amounts reclassified from accumulated other comprehensive income (loss)	1,540	(3,111)	182	(1,389)
Tax effect	—	(12,548)	(35)	(12,583)
Balances at December 31, 2022	$ —	$ 61,485	$ (56)	$ 61,429
Unrealized (losses) gains	—	(8,506)	9	(8,497)
Amounts reclassified from accumulated other comprehensive income (loss)	—	(15,858)	30	(15,828)
Tax effect	—	1,662	16	1,678
Balances at December 31, 2023	$ —	$ 38,783	$ (1)	$ 38,782

The following amounts were reclassified out of accumulated other comprehensive income (loss) during the respective periods:

Details About AOCI Components	December 31, 2023	December 31, 2022	Line Item in the Condensed Consolidated Income Statements
Interest rate hedges	$ —	$ (112)	Interest expense
Interest rate hedges (ineffective portion)	—	(1,428)	Net loss resulting from early retirement of debt
	—	—	Provision for income taxes
	$ —	$ (1,540)	Net of tax
Pension, postretirement and other post-employment benefits			
Amortization of actuarial gains, net [1]	$ 11,208	$ 2,193	Non-service related pension and postretirement benefit credits (costs)
Amortization of prior service credits	98	147	Non-service related pension and postretirement benefit credits
Pension Termination/Settlement	4,552	771	Non-service related pension and postretirement benefit credits (costs)
	$ 15,858	$ 3,111	Total before tax
	(1,662)	(674)	Provision for income taxes
	$ 14,196	$ 2,437	Net of tax
Available-for-sale securities [2]	$ (30)	$ (182)	Interest and investment income
	16	39	Provision for income taxes
	$ (14)	$ (143)	Net of tax

[1] Production-related benefits and workers' compensation costs are included in costs of sales.
[2] The gains and losses on sales of available-for-sale-securities are determined on a specific identification basis.

4. Divestitures

In November 2021, the Company sold its 49.5% ownership in Knight Hawk Holdings, LLC (Knight Hawk") to CBR, LLC. The Company received total proceeds of $38 million which consisted of $20 million received in the fourth quarter of 2021 and a three year note receivable for $18 million with monthly payments of $0.5 million. The sale resulted in a non-cash loss of $24.2 million that was recorded in "Loss on divestitures" in the year ended December 31, 2021.

5. Inventories

Inventories consist of the following:

	December 31, 2023	December 31, 2022
	(In thousands)	
Coal	$ 99,174	$ 96,954
Repair parts and supplies	145,087	126,061
	$ 244,261	$ 223,015

The repair parts and supplies are stated net of an allowance for slow-moving and obsolete inventories of $1.6 million at December 31, 2023 and $2.4 million at December 31, 2022.

6. Investments in Available-for-Sale Securities

The Company has invested in marketable debt securities, primarily highly liquid U.S. Treasury securities and investment grade corporate bonds. These investments are held in the custody of a major financial institution. These securities are classified as available-for-sale securities and, accordingly, the unrealized gains and losses are recorded through other comprehensive income.

The Company's investments in available-for-sale marketable securities are as follows:

	December 31, 2023				
	Cost Basis	Gross Unrealized Gains	Gross Unrealized Losses	Allowance for - Credit Losses	Fair Value
		(In thousands)			
Available-for-sale:					
U.S. government and agency securities	$ 28,764	$ 14	$ (5)	$ —	$ 28,773
Corporate notes and bonds	3,951	1	(1)	—	3,951
Total Investments	$ 32,715	$ 15	$ (6)	$ —	$ 32,724

	December 31, 2022				
	Cost Basis	Gross Unrealized Gains	Gross Unrealized Losses	Allowance for - Credit Losses	Fair Value
		(In thousands)			
Available-for-sale:					
U.S. government and agency securities	$ 28,325	$ 1	$ (25)	$ —	$ 28,301
Corporate notes and bonds	8,689	20	(17)	—	8,692
Total Investments	$ 37,014	$ 21	$ (42)	$ —	$ 36,993

The aggregate fair value of investments with unrealized losses that had been owned for less than a year was $2.2 million and $22.6 million at December 31, 2023 and 2022, respectively. The aggregate fair value of investments with unrealized losses that have been owned for over a year was $2.3 million and $0.0 million at December 31, 2023 and 2022, respectively.

The debt securities outstanding at December 31, 2023 have maturity dates ranging through the first quarter of 2025. The Company classifies its investments as current based on the nature of the investments and their availability to provide cash for use in current operations, if needed.

7. Equity Method Investments and Membership Interests in Joint Ventures

The Company accounts for its investments and membership interests in joint ventures under the equity method of accounting if the Company has the ability to exercise significant influence, but not control, over the entity. Equity method investments are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the investments may not be recoverable.

Below are the equity method investments reflected in the consolidated balance sheets:

(In thousands)	DTA
December 31, 2021	$ 15,403
Advances to affiliates, net	9,575
Equity in comprehensive loss	(7,711)
December 31, 2022	$ 17,267
Advances to affiliates, net	17,345
Equity in comprehensive loss	(11,797)
December 31, 2023	$ 22,815

The Company holds a 35% general partnership interest in Dominion Terminal Associates LLP ("DTA"), which is accounted for under the equity method. DTA operates a ground storage-to-vessel coal transloading facility in Newport News, Virginia for use by the partners. Under the terms of a throughput and handling agreement with DTA, each partner is charged its share of cash operating and debt-service costs in exchange for the right to use the facility's loading capacity and is required to make periodic cash advances to DTA to fund such costs.

The Company is not required to make any future contingent payments related to development financing for its equity investee.

8. Derivatives

Diesel fuel price risk management

The Company is exposed to price risk with respect to diesel fuel purchased for use in its operations. The Company anticipates purchasing approximately 30 to 35 million gallons of diesel fuel for use in its operations during 2024. To protect the Company's cash flows from increases in the price of diesel fuel, the Company has purchased heating oil call options. At December 31, 2023, the Company had protected the price of expected diesel fuel purchases for 2024 with approximately 24 million gallons of heating oil call options with an average strike price of $2.96 per gallon. These positions are not designated as hedges for accounting purposes, and therefore, changes in the fair value are recorded immediately to earnings.

Coal risk management positions

The Company may sell or purchase forward contracts, swaps and options in the over-the-counter coal market in order to manage its exposure to coal prices. The Company has exposure to the risk of fluctuating coal prices related to forecasted sales or purchases of coal or to the risk of changes in the fair value of a fixed price physical sales contract. Certain derivative contracts may be designated as hedges of these risks.

At December 31, 2023, the Company held approximately 7,000 tons of coal derivatives for risk management purposes that are expected to settle in 2024.

Tabular derivatives disclosures

The Company has master netting agreements with all of its counterparties which allow for the settlement of contracts in an asset position with contracts in a liability position in the event of default or termination. Such netting arrangements reduce the Company's credit exposure related to these counterparties. For classification purposes, the Company records the net fair value of all the positions with a given counterparty as a net asset or liability in the Consolidated Balance Sheets. The amounts shown in the table below represent the fair value position of individual contracts, and not the net position presented in the accompanying Consolidated Balance Sheets.

The fair value and location of derivatives reflected in the accompanying Consolidated Balance Sheets are as follows:

Fair Value of Derivatives (In thousands)	December 31, 2023			December 31, 2022		
	Asset Derivative	Liability Derivative		Asset Derivative	Liability Derivative	
Derivatives Not Designated as Hedging Instruments						
Heating oil -- diesel purchases	998	—		1,300	—	
Coal -- risk management	—	(165)		1,407	—	
Total	$ 998	$ (165)		$ 2,707	$ —	
Total derivatives	$ 998	$ (165)		$ 2,707	$ —	
Effect of counterparty netting	—	—		—	—	
Net derivatives as classified in the balance sheets	$ 998	$ (165)	$ 833	$ 2,707	$ —	$ 2,707

Fair Value of Derivatives (In thousands)		December 31, 2023	December 31, 2022
Net derivatives as reflected on the balance sheets (in thousands)			
Heating Oil and coal	Other current assets	$ 998	$ 2,707
Coal	Accrued expenses and other current liabilities	(165)	—
		$ 833	$ 2,707

The Company had a current asset representing cash collateral posted to a margin account for derivative positions primarily related to coal derivatives of $0.6 million at December 31, 2023. At December 31, 2022, the current open derivative positions were non-margined. This amount is not included with the derivatives presented in the table above and is included in "other current assets" in the accompanying Consolidated Balance Sheets.

The effects of derivatives on measures of financial performance are as follows:

Derivatives Not Designated as Hedging Instruments (in thousands)

For the noted periods,

		Gain (Loss) Recognized		
		Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Coal trading— realized and unrealized	(3)	$ —	$ —	$ —
Coal risk management— unrealized	(3)	(1,572)	(1,274)	2,392
Natural gas trading — realized and unrealized	(3)	—	—	—
Change in fair value of coal derivatives and coal trading activities, net total		$ (1,572)	$ (1,274)	$ 2,392
Coal risk management — realized	(4)	$ 6,254	$ (42,068)	$ (27,464)
Heating oil — diesel purchases	(4)	$ (4,079)	$ 8,309	$ —

Location in Consolidated Statements of Operations:

(1) — Revenues
(2) — Cost of sales
(3) — Change in fair value of coal derivatives, net
(4) — Other operating income, net

9. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following:

	December 31, 2023	December 31, 2022
	(In thousands)	
Payroll and employee benefits	$ 37,259	$ 61,836
Taxes other than income taxes	51,155	53,105
Interest	2,395	2,511
Workers' compensation	18,724	17,584
Asset retirement obligations	6,089	8,632
Other	11,995	13,375
	$ 127,617	$ 157,043

10. Debt and Financing Arrangements

	December 31, 2023	December 31, 2022
	(In thousands)	
Term loan due 2024 ($3.5 million face value)	$ 3,502	$ 6,502
Tax Exempt Bonds ($98.1 million face value)	98,075	98,075
Convertible Debt	—	13,156
Other	40,529	59,472
Debt issuance costs	(1,511)	(2,929)
	140,595	174,276
Less: current maturities of debt	35,343	57,988
Long-term debt	$ 105,252	$ 116,288

Term Loan Facility

In 2017, the Company entered into a senior secured term loan credit agreement in an aggregate principal amount of $300 million (the "Term Loan Debt Facility") with Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent, and the other financial institutions from time to time party thereto (collectively, the "Lenders"). The Term Loan Debt Facility was issued at 99.50% of the face amount and will mature on March 7, 2024. The term loans provided under the Term Loan Debt Facility (the "Term Loans") are subject to quarterly principal amortization payments in an amount equal to $0.8 million. The interest rate on the Term Loan Debt Facility is, at the option of Arch Resources, either (i) LIBOR plus an applicable margin of 2.75%, subject to a 1.00% LIBOR floor, or (ii) a base rate plus an applicable margin of 1.75%.

The Term Loan Debt Facility is guaranteed by all existing and future wholly owned domestic subsidiaries of the Company (collectively, the "Subsidiary Guarantors" and, together with Arch Resources, the "Loan Parties"), subject to customary exceptions, and is secured by first priority security interests on substantially all assets of the Loan Parties, including 100% of the voting equity interests of directly owned domestic subsidiaries and 65% of the voting equity interests of directly owned foreign subsidiaries, subject to customary exceptions.

The Company has the right to prepay Term Loans at any time and from time to time in whole or in part without premium or penalty, upon written notice, except that any prepayment of Term Loans that bear interest at the LIBOR Rate other than at the end of the applicable interest periods therefor shall be made with reimbursement for any funding losses and redeployment costs of the Lenders resulting therefrom.

The Term Loan Debt Facility is subject to certain usual and customary mandatory prepayment events, including 100% of net cash proceeds of (i) debt issuances (other than debt permitted to be incurred under the terms of the New Term Loan Debt Facility) and (ii) non-ordinary course asset sales or dispositions, subject to customary thresholds, exceptions and reinvestment rights.

The Term Loan Debt Facility contains customary affirmative covenants and representations.

The Term Loan Debt Facility also contains customary negative covenants, which, among other things, and subject to certain exceptions, include restrictions on (i) indebtedness, (ii) liens, (iii) liquidations, mergers, consolidations and acquisitions, (iv) disposition of assets or subsidiaries, (v) affiliate transactions, (vi) creation or ownership of certain subsidiaries, partnerships and joint ventures, (vii) continuation of or change in business, (viii) restricted payments, (ix) prepayment of subordinated and junior lien indebtedness, (x) restrictions in agreements on dividends, intercompany loans and granting liens on the collateral, (xi) loans and investments, (xii) sale and leaseback transactions, (xiii) changes in organizational documents and fiscal year and (xiv) transactions with respect to bonding subsidiaries. The Term Loan Debt Facility does not contain any financial maintenance covenant.

The Term Loan Debt Facility contains customary events of default, subject to customary thresholds and exceptions, including, among other things, (i) nonpayment of principal and nonpayment of interest and fees, (ii) a material inaccuracy of a representation or warranty at the time made, (iii) a failure to comply with any covenant, subject to customary grace periods in the case of certain affirmative covenants, (iv) cross-events of default to indebtedness of at least $50 million, (v) cross-events of default to surety, reclamation or similar bonds securing obligations with an aggregate face amount of at least $50 million, (vi) uninsured judgments in excess of $50 million, (vii) any loan document shall cease to be a legal, valid and binding agreement, (viii) uninsured losses or proceedings against assets with a value in excess of $50 million, (ix) certain ERISA events, (x) a change of control or (xi) bankruptcy or insolvency proceedings relating to the Company or any material subsidiary of the Company.

During the year ended December 31, 2022, the Company repaid $273.8 million of the Term Loan leaving a remaining balance of $6.5 million. The remaining balance of $6.5 million was left as certain terms and conditions governing the Term Loan are incorporated into the Company's outstanding indebtedness. As a result of the repayment, the Company recorded $4.1 million in "net loss resulting from early retirement of debt" during the year ended December 31, 2022 in the accompanying Consolidated Income Statements relating to deferred financing fees, original issue

discount, and the ineffective portion of an interest rate swap designated as a cashflow hedge, partially offset by gains on repurchases of the Term Loans.

On February 8, 2024, the Company entered into a new senior secured term loan credit agreement in the principal amount of $20.0 million. The new term loan requires quarterly principal amortization payments of $3.3 million and matures on June 30, 2025. The loan is guaranteed by substantially all of the domestic subsidiaries of the Company. Additionally, the loan is secured by substantially all of the assets of the Company and the guarantors, subject to customary exceptions (including an exclusion for owned and leased real property). The proceeds from the new term loan were used to pay off the $3.5 million balance of the existing term loan debt facility.

Accounts Receivable Securitization Facility

On August 3, 2022, the Company amended and extended its existing trade accounts receivable securitization facility provided to Arch Receivable Company, LLC, a special-purpose entity that is a wholly owned subsidiary of Arch Resources ("Arch Receivable") (the "Securitization Facility"), which supports the issuance of letters of credit and requests for cash advances. The amendment to the Securitization Facility increased the size of the facility from $110 million to $150 million of borrowing capacity and extended the maturity date to August 1, 2025.

Under the Securitization Facility, Arch Receivable, Arch Resources and certain of Arch Resources' subsidiaries party to the Securitization Facility have granted to the administrator of the Securitization Facility a first priority security interest in eligible trade accounts receivable generated by such parties from the sale of coal and all proceeds thereof. As of December 31, 2023, letters of credit totaling $50.2 million were outstanding under the facility with $99.8 million available for borrowings.

Inventory-Based Revolving Credit Facility

On August 3, 2022, Arch Resources amended the senior secured inventory-based revolving credit facility in an aggregate principal amount of $50 million (the "Inventory Facility") with Regions Bank ("Regions") as administrative agent and collateral agent, as lender and swingline lender and as letter of credit issuer. Availability under the Inventory Facility is subject to a borrowing base consisting of (i) 85% of the net orderly liquidation value of eligible coal inventory, plus (ii) the lesser of (x) 85% of the net orderly liquidation value of eligible parts and supplies inventory and (y) 35% of the amount determined pursuant to clause (i), plus (iii) 100% of Arch Resources' Eligible Cash (defined in the Inventory Facility), subject to reduction for reserves imposed by Regions. The amendment of the Inventory Facility extended the maturity of the facility to August 3, 2025.

Revolving loan borrowings under the Inventory Facility bear interest at a per annum rate equal to, at the option of Arch Resources, either the base rate or the Term Secured Overnight Financing Rate ("SOFR") plus, in each case, a margin ranging from 2.25% to 3.50% (in the case of Term SOFR loans) subject to a 0.75% floor, and 1.25% to 2.50% (in the case of base rate loans) determined using a Liquidity-based grid. Letters of credit under the Inventory Facility are subject to a fee in an amount equal to the applicable margin for Term SOFR loans, plus customary fronting and issuance fees.

All existing and future direct and indirect domestic subsidiaries of Arch Resources, subject to customary exceptions, will either constitute co-borrowers under or guarantors of the Inventory Facility (collectively with Arch Resources, the "Loan Parties"). The Inventory Facility is secured by first priority security interests in the ABL Priority Collateral (defined in the Inventory Facility) of the Loan Parties and second priority security interests in substantially all other assets of the Loan Parties, subject to customary exceptions (including an exception for the collateral that secures the Securitization Facility).

Arch Resources has the right to prepay borrowings under the Inventory Facility at any time and from time to time in whole or in part without premium or penalty, upon written notice, except that any prepayment of such borrowings that bear interest at the Term SOFR rate other than at the end of the applicable interest periods therefore shall be made with reimbursement for any funding losses and redeployment costs of the Lender resulting therefrom.

The Inventory Facility is subject to certain usual and customary mandatory prepayment events, including non-ordinary course asset sales or dispositions, subject to customary thresholds, exceptions (including exceptions for required prepayments under Arch Resources' term loan facility) and reinvestment rights.

The Inventory Facility contains certain customary affirmative and negative covenants; events of default, subject to customary thresholds and exceptions; and representations, including certain cash management and reporting requirements that are customary for asset-based credit facilities. The Inventory Facility also includes a requirement to maintain Liquidity equal to or exceeding $100 million at all times. As of December 31, 2023, letters of credit totaling $26.2 million were outstanding under the facility with $23.8 million available for borrowings.

Equipment Financing

On March 4, 2020, the Company entered into an equipment financing arrangement accounted for as debt. The Company received $53.6 million in exchange for conveying an interest in certain equipment in operation at its Leer Mine and entered into a master lease arrangement for that equipment. The financing arrangement contains customary terms and events of default and provides for 48 monthly payments with an average interest rate of 6.34% maturing on March 4, 2024. Upon maturity, all interests in the subject equipment will revert back to the Company.

On July 29, 2021, the Company entered into an additional equipment financing arrangement accounted for as debt. The Company received $23.5 million in exchange for conveying an interest in certain equipment in operation at its Powder River Basin operations and entered into a master lease arrangement for that equipment. The financing arrangement contains customary terms and events of default and provides for 42 monthly payments with an average implied interest rate of 7.35% maturing on February 1, 2025. Upon maturity, the Company will have the option to purchase the equipment.

Tax Exempt Bonds

On July 2, 2020, the West Virginia Economic Development Authority (the "Issuer") issued $53.1 million aggregate principal amount of Solid Waste Disposal Facility Revenue Bonds (Arch Resources Project), Series 2020 (the "2020 Tax Exempt Bonds") pursuant to an Indenture of Trust dated as of June 1, 2020 (as amended to date, the "Indenture of Trust") between the Issuer and Citibank, N.A., as trustee (the "Trustee"). On March 4, 2021, the Issuer issued an additional $45.0 million of Series 2021 Tax Exempt Bonds (the "2021 Tax Exempt Bonds" and together with the 2020 Tax Exempt Bonds, the "Tax Exempt Bonds"). The proceeds of the Tax Exempt Bonds were loaned to the Company pursuant to a Loan Agreement dated as of June 1, as supplemented by a First Amendment to Loan Agreement dated as of March 1, 2021 (collectively, the "Loan Agreement"), each between the Issuer and the Company. The Tax Exempt Bonds are payable solely from payments to be made by the Company under the Loan Agreement as evidenced by a Note from the Company to the Trustee. The proceeds of the Tax Exempt Bonds were used to finance certain costs of the acquisition, construction, reconstruction, and equipping of solid waste disposal facilities at the Company's Leer South development, and for capitalized interest and certain costs related to issuance of the Tax Exempt Bonds.

The Tax Exempt Bonds bear interest payable each January 1 and July 1, and have a final maturity of July 1, 2045; however, the Tax Exempt Bonds are subject to mandatory tender on July 1, 2025 at a purchase price equal to 100% of the principal amount of the Tax Exempt Bonds, plus accrued interest to July 1, 2025. The 2020 Tax Exempt Bonds and 2021 Tax Exempt Bonds bear interest of 5% and 4.125%, respectively.

The Tax Exempt Bonds are subject to redemption (i) in whole or in part at any time on or after January 1, 2025 at the option of the Issuer, upon the Company's direction at a redemption price of par, plus interest accrued to the redemption date; and (ii) at par plus interest accrued to the redemption date from certain excess Tax Exempt Bonds proceeds as further described in the Indenture of Trust.

The Company's obligations under the Loan Agreement are (i) except as otherwise described below, secured by first priority liens on and security interests in substantially all of the Company's and Subsidiary Guarantors' real property and other assets, subject to certain customary exceptions and permitted liens, and in any event excluding accounts receivable and inventory; and (ii) jointly and severally guaranteed by the Subsidiary Guarantors, subject to customary exceptions.

The collateral securing the Company's obligations under the Loan Agreement is substantially the same as the collateral securing the obligations under the Term Loan Debt Facility other than with respect to variances in certain real property collateral. The real property securing the Company's obligations under the Loan Agreement includes a subset of the real property collateral securing the obligations under the Term Loan Debt Facility and includes only mortgages on substantially all of the Company's revenue generating real property and assets.

The Loan Agreement contains certain affirmative covenants and representations, including but not limited to: (i) maintenance of a rating on the Tax Exempt Bonds; (ii) maintenance of proper books of records and accounts; (iii) agreement to add additional guarantors to guarantee the obligations under the Loan Agreement in certain circumstances; (iv) procurement of customary insurance; and (v) preservation of legal existence and certain rights, franchises, licenses and permits. The Loan Agreement also contains certain customary negative covenants, which, among other things, and subject to certain exceptions, include restrictions on (i) release of collateral securing the Company's obligations under the Loan Agreement; (ii) mergers and consolidations and disposition of assets, and (iii) restrictions on actions that may jeopardize the tax-exempt status of the Tax Exempt Bonds.

The Loan Agreement contains customary events of default, subject to customary thresholds and exceptions, including, among other things: (i) nonpayment of principal, purchase price, interest and other fees (subject to certain cure periods); (ii) bankruptcy or insolvency proceedings relating to us; (iii) material inaccuracy of a representation or warranty at the time made; (iv) cross-events of default to indebtedness of at least $50 million; and (v) cross defaults to the Indenture of Trust, the guaranty related to the Tax Exempt Bonds or any related security documents.

Convertible Debt

On November 3, 2020, the Company issued $155.3 million in aggregate principal amount of 5.25% convertible senior notes due 2025 ("Convertible Notes" or "Convertible Debt"). The net proceeds from the issuance of the Convertible Notes, after deducting offering related costs of $5.1 million and cost of a "Capped Call Transaction" as defined below of $17.5 million, were approximately $132.7 million.

During the year ended December 31, 2022, the Company entered into exchange and repurchase agreements for $142.1 million principal amount of the Convertible Notes for aggregate consideration consisting of $208.1 million in cash and approximately 2.6 million shares of Arch Resources common stock. In connection with the exchanges and repurchases, the Company recognized a total loss of $10.3 million which includes inducement premium payments of $5.0 million, unamortized deferred financing fees of $3.8 million and professional fees of $1.5 million. This amount is included as "Net loss resulting from early retirement of debt" in the accompanying Consolidated Income Statements.

During the first half of 2023, the Company repurchased the remaining Convertible Notes with a principal amount of $13.2 million for aggregate consideration consisting of $58.4 million in cash. In connection with the repurchase, the Company recognized a loss of $1.1 million. This amount is included as "Net loss resulting from early retirement of debt" in the accompanying Consolidated Income Statements.

Total interest expense related to the Convertible Debt for the year ended December 31, 2023 was less than $0.1 million and December 31, 2022 was $4.7 million, which was related to the contractual interest coupon of $4.1 million and $0.6 million of amortization of deferred financing fees.

Capped Call Transactions

In connection with the offering of the Convertible Notes, the Company entered into privately negotiated convertible note hedge transactions (collectively, the "Capped Call Transactions"). The Capped Call Transactions cover, subject to customary anti-dilution adjustments, the number of shares of the Company's common stock that initially underlie the Convertible Notes.

The Capped Call Transactions are expected generally to reduce the potential dilution and/or offset any cash payments the Company is required to make in excess of the principal amount due upon conversion of the Convertible Notes in the event that the market price of the Company's common stock is greater than the strike price of the Capped Call Transactions, which was initially $37.325 per share and the initial cap price was $52.255 per share. The initial call and cap prices are subject to adjustments under the terms of the underlying capped call agreements, including for various transactions such as the payment of dividends. The number of shares underlying the Capped Call Transactions at inception was 4.2 million.

The cap price of the Capped Call Transactions was initially $52.2550 per share, which represented a premium of 75% over the last reported sale price of the Company's common stock on October 29, 2020. The cost of the Capped Call Transactions was approximately $17.5 million with a maturity date of November 15, 2025.

As of December 31, 2023, the Capped Call Transactions remain outstanding and have an intrinsic value of $62.1 million. If the Company were to be unwind the capped call, it could be done in either shares or cash.

The Capped Call Transactions are separate transactions, in each case entered into between the Company and the respective Option Counterparty, and were not part of the terms of the Convertible Notes. Holders of the Convertible Notes do not have any rights with respect to the Capped Call Transactions. Additionally, the cost of the Capped Call Transactions is not expected to be tax deductible as the Company did not elect to integrate the Capped Call Transactions into the notes for tax purposes. As the Capped Call Transactions meet certain accounting criteria, they were classified as equity and are not accounted for as derivatives.

Debt Maturities

The contractual maturities of debt as of December 31, 2023 are as follows:

Year	(In thousands)
2024	$ 36,268
2025	105,838
2026	—
2027	—
2028	—
Thereafter	—
	$ 142,106

Financing Costs

The Company paid financing costs of $0.0 million, $1.0 million and $2.1 million during the years ended December 31, 2023, 2022 and 2021, respectively.

11. Taxes

Significant components of the provision for (benefit from) income taxes are as follows:

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Current:			
Federal	$ 106	$ (30,107)	$ 1,525
State	317	204	342
Total current	$ 423	$ (29,903)	$ 1,867
Deferred:			
Federal	$ 85,002	$ (209,130)	$ 7
State	2,089	(12,893)	—
Total deferred	$ 87,091	$ (222,023)	$ 7
Provision for (benefit from) income taxes	$ 87,514	$ (251,926)	$ 1,874

A reconciliation of the statutory federal income tax provision (benefit) at the statutory rate to the actual provision for (benefit from) income taxes follows:

	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Income tax provision at statutory rate	$ 115,826	$ 226,587	$ 71,284
Percentage depletion and other permanent items	(30,585)	(52,647)	(29,392)
State taxes, net of effect of federal taxes	2,725	2,988	16,490
Change in valuation allowance	(879)	(420,688)	(69,603)
Other, net	427	(8,166)	13,095
Provision for (benefit from) income taxes	$ 87,514	$ (251,926)	$ 1,874

Significant components of the Company's deferred tax assets and liabilities that result from carryforwards and temporary differences between the financial statement basis and tax basis of assets and liabilities are summarized as follows:

(In thousands)	December 31, 2023	December 31, 2022
Deferred tax assets:		
Tax loss carryforwards	$ 157,648	$ 219,302
Tax credit carryforwards	1,584	1,656
Investment in partnerships	24,933	39,999
Other	28,070	38,362
Gross deferred tax assets	$ 212,235	$ 299,319
Valuation allowance	(82,825)	(83,704)
Total deferred tax assets	$ 129,410	$ 215,615
Deferred tax liabilities:		
Plant and equipment	1,075	1,245
Convertible Notes	—	75
Other	4,311	4,825
Total deferred tax liabilities	$ 5,386	$ 6,145
Net deferred tax asset	$ 124,024	$ 209,470

The Company provides for deferred income taxes for temporary differences arising from differences between the financial statement and tax basis of assets and liabilities existing at each balance sheet date using enacted tax rates expected to be in effect when the related taxes are expected to be paid or recovered.

The Company assesses the need for a valuation allowance against its deferred tax assets (including temporary differences and tax attributes) through a review of all available positive and negative evidence. On the basis of this assessment for the year ended December 31, 2022, the Company determined that it is more likely than not that the net deferred tax assets would be realized, except for certain state NOLs and capital loss carryforwards, and released the valuation allowance that was recorded against the Company's net deferred tax assets. As of December 31, 2023, the Company continues to carry a valuation allowance against certain state NOLs and capital loss carryforwards.

At December 31, 2023, the Company has gross NOL carryforwards for federal income tax purposes of $319.3 million. Of these carryforwards, approximately $46.6 million will expire, if not utilized, starting in 2037. The remaining carryforwards have no expiration, however, they can only be used to offset 80% of U.S. federal taxable income.

The ability to use the NOLs in existence immediately prior to emergence from bankruptcy in 2016 has been limited by the "ownership change" under Section 382 of the Internal Revenue Code (the "Code") that occurred as a result of such emergence (the "Emergence Ownership Change"). NOLs generated after the Emergence Ownership Change are generally not subject to limitations resulting from the Emergence Ownership Change.

On August 16, 2022, the Inflation Reduction Act of 2022 ("IRA") was signed into law. This legislation introduces a 15% corporate alternative minimum tax among its key tax provisions. The IRA is effective for years beginning after December 31, 2022. The Company did not experience any related material impact in the current year. The Company will continue to evaluate the effects of IRA on future periods, however, does not anticipate any material impact.

A reconciliation of the beginning and ending amounts of gross unrecognized tax benefits follows:

	(In thousands)
Balance at December 31, 2020	$ 48,116
Additions based on tax positions to the current year	3,467
Additions for tax positions related to the prior year	3,931
Reductions for tax positions of prior years	(2,868)
Reductions as a result of lapses in the statute of limitations	(3,683)
Balance at December 31, 2021	48,963
Additions for tax positions related to the current year	5,446
Additions for tax positions related to the prior year	768
Reductions for tax positions of prior years	(125)
Reductions as a result of lapses in the statute of limitations	(36,988)
Balance at December 31, 2022	18,064
Additions based on tax positions related to the current year	3,019
Additions for tax positions related to the prior year	731
Increases for tax positions of prior years	1,485
Reductions as a result of lapses in the statute of limitations	(2,732)
Balance at December 31, 2023	$ 20,567

If recognized, the entire amount of the gross unrecognized tax benefits at December 31, 2023 would affect the effective tax rate. The Company recognizes interest and penalties related to unrecognized tax benefits in income tax expense. The Company had no accrued interest and penalties at December 31, 2023 and 2022, respectively. In the next 12 months, no gross unrecognized tax benefits are expected to be reduced due to the expiration of the statute of limitations.

The Company is subject to U.S. federal income tax as well as income tax in multiple state jurisdictions. The tax years 2016 through 2022 remain open to examination for U.S. federal income tax matters and 2002 through 2022 remain open to examination for various state income tax matters.

12. Asset Retirement Obligations

The Company's asset retirement obligations arise from the Federal Surface Mining Control and Reclamation Act of 1977 and similar state statutes, which require that mine property be restored in accordance with specified standards and an approved reclamation plan. The required reclamation activities to be performed are outlined in the Company's mining permits. These activities include reclaiming the pit and support acreage at surface mines, sealing portals at underground mines, reclaiming refuse areas and slurry ponds and water treatment.

The following table describes the changes to the Company's asset retirement obligation liability:

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022
Balance at beginning of period (including current portion)	$ 244,368	$ 214,453
Accretion expense	21,170	17,721
Adjustments to the liability from changes in estimates	17,747	25,914
Reclamation work completed	(21,456)	(13,720)
Balance at period end	$ 261,829	$ 244,368
Current portion included in accrued expenses	(6,089)	(8,632)
Noncurrent liability	$ 255,740	$ 235,736

As of December 31, 2023, the Company had $455.7 million in reclamation surety bonds outstanding and posted $0.6 million in cash as collateral; this amount is recorded within "Noncurrent assets" on the Consolidated Balance Sheets. Additionally, through December 31, 2023, the Company has contributed $142.3 million to a fund that will serve to defease the long-term asset retirement obligation for its thermal asset base; this amount is recorded as "Fund for asset retirement obligations" on the Consolidated Balance Sheets.

13. Fair Value Measurements

The hierarchy of fair value measurements assigns a level to fair value measurements based on the inputs used in the respective valuation techniques. The levels of the hierarchy, as defined below, give the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs.

● Level 1 is defined as observable inputs such as quoted prices in active markets for identical assets. Level 1 assets include U.S. Treasury securities, and coal swaps and futures that are submitted for clearing on the New York Mercantile Exchange.

● Level 2 is defined as observable inputs other than Level 1 prices. These include quoted prices for similar assets or liabilities in an active market, quoted prices for identical assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. The Company's Level 2 assets and liabilities include U.S. government agency securities, coal commodity contracts and interest rate swaps with fair values derived from quoted prices in over-the-counter markets or from prices received from direct broker quotes.

● Level 3 is defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. These include the Company's commodity option contracts (heating oil) valued using modeling techniques, such as Black-Scholes, that require the use of inputs, particularly volatility, that are rarely observable. Changes in the unobservable inputs would not have had a significant impact on the reported Level 3 fair values at December 31, 2023 and 2022.

The table below sets forth, by level, the Company's financial assets and liabilities that are recorded at fair value in the accompanying consolidated balance sheet:

	December 31, 2023			
	Total	Level 1	Level 2	Level 3
	(In thousands)			
Assets:				
Investments in marketable securities	$ 32,724	$ 28,773	$ 3,951	$ —
Derivatives	998	—	—	998
Fund for asset retirement obligations	142,266	142,266	—	—
Total assets	$ 175,988	$ 171,039	$ 3,951	$ 998
Liabilities:				
Derivatives	$ 165	$ —	$ 165	$ —

	Fair Value at December 31, 2022			
	Total	Level 1	Level 2	Level 3
	(In thousands)			
Assets:				
Investments in marketable securities	$ 36,993	$ 28,301	$ 8,692	$ —
Derivatives	3,955	—	2,655	1,300
Fund for asset retirement obligations	135,993	135,993	—	—
Total assets	$ 176,941	$ 164,294	$ 11,347	$ 1,300
Liabilities:				
Derivatives	$ —	$ —	$ —	$ —

The Company's contracts with its counterparties allow for the settlement of contracts in an asset position with contracts in a liability position in the event of default or termination. For classification purposes, the Company records the net fair value of all the positions with these counterparties as a net asset or liability. Each level in the table above displays the underlying contracts according to their classification in the accompanying Consolidated Balance Sheet, based on this counterparty netting.

The following table summarizes the change in the fair values of financial instruments categorized as Level 3.

(In thousands)	2023	2022
Balance, beginning of period	$ 1,300	$ 1,219
Realized and unrealized gains (losses) recognized in earnings, net	(4,192)	7,019
Purchases	5,400	4,673
Settlements	(1,510)	(11,611)
Ending balance	$ 998	$ 1,300

Net unrealized losses of $2.6 million were recognized during the year ended December 31, 2023 related to Level 3 financial instruments held on December 31, 2023.

Cash and Cash Equivalents

At December 31, 2023 and 2022, the carrying amounts of cash and cash equivalents approximate their fair value.

Fair Value of Long-Term Debt

At December 31, 2023 and 2022, the fair value of the Company's debt, including amounts classified as current, was $142.1 million and $223.0 million, respectively. Fair values are based upon observed prices in an active market, when available, or from valuation models using market information, which fall into Level 2 in the fair value hierarchy.

14. Capital Stock

Dividends

The Company declared and paid cash dividends per share during the periods presented below (inclusive of dividends related to restricted stock units):

2023:	Dividends per share	Amount (in thousands)
1st quarter	$ 3.11	$ 66,902
2nd quarter	2.45	45,011
3rd quarter	3.97	71,877
4th quarter	1.13	22,335
Total cash dividends declared and paid	$ 10.66	$ 206,125

2022:	Dividends per share	Amount (in thousands)
1st quarter	$ 0.25	$ 3,851
2nd quarter	8.11	150,716
3rd quarter	6.00	110,071
4th quarter	10.75	191,754
Total cash dividends declared and paid	$ 25.11	$ 456,392

As of December 31, 2023, $792.1 million has been returned as dividends inclusive of the announced dividend on February 15, 2024.

Future dividend declarations will be subject to ongoing Board review and authorization will be based on a number of factors, including business and market conditions, the Company's future financial performance and other capital priorities.

Share Repurchase Program

During the second quarter of 2022, the Board of Directors increased the remaining outstanding authorization for share repurchases to $500 million. The timing of any future share repurchases, and the ultimate number of shares of common stock to be purchased, will depend on a number of factors, including business and market conditions, future financial performance, and other capital priorities. The shares will be acquired in the open market or through private transactions in accordance with Securities and Exchange Commission requirements. The share repurchase program has no termination date, but may be amended, suspended or discontinued at any time and does not commit the Company to repurchase shares of its common stock. The actual number and value of the shares to be purchased will depend on the performance of the Company's stock price and other market conditions.

On August 16, 2022, the Inflation Reduction Act of 2022 ("IRA") was signed into law. This legislation introduces a 1% excise tax on stock repurchases among its key tax provisions. The IRA is effective for years beginning after December 31, 2022.

During 2023, the Company repurchased 989,792 shares at an average price of $124.78 for an aggregate purchase price of approximately $123.5 million. As of December 31, 2023, the Company had repurchased 12,196,627 shares at an average share price of $90.98 per share for an aggregate purchase price of approximately $1,109.7 million since inception of the stock repurchase program, and the remaining authorized amount for stock repurchases under this program is approximately $217.7 million.

Outstanding Warrants

In October 2016, the Company emerged from Chapter 11 which became known as the "Effective Date". On the Effective Date, the Company entered into a warrant agreement (the "Warrant Agreement") with American Stock Transfer & Trust Company, LLC as warrant agent and, pursuant to the terms of the Plan, issued warrants ("Warrants") to purchase up to an aggregate of 1,914,856 shares of Class A Common Stock, par value $0.01 per share, of Arch Resources (the "Class A Common Stock") to certain holders of claims in the Chapter 11 case. Each Warrant expired on October 5, 2023, and was initially exercisable for one share of Class A Common Stock at an initial exercise price of $57.00 per share. The Warrants were exercisable by a holder paying the exercise price in cash or on a cashless basis, at the election of the holder. The Warrants contained anti-dilution adjustments for stock splits, reverse stock splits, stock dividends, dividends and distributions of cash, other securities or other property, spin-offs and tender and exchange offers by Arch Resources or its subsidiaries to purchase Class A Common Stock at above-market prices.

During 2023, holders of warrants exercised 1,248,226 of the warrants. On October 5, 2023, the remaining warrants expired. There were no warrants outstanding at December 31, 2023.

As provided in ASC 825-20, "Financial Instruments," the warrants are considered equity because they can only be physically settled in Company shares, can be settled in unregistered shares, the Company has adequate authorized shares to settle the outstanding warrants and each warrant is fixed in terms of settlement to one share of Company stock subject only to remote contingency adjustment factors designed to assure the relative value in terms of shares remains fixed.

15. Stock-Based Compensation and Other Incentive Plans

Under the Company's 2016 Omnibus Incentive Plan (the "Incentive Plan"), 3.0 million shares of the Company's common stock were reserved for awards to officers and other selected key management employees of the Company. The Incentive Plan provides the Board of Directors with the flexibility to grant stock options, stock appreciation rights, restricted stock awards, restricted stock units, performance stock or units, phantom stock awards and rights to acquire stock through purchase under a stock purchase program ("Awards"). Awards the Board of Directors elects to pay out in cash do not impact the shares authorized in the Incentive Plan. Shares available for award under the plan were 1.5 million at December 31, 2023.

Restricted Stock Unit Awards

The Company may issue restricted stock and restricted stock units, which require no payment from the employee. Restricted stock cliff-vests at various dates and restricted stock units either vest ratably over or vest at the end of the award's stated vesting period. Compensation expense is based on the fair value on the grant date and is recorded ratably over the vesting period utilizing the straight-line recognition method. Upon vesting, the employee receives cash compensation equal to the amount of dividends that would have been paid on the underlying shares.

During 2023, the Company granted both time and performance-based awards. The time-based awards vest ratably over a three-year period whereas the performance-based awards vest at the end of three years. The time-based awards' grant date fair value was determined based on the stock price at the date of grant. The performance-based awards' grant date fair value was determined using a Black-Scholes Monte Carlo simulation. An historical volatility of 67% was selected for the performance-based award based on comparator companies, and the three-year risk-free rate was derived

from yields on U.S. Government bonds. Information regarding the restricted stock units activity and weighted average grant-date fair value follows:

	Time Based Awards		Performance Based Awards	
(Shares in thousands)	Restricted Stock Units	Weighted Average Grant-Date Fair Value	Restricted Stock Units	Weighted Average Grant-Date Fair Value
Outstanding at January 1, 2023	359	$ 74.14	407	$ 74.68
Granted & Reinvested	57	136.55	221	95.83
Forfeited/Canceled	(1)	98.82	(1)	145.11
Vested	(186)	70.56	(324)	48.45
Unvested outstanding at December 31, 2023	229	$ 92.41	303	$ 117.85

The Company recognized expense related to restricted stock units of $25.4 million, $27.4 million and $20.5 million for the years ended December 31, 2023, 2022 and 2021, respectively. As of December 31, 2023, there was $24.5 million of unrecognized share-based compensation expense which is expected to be recognized over a weighted-average period of approximately two years.

16. Workers' Compensation Expense

The Company is liable under the Federal Mine Safety and Health Act of 1969, as subsequently amended, to provide for pneumoconiosis (occupational disease) benefits to eligible employees, former employees and dependents. The Company currently provides for federal claims principally through a self-insurance program. The Company is also liable under various state workers' compensation statutes for occupational disease benefits. The occupational disease benefit obligation represents the present value of the actuarially computed present and future liabilities for such benefits over the employees' applicable years of service.

In October 2019, the Company filed an application with the Office of Workers' Compensation Programs ("OWCP") within the Department of Labor for reauthorization to self-insure federal black lung benefits. In February 2020, the Company received a reply from the OWCP confirming its status to remain self-insured contingent upon posting additional collateral of $71.1 million within 30 days of receipt of the letter. The Company is currently appealing the ruling from the OWCP and has received an extension to self-insure during the appeal process.

On January 18, 2023, the OWCP proposed revisions to regulations under the Black Lung Benefits Act governing authorization of self-insurers. The revisions seek to codify the practice of basing a self-insured operator's security requirement on an actuarial assessment of its total present and future black lung liability. A material change to the regulations is the requirements that all self-insured operators must post security equal to 120% of their projected black lung liabilities.

The proposed regulations were posted to the Federal Register on January 19, 2023 with written comments to be accepted within 60 days of this date. A subsequent extended comment period expired on April 19, 2023; however, the final regulations have not yet been published.

If the above regulation is codified into law, the Company will be required to post additional collateral to maintain its self-insured status. The Company is evaluating alternatives to self-insurance, including the purchase of commercial insurance to cover these claims. Additionally, the Company is assessing the availability of surety bond capacity within the markets, additional sources of liquidity, and other items to satisfy the proposed regulations.

In addition, the Company is liable for workers' compensation benefits for traumatic injuries which are calculated using actuarially-based loss rates, loss development factors and discounted based on a risk-free rate of 4.55%. Traumatic workers' compensation claims are insured with varying retentions/deductibles, or through state-sponsored workers' compensation programs.

Workers' compensation expense consists of the following components:

	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Self-insured occupational disease benefits:			
Service cost	$ 3,974	$ 5,991	$ 7,796
Interest cost[1]	6,041	4,610	4,439
Net amortization[1]	(965)	628	2,363
Total occupational disease	$ 9,050	$ 11,229	$ 14,598
Traumatic injury claims and assessments	277	(3,783)	3,925
Total workers' compensation expense	$ 9,327	$ 7,446	$ 18,523

(1) In accordance with the adoption of ASU 2017-07, "Compensation-Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost," these costs are recorded within Nonoperating expenses in the Consolidated Income Statements on the line item "Non-service related pension and postretirement benefit credits (costs)."

The table below reconciles changes in the occupational disease liability for the respective period.

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022
Beginning of period	$ 120,008	$ 167,585
Service cost	3,974	5,991
Interest cost	6,041	4,610
Actuarial loss (gain)	10,721	(48,859)
Benefit and administrative payments	(11,526)	(9,319)
	$ 129,218	$ 120,008

The following table provides the assumptions used to determine the projected occupational disease obligation:

(Percentages)	Year Ended December 31, 2023	Year Ended December 31, 2022
Discount rate	5.01	5.21

The lower discount rate increased obligations by $3.2 million.

Summarized below is information about the amounts recognized in the accompanying Consolidated Balance Sheets for workers' compensation benefits:

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022
Occupational disease costs	$ 129,218	$ 120,008
Traumatic and other workers' compensation claims	44,156	53,332
Total obligations	173,374	173,340
Less amount included in accrued expenses	18,724	17,584
Noncurrent obligations	$ 154,650	$ 155,756

As of December 31, 2023, the Company had $124.2 million in surety bonds, letters of credit and cash outstanding to secure workers' compensation obligations.

As of December 31, 2023, the Company's recorded liabilities include $6.9 million of obligations that are reimbursable under various insurance policies purchased by the Company. These insurance receivables are recorded in the balance sheet line items "Other receivables" and "Other noncurrent assets" for $0.4 million and $6.5 million, respectively.

The following represents expected future payments:

Year	(In thousands)
2024	$ 12,837
2025	13,634
2026	13,750
2027	14,186
2028	14,564
Next 5 years	79,731
	$ 148,702

17. Employee Benefit Plans

Defined Benefit Pension and Other Postretirement Benefit Plans

The Company provides funded and unfunded non-contributory defined benefit pension plans covering certain of its salaried and hourly employees. Benefits are generally based on the employee's age and compensation. The Company funds the plans in an amount not less than the minimum statutory funding requirements or more than the maximum amount that can be deducted for U.S. federal income tax purposes.

The Company also currently provides certain postretirement medical and life insurance coverage for eligible employees. Generally, covered employees who terminate employment after meeting eligibility requirements are eligible for postretirement coverage for themselves and their dependents. The Company offers a subsidy to eligible retirees based on age and years of service at retirement and contain other cost-sharing features such as deductibles and coinsurance. The Company's current funding policy is to fund the cost of all postretirement benefits as they are paid.

On January 1, 2015, the Company's cash balance and excess plans were amended to freeze new service credits for any new or active employees.

In February 2022, the Board of Directors approved the termination of the Company's Cash Balance Pension Plan. The Company has executed plan amendments regarding the termination and filed an Application for Determination for Terminating Pension Plan with the Internal Revenue Service ("IRS"), which was approved by the IRS during the first quarter of 2023. The Company also prepared and filed appropriate notices and documents related to the Pension Plan's termination and wind-down with the Pension Benefit Guaranty Corporation ("PBGC"). To complete the termination of the plan, the Company made a $3.2 million cash contribution into the plan in order to complete lump sum payments and to purchase annuity contracts for plan participants. An immaterial gain was recognized on the plan termination, which is reflected in the Consolidated Incomes Statements line item "Non-service related pension and postretirement benefits credits (costs)". The Company no longer administers or pays the retirement benefits of the Cash Balance Pension Plan.

Obligations and Funded Status.

Summaries of the changes in the benefit obligations, plan assets and funded status of the plans are as follows:

	Pension Benefits		Other Postretirement Benefits	
(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2023	Year Ended December 31, 2022
CHANGE IN BENEFIT OBLIGATIONS				
Benefit obligations at beginning of period	$ 122,430	$ 169,976	$ 54,514	$ 79,245
Service cost	—	—	231	282
Interest cost	4,108	5,264	2,694	2,006
Settlement gain	(1,586)	(771)	—	—
Plan Settlements	(124,382)	—	—	—
Benefits paid	(4,652)	(22,164)	(3,858)	(4,834)
Other-primarily actuarial gain	5,070	(29,875)	(2,227)	(22,185)
Benefit obligations at end of period	$ 988	$ 122,430	$ 51,354	$ 54,514
CHANGE IN PLAN ASSETS				
Value of plan assets at beginning of period	$ 121,127	$ 177,499	$ —	$ —
Actual return on plan assets	4,625	(34,325)	—	—
Employer contributions	3,282	117	3,858	4,834
Plan Settlements	(124,382)	—	—	—
Benefits paid	(4,652)	(22,164)	(3,858)	(4,834)
Value of plan assets at end of period	$ —	$ 121,127	$ —	$ —
Accrued benefit net obligation	$ (988)	$ (1,303)	$ (51,354)	$ (54,514)
ITEMS NOT YET RECOGNIZED AS A COMPONENT OF NET PERIODIC BENEFIT COST				
Prior service credit	$ —	$ 945	$ —	$ —
Accumulated gain	1,150	5,164	32,871	40,334
	$ 1,150	$ 6,109	32,871	$ 40,334
BALANCE SHEET AMOUNTS				
Noncurrent asset	$ —	$ —	$ —	$ —
Current liability	(110)	(202)	(3,860)	(4,840)
Noncurrent liability	(878)	(1,101)	(47,494)	(49,674)
	$ (988)	$ (1,303)	$ (51,354)	$ (54,514)

Pension Benefits

The accumulated benefit obligation for all pension plans was $1.0 million and $122.4 million at December 31, 2023 and 2022, respectively. The termination of the Company's Cash Balance Pension Plan significantly impacted the benefit obligation.

The weighted-average interest credit rate for the cash balance pension plan was 4.25% at December 31, 2022.

Other Postretirement Benefits

Significant gains and losses affecting the benefit obligations included:

- the lower discount rate increased plan obligations by $1.0 million;
- the claims cost assumptions were updated decreasing plan obligations by $0.9 million; and
- updated census data resulted in a decrease of plan obligations in the amount of $1.4 million.

Components of Net Periodic Benefit Cost. The following table details the components of pension and postretirement benefit costs (credits):

	Pension Benefits			Other Postretirement Benefits		
(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Service cost	$ —	$ —	$ —	$ 231	$ 282	$ 341
Interest cost[1]	4,108	5,264	4,334	2,694	2,006	2,113
Settlements/Terminations[1]	(1,586)	(771)	(1,768)	—	—	—
Expected return on plan assets[1]	(4,048)	(6,173)	(7,245)	—	—	—
Amortization of prior service credits[1]	(98)	(147)	(128)	—	—	—
Amortization of other actuarial losses (gains) [1]	(553)	(313)	(62)	(9,690)	(2,508)	—
Net benefit cost (credit)	$ (2,177)	$ (2,140)	$ (4,869)	$ (6,765)	$ (220)	$ 2,454

(1) In accordance with the adoption of ASU 2017-07, "Compensation-Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost," these costs are recorded within Nonoperating expenses in the Consolidated Income Statements on the line item "Non-service related pension and postretirement benefit credits (costs)."

The differences generated from changes in assumed discount rates and returns on plan assets are amortized into earnings over the remaining service attribution periods of the employees using the corridor method.

Assumptions. The following table provides the assumptions used to determine the actuarial present value of projected benefit obligations for the respective periods.

(Percentages)	Year Ended December 31, 2023	Year Ended December 31, 2022
Pension Benefits		
Discount rate	4.89	5.20/5.15
Other Postretirement Benefits		
Discount rate	4.94	5.19

The following table provides the weighted average assumptions used to determine net periodic benefit cost for the respective periods.

(Percentages)	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Pension Benefits			
Discount rate	5.20	4.47	2.50
Expected return on plan assets	4.20	4.06	4.30
Other Postretirement Benefits			
Discount rate	5.19	2.63	2.17

The discount rates used in 2023, 2022 and 2021 were reevaluated during the year for settlements. The obligations are remeasured at an updated discount rate that impacts the benefit cost recognized subsequent to the remeasurement.

As of December 31, 2023, there are no pension plan assets. For December 31, 2022, the Company established the expected long-term rate of return at the beginning of each fiscal year based upon historical returns and projected returns on the underlying mix of invested assets. The Company utilized modern portfolio theory modeling techniques in the development of its return assumptions. This technique projects rates of return that can be generated through various asset allocations that lie within the risk tolerance set forth by members of the Company's retirement committee. The risk assessment provides a link between a pension plan's risk capacity, management's willingness to accept investment risk and the asset allocation process, which ultimately leads to the return generated by the invested assets.

The health care cost trend rate assumed for 2024 is 7.37% and is expected to reach an ultimate trend rate of 4.0% by 2048.

The Company's pension plan assets at December 31, 2023 and 2022, respectively, are categorized below according to the fair value hierarchy as defined in Note 13, "Fair Value Measurements":

	Total		Level 1		Level 2		Level 3	
	2023	2022	2023	2022	2023	2022	2023	2022
	(In thousands)							
Fixed income securities:								
U.S. government securities[A]	$ —	$ 37,148	$ —	$ 34,143	$ —	$ 3,005	$ —	$ —
Non-U.S. government securities[B]	—	2,340	—	—	—	2,340	—	—
Corporate fixed income[C]	—	41,286	—	—	—	41,286	—	—
State and local government securities[D]	—	2,504	—	—	—	2,504	—	—
Other investments[E]	—	15,616	—	—	—	15,616	—	—
Total	$ —	$ 98,894	$ —	$ 34,143	$ —	$ 64,751	$ —	$ —
Assets at net asset value[F]	—	22,233						
	$ —	$ 121,127						

(A) U.S. government securities includes agency and treasury debt. These investments are valued using dealer quotes in an active market.

(B) Non-U.S. government securities includes debt securities issued by foreign governments and are valued utilizing a price spread basis valuation technique with observable sources from investment dealers and research vendors.

(C) Corporate fixed income is primarily comprised of corporate bonds and certain corporate asset-backed securities that are denominated in the U.S. dollar and are investment-grade securities. These investments are valued using dealer quotes.

(D) State and local government securities include different U.S. state and local municipal bonds and asset backed securities, these investments are valued utilizing a market approach that includes various valuation techniques and sources such as value generation models, broker quotes, benchmark yields and securities, reported trades, issuer trades and/or other applicable data.

(E) Other investments include cash, forward contracts, derivative instruments, credit default swaps, interest rate swaps and mutual funds. Investments in interest rate swaps are valued utilizing a market approach that includes various valuation techniques and sources such as value generation models, broker quotes in active and non-active markets, benchmark yields and securities, reported trades, issuer trades and/or other applicable data. Forward contracts and derivative instruments are valued at their exchange listed price or broker quote in an active market. The mutual funds are valued at the net asset value per share multiplied by the number of shares held as of the measurement date and are traded on listed exchanges.

(F) Investments that are measured at fair value using the net asset value per share practical expedient have not been classified in the fair value hierarchy in accordance with Accounting Standards Update 2015-07. These investments are primarily mutual funds that are highly liquid with no restrictions on ability to redeem the funds into cash.

Cash Flows. The Company expects to make no contributions to the pension plans in 2024.

The following represents expected future benefit payments from the plan:

	Pension Benefits	Other Postretirement Benefits
	(In thousands)	
2024	$ 109	$ 4,699
2025	106	4,645
2026	103	4,564
2027	99	4,493
2028	95	4,381
Next 5 years	393	19,208
	$ 905	$ 41,990

Other Plans

The Company sponsors savings plans which were established to assist eligible employees in providing for their future retirement needs. The Company's expense, representing its contributions to the plans, was $20.5 million, $18.7 million, and $16.8 million for the years ended December 31, 2023, 2022, and 2021, respectively.

18. Earnings Per Common Share

The Company computes basic net income per share using the weighted average number of common shares outstanding during the period. Diluted net income per share is computed using the weighted average number of common shares and the effect of potentially dilutive securities outstanding during the period. Potentially dilutive securities may consist of warrants, restricted stock units or other contingently issuable shares and convertible debt. The dilutive effect of outstanding warrants, restricted stock units is reflected in diluted earnings per share by application of the treasury stock method whereas the Convertible Debt uses the if-converted method.

The following table provides the basis for basic and diluted EPS by reconciling the numerators and denominators of the computations:

(In Thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Net income attributable to common shares	$ 464,038	$ 1,330,914	$ 337,573
Adjustment of interest expense attributable to convertible notes	108	4,726	-
Adjustment for inducement payments	-	4,914	-
Diluted net income attributable to common shareholders	$ 464,146	$ 1,340,554	$ 337,573
Weighted average shares outstanding:			
Basic weighted average shares outstanding	18,233	17,136	15,318
Effect of dilutive securities	866	1,730	654
Convertible Notes	84	2,119	1,607
Diluted weighted average shares outstanding	19,183	20,985	17,579

19. Leases

The Company has operating and finance leases for mining equipment, office equipment and office space with remaining lease terms ranging from less than one year to approximately three years. Some of these leases include both

lease and non-lease components which are accounted for as a single lease component as the Company has elected the practical expedient to combine these components for all leases. As most of the leases do not provide an implicit rate, the Company calculated the Right-of-use ("ROU") assets and lease liabilities using its' secured incremental borrowing rate at the lease commencement date.

As of December 31, 2023 and December 31, 2022, the Company had the following ROU assets and lease liabilities within the Company's Consolidated Balance Sheets:

		December 31, 2023	December 31, 2022
Assets	**Balance Sheet Classification**		
Operating lease right-of-use assets	Other noncurrent assets	$ 9,626	$ 12,106
Financing lease right-of-use assets	Other noncurrent assets	1,621	2,918
Total Lease Assets		$ 11,247	$ 15,024
Liabilities	**Balance Sheet Classification**		
Financing lease liabilities - current	Accrued expenses and other current liabilities	$ 1,041	$ 977
Operating lease liabilities - current	Accrued expenses and other current liabilities	2,789	2,722
Financing lease liabilities - long-term	Other noncurrent liabilities	2,079	3,121
Operating lease liabilities - long-term	Other noncurrent liabilities	7,351	9,993
		$ 13,260	$ 16,813
Weighted average remaining lease term in years			
Operating leases		3.32	4.14
Finance leases		1.25	2.25
Weighted average discount rate			
Operating leases		5.5%	5.5%
Finance leases		6.4%	6.4%

Information related to leases was as follows:

	Year Ended December 31,	
	2023	2022
	(In thousands)	
Operating lease information:		
Operating lease cost	$ 3,263	$ 3,323
Operating cash flows from operating leases	3,356	3,389
Financing lease information:		
Financing lease cost	$ 1,572	$ 1,572
Operating cash flows from financing leases	1,210	1,210

Future minimum lease payments under non-cancellable leases as of December 31, 2023 were as follows:

Year	Operating Leases	Finance Leases
	(In thousands)	
2024	$ 3,281	$ 1,210
2025	3,266	2,111
2026	3,080	—
2027	1,533	—
2028	—	—
Thereafter	—	—
Total minimum lease payments	$ 11,160	$ 3,321
Less imputed interest	(1,020)	(201)
Total lease liabilities	$ 10,140	$ 3,120

Rental expense, including amounts related to these operating leases and other shorter-term arrangements, amounted to $12.8 million in 2023, $10.4 million in 2022 and $8.1 million in 2021.

Royalties are paid to lessors either as a fixed price per ton or as a percentage of the gross selling price of the mined coal. Royalties under the majority of the Company's significant leases are paid on the percentage of gross selling price basis. Royalty expense, including production royalties, was $177.1 million in 2023, $189.7 million in 2022, and $127.8 million in 2021.

As of December 31, 2023, certain of the Company's lease obligations were secured by outstanding surety bonds totaling $40.4 million.

20. Risk Concentrations

Credit Risk and Major Customers

The Company has a formal written credit policy that establishes procedures to determine creditworthiness and credit limits for trade customers and counterparties in the over-the-counter coal market. Generally, credit is extended based on an evaluation of the customer's financial condition. Collateral is not generally required, unless credit cannot be established. Credit losses are provided for in the financial statements and historically have been minimal.

The Company markets its thermal coal principally to domestic and foreign electric utilities and its metallurgical coal to domestic and foreign steel producers. As of December 31, 2023 and 2022, accounts receivable from sales of thermal coal of $67.2 million and $94.1 million, respectively, represented 25% and 40% of total trade receivables at each date. As of December 31, 2023 and 2022, accounts receivable from sales of metallurgical-quality coal of $206.3 million and $142.9 million, respectively, represented 75% and 60% of total trade receivables at each date.

The Company uses shipping destination as the basis for attributing revenue to individual countries. Because title may transfer on brokered transactions at a point that does not reflect the end usage point, they are reflected as exports,

and attributed to an end delivery point if that knowledge is known to the Company. The Company's foreign revenues by geographical location are as follows:

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Europe	$ 696,975	$ 939,955	$ 592,702
Asia	935,158	1,210,855	446,724
Central and South America	136,423	160,642	109,613
Africa	4,971	—	—
Total	$ 1,773,527	$ 2,311,452	$ 1,149,039

The Company is committed under long-term contracts to supply thermal coal that meets certain quality requirements at specified prices. These prices are generally adjusted based on market indices. Quantities sold under some of these contracts may vary from year to year within certain limits at the option of the customer based on their requirements. The Company sold approximately 75 million tons of coal in 2023. Approximately 75% of this tonnage (representing approximately 46% of the Company's revenues) was sold under long-term contracts (contracts having a term of greater than one year). Long-term contracts range in remaining life from one to four years.

Third-party sources of coal

The Company purchases coal from third parties that it sells to customers. Factors beyond the Company's control could affect the availability of coal purchased by the Company. Disruptions in the quantities of coal purchased by the Company could impair its ability to fill customer orders or require it to purchase coal from other sources at prevailing market prices in order to satisfy those orders.

Transportation

The Company depends upon barge, rail, truck and belt transportation systems to deliver coal to its customers. Disruption of these transportation services due to weather-related problems, mechanical difficulties, strikes, lockouts, bottlenecks, and other events could temporarily impair the Company's ability to supply coal to its customers. In the past, disruptions in rail service have resulted in missed shipments and production interruptions.

21. Revenue Recognition

ASC 606-10-50-5 requires that entities disclose disaggregated revenue information in categories (such as type of good or service, geography, market, type of contract, etc.) that depict how the nature, amount, timing, and uncertainty of revenue and cash flow are affected by economic factors. ASC 606-10-55-89 explains that the extent to which an entity's revenue is disaggregated depends on the facts and circumstances that pertain to the entity's contracts with customers and that some entities may need to use more than one type of category to meet the objective for disaggregating revenue.

In general, the Company's business segmentation is aligned according to the nature and economic characteristics of its coal and customer relationships and provides meaningful disaggregation of each segment's results. The Company has further disaggregated revenue between North America and Seaborne revenues which depicts the pricing and contract differences between the two. North America revenue is characterized by contracts with a term of one year or longer and

typically the pricing is fixed; whereas Seaborne revenue generally is derived by spot or short-term contracts with an indexed based pricing mechanism.

	MET	Thermal	Corporate, Other and Eliminations	Consolidated
		(in thousands)		
Year Ended December 31, 2023				
North America revenues	$ 342,070	$ 1,030,246	$ —	$ 1,372,316
Seaborne revenues	1,550,256	223,271	—	1,773,527
Total revenues	$ 1,892,326	$ 1,253,517	$ —	$ 3,145,843
Year Ended December 31, 2022				
North America revenues	$ 232,831	$ 1,180,310	$ —	$ 1,413,141
Seaborne revenues	1,924,879	386,573	—	2,311,452
Total revenues	$ 2,157,710	$ 1,566,883	$ —	$ 3,724,593
Year Ended December 31, 2021				
North America revenues	$ 163,833	$ 893,741	$ 1,429	$ 1,059,003
Seaborne revenues	985,300	163,739	—	1,149,039
Total revenues	$ 1,149,133	$ 1,057,480	$ 1,429	$ 2,208,042

As of December 31, 2023, the Company has outstanding performance obligations for approximately 59.3 million tons of coal for 2024, representing 54.3 million tons of fixed price contracts and 5.0 million tons of variable price contracts. Additionally, the Company has outstanding performance obligations of approximately 59.7 million tons in periods beyond 2024, comprised of 58.9 million tons of fixed price contracts and 0.8 million tons of variable price contracts.

22. Commitments and Contingencies

The Company accrues for cost related to contingencies when a loss is probable and the amount is reasonably determinable. Disclosure of contingencies is included in the financial statements when it is at least reasonably possible that a material loss or an additional material loss in excess of amounts already accrued may be incurred.

The Company is a party to numerous claims and lawsuits with respect to various matters. As of December 31, 2023 and 2022, the Company had accrued $0.0 million and $2.0 million, respectively, for all legal matters, all classified as current. The ultimate resolution of any such legal matter could result in outcomes which may be materially different from amounts the Company has accrued for such matters. The Company believes it has recorded adequate reserves for these matters.

In the normal course of business, the Company is a party to certain financial instruments with off-balance sheet risk, such as bank letters of credit, performance or surety bonds, and other guarantees and indemnities related to the obligations of affiliated entities which are not reflected in the Company's Consolidated Balance Sheets. However, the underlying liabilities that they secure, such as asset retirement obligations, workers' compensation liabilities, and other obligations, are reflected in the Company's Consolidated Balance Sheets. As of December 31, 2023, the Company had outstanding surety bonds with a face amount of $552.5 million to secure various obligations and commitments and $76.4 million of letters of credit under its Securitization and Inventory Facilities used to collateralize certain obligations. The Company had posted $5.6 million in cash collateral related to various obligations; this amount is recorded within "Other noncurrent assets" on the Consolidated Balance Sheets.

As of December 31, 2023, the Company's reclamation-related obligations of $261.8 million were supported by surety bonds of $455.7 million; and the Company has posted $0.6 million in cash collateral related to reclamation surety bonds. This amount is recorded within "Other noncurrent assets" on the Consolidated Balance Sheets. Additionally, through December 31, 2023, the Company has contributed $142.3 million to a fund that will serve to defease the long-term asset retirement obligation for its thermal asset base; this amount is recorded as "Fund for asset retirement obligations" on the Consolidated Balance Sheets. The funds will be utilized for final mine closure reclamation activities.

The Company has unconditional purchase obligations relating to purchases of materials and supplies and capital commitments, other than reserve acquisitions, and is also a party to transportation capacity commitments. The future commitments under these agreements total $221.2 million in 2024, and is immaterial thereafter.

23. Segment Information

The Company's reportable business segments are based on two distinct lines of business, metallurgical and thermal, and may include a number of mine complexes. The Company manages its coal sales by market and coal quality, not by individual mining complex. Geology, coal transportation routes to customers, and regulatory environments also have a significant impact on the Company's marketing and operations management. Mining operations are evaluated based on Adjusted EBITDA, per-ton cash operating costs (defined as including all mining costs except depreciation, depletion, amortization, accretion on asset retirement obligations, and pass-through transportation expenses, divided by segment tons sold), and on other non-financial measures, such as safety and environmental performance. Adjusted EBITDA is not a measure of financial performance in accordance with generally accepted accounting principles, and items excluded from Adjusted EBITDA are significant in understanding and assessing the Company's financial condition. Therefore, Adjusted EBITDA should not be considered in isolation, nor as an alternative to net income (loss), income (loss) from operations, cash flows from operations or as a measure of our profitability, liquidity or performance under generally accepted accounting principles. The Company uses Adjusted EBITDA to measure the operating performance of its segments and allocate resources to the segments. Furthermore, analogous measures are used by industry analysts and investors to evaluate the Company's operating performance. Investors should be aware that the Company's presentation of Adjusted EBITDA may not be comparable to similarly titled measures used by other companies. The Company reports its results of operations primarily through the following reportable segments: Metallurgical (MET) segment, containing the Company's metallurgical operations in West Virginia, and the Thermal segment containing the Company's thermal operations in Wyoming and Colorado.

In November of 2021, the Company sold its equity investment Knight Hawk Holdings, LLC, which had been part of its Corporate, Other and Eliminations grouping. For further information on the sale of Knight Hawk Holdings, LLC, please see Note 4, "Divestitures" to the Consolidated Financial Statements.

Reporting segment results for the years ended December 31, 2023, 2022 and 2021 are presented below. The Corporate, Other, and Eliminations grouping includes these charges: idle operations; change in fair value of coal

derivatives, net; corporate overhead; land management activities; other support functions; and the elimination of intercompany transactions.

(In thousands)	MET	Thermal	Corporate, Other and Eliminations	Consolidated
Year Ended December 31, 2023				
Revenues	$ 1,892,326	$ 1,253,517	$ —	$ 3,145,843
Adjusted EBITDA	717,834	125,469	(129,261)	714,042
Depreciation, depletion and amortization	116,550	28,996	872	146,418
Accretion on asset retirement obligation	2,507	17,255	1,408	21,170
Total assets	1,064,510	437,776	981,887	2,484,173
Capital expenditures	141,210	33,212	1,615	176,037
Year Ended December 31, 2022				
Revenues	$ 2,157,710	$ 1,566,883	$ —	$ 3,724,593
Adjusted EBITDA	1,021,932	353,884	(115,384)	1,260,432
Depreciation, depletion and amortization	111,772	20,650	878	133,300
Accretion on asset retirement obligation	2,213	13,775	1,733	17,721
Total assets	1,058,217	381,099	993,792	2,433,108
Capital expenditures	140,031	28,578	4,119	172,728
Year Ended December 31, 2021				
Revenues	$ 1,149,133	$ 1,057,480	$ 1,429	$ 2,208,042
Adjusted EBITDA	442,830	175,709	(85,109)	533,430
Depreciation, depletion and amortization	99,171	20,231	925	120,327
Accretion on asset retirement obligation	2,030	17,675	2,043	21,748
Total assets	964,761	205,147	947,252	2,117,160
Capital expenditures	227,802	5,949	11,689	245,440

A reconciliation of segment Adjusted EBITDA to net income:

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Net income	$ 464,038	$ 1,330,914	$ 337,573
Provision for (benefit from) income taxes	87,514	(251,926)	1,874
Interest (income) expense, net	(2,438)	13,162	23,344
Depreciation, depletion and amortization	146,418	133,300	120,327
Accretion on asset retirement obligations	21,170	17,721	21,748
Loss on divestitures	—	—	24,225
Non-service related pension and postretirement benefit (credits) costs	(3,786)	2,841	4,339
Net loss resulting from early retirement of debt	1,126	14,420	—
Adjusted EBITDA	$ 714,042	$ 1,260,432	$ 533,430
EBITDA from idled or otherwise disposed operations	15,986	(828)	2,469
Selling, general and administrative expenses	98,871	105,355	92,342
Other	14,404	10,857	(9,702)
Segment Adjusted EBITDA from coal operations	$ 843,303	$ 1,375,816	$ 618,539

24. Subsequent Events

On February 15, 2024, the Company announced that its board of directors had approved a dividend of $1.65 per share for stockholders of record on February 29, 2024, with payment date of March 15, 2024. The dividend consists of a fixed component of $0.25 per share and a variable component of $1.40 per share.

On February 8, 2024, the Company entered into a new senior secured term loan credit agreement in the principal amount of $20.0 million. The new term loan requires quarterly principal amortization payments of $3.3 million and matures on June 30, 2025. The loan is guaranteed by substantially all of the domestic subsidiaries of the Company. Additionally, the loan is secured by substantially all of the assets of the Company and the guarantors, subject to customary exceptions (including an exclusion for owned and leased real property). The proceeds from the new term loan were used to pay off the $3.5 million balance of the existing term loan debt facility.

Schedule II

Arch Resources, Inc. and Subsidiaries

Valuation and Qualifying Accounts

	Balance at Beginning of Year	Additions (Reductions) Charged to Costs and Expenses	Charged to Other Accounts	Deductions [a]	Balance at End of Year
			(In thousands)		
Year Ended December 31, 2023					
Reserves deducted from asset accounts:					
Accounts receivable and other receivables	$ 10,636	(2,200)	—	8,436	$ —
Current assets — supplies and inventory	2,439	522	—	1,365	1,596
Deferred income taxes	83,704	(879)	—	—	82,825
Year Ended December 31, 2022					
Reserves deducted from asset accounts:					
Accounts receivable and other receivables	$ 10,636	—	—	_	$ 10,636
Current assets — supplies and inventory	2,249	314	—	124	2,439
Deferred income taxes	504,392	(420,688)	—	—	83,704
Year Ended December 31, 2021					
Reserves deducted from asset accounts:					
Accounts receivable and other receivables	$ 10,636	—	—	_	$ 10,636
Current assets — supplies and inventory	574	1,860	—	185	2,249
Deferred income taxes	573,995	(69,603)	—	—	504,392

(a) Reserves utilized, unless otherwise indicated.

Exhibit 10.1

$20,000,000 TERM LOAN CREDIT AGREEMENT

ARCH RESOURCES, INC., as Borrower

and

THE GUARANTORS PARTY HERETO

and

THE LENDERS PARTY HERETO

and

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent

Dated as of February 8, 2024

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LIST OF SCHEDULES AND EXHIBITS

SCHEDULES

EXHIBITS

CREDIT AGREEMENT

THIS CREDIT AGREEMENT is dated as of February 8, 2024, and is made by and among ARCH RESOURCES, INC., a Delaware corporation (the "Borrower"), the GUARANTORS (as hereinafter defined), the LENDERS (as hereinafter defined), and PNC BANK, NATIONAL ASSOCIATION, in its capacity as the Administrative Agent (as hereinafter defined).

The Borrower has requested the Lenders to provide a $20,000,000 term loan facility. In consideration of their mutual covenants and agreements hereinafter specified and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

1.1 Certain Definitions. In addition to words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly requires otherwise:

"ABL Agent" means the administrative agent and collateral agent under any ABL Credit Agreement, together with its successors and assigns in such capacities. As of the date hereof, the "ABL Agent" is Regions Bank, as administrative agent and collateral agent under the Existing ABL Credit Agreement.

"ABL Credit Agreement" means the collective reference to any credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument, in each case, evidencing or governing the terms of any inventory- and/or receivables-based Debt facility or other financial accommodation incurred in connection therewith, and any Permitted Refinancing of such Debt, and other obligations outstanding under any of the foregoing agreements or instruments, unless such agreement or instrument expressly provides that it is not intended to be and is not an ABL Credit Agreement hereunder and under the ABL Intercreditor Agreement (if any). Any reference to the ABL Credit Agreement hereunder shall be deemed a reference to any ABL Credit Agreement then extant. As of the date hereof, the "ABL Credit Agreement" means the Existing ABL Credit Agreement.

"ABL Documents" means the "Loan Documents" as defined in the Existing ABL Credit Agreement (or any comparable definition in any other ABL Credit Agreement).

"ABL Facility" means any facility provided by the lenders or issuing banks pursuant to an ABL Credit Agreement.

"ABL Intercreditor Agreement" means (i) the Existing ABL Intercreditor Agreement or (ii) any other intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent governing the priority of the Liens on the Collateral securing the Obligations, on the one hand, and the ABL Obligations, on the other hand, and, among other things, providing that Liens on all or a portion of the assets constituting ABL Priority Collateral that secure the ABL Obligations are senior to the Liens on such Collateral that secure the Obligations, to be entered into in connection with any ABL Facility, between the Administrative Agent and the ABL

Agent and acknowledged by the Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"ABL Obligations" has the meaning of "ABL Debt" specified in the Existing ABL Intercreditor Agreement (or any comparable definition in any other ABL Intercreditor Agreement).

"ABL Priority Collateral" has the meaning specified in the Existing ABL Intercreditor Agreement (or any comparable definition in any other ABL Intercreditor Agreement).

"ABL Specified Collateral" means (a) cash and Permitted Investments, and deposit accounts and securities accounts containing solely such cash and Permitted Investments, that (i) cash collateralize (x) letters of credit issued under the ABL Documents, (y) defaulting lender participations in letters of credit, swingline loans or protective advances under the ABL Documents, or (z) returned or charged-back items under the ABL Documents, or (ii) constitute "Qualified Cash" (as defined in the ABL Credit Agreement, or any comparable definition) and (b) "as-extracted collateral" as defined in the UCC.

"Active Operating Properties" means all property which is the subject of outstanding Environmental Health and Safety Permits issued to any Loan Party or any Subsidiary of any Loan Party.

"Administrative Agent" means PNC Bank, National Association, in its capacity as administrative agent and collateral agent hereunder or any successor administrative agent and collateral agent.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Parties" means as is specified in Section 12.5(d)(ii).

"Agreement" means this Credit Agreement, as the same may be amended, supplemented, modified or restated from time to time, including all schedules and exhibits.

"Anti-Corruption Laws" means (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) any other applicable Law relating to anti-bribery or anti-corruption in any jurisdiction in which any Loan Party is located or doing business.

"Anti-Money Laundering Laws" means (a) the Bank Secrecy Act and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct

Terrorism (USA PATRIOT) Act of 2001; (b) the U.K. Proceeds of Crime Act 2002, the Money Laundering Regulations 2017, as amended and the Terrorist Asset-Freezing etc. Act 2010; and (c) any other applicable Law relating to anti-money laundering and countering the financing of terrorism in any jurisdiction in which any Loan Party is located or doing business.

"Applicable Intercreditor Agreement" has the meaning specified in Section 11.11(c).

"Applicable Margin" means three percent (3.0%) per annum with respect to the Term SOFR Rate Option and two percent (2.0%) per annum with respect to the Base Rate Option

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Assumption Agreement" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 12.8 [Successors and Assigns]), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

"Authorized Officer" means, with respect to any Loan Party, the Chief Executive Officer, President, Chief Financial Officer, Treasurer or Assistant Treasurer of such Loan Party, any manager or the members (as applicable) in the case of any Loan Party which is a limited liability company, or such other individuals, designated by written notice to the Administrative Agent from the Borrower, authorized to execute notices, reports and other documents on behalf of such Loan Party required hereunder. The Borrower may amend such list of individuals from time to time by giving written notice of such amendment to the Administrative Agent.

"Bail-In Action" means the exercise of any Write-down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

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

"Base Rate" means, for any day, a fluctuating per annum rate of interest equal to the highest of (i) the Overnight Bank Funding Rate, plus 0.5%, (ii) the Prime Rate, and (iii) the Daily Simple SOFR, plus 1.00%, so long as Daily Simple SOFR is offered, ascertainable and not unlawful; provided, however, if the Base Rate as determined above would be less than zero, then such rate shall be deemed to be zero. Any change in the Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs. Notwithstanding

anything to the contrary contained herein, in the case of any event specified in Section 4.4(a) [Unascertainable; Increased Costs] or Section 4.4(b) [Illegality], to the extent any such determination affects the calculation of the Base Rate, the definition hereof shall be calculated without reference to clause (iii) until the circumstances giving rise to such event no longer exist.

"Base Rate Loan" means a Term Loan bearing interest at the Base Rate plus the Applicable Margin.

"Base Rate Option" means the option of the Borrower to have Loans bear interest at the rate and under the terms specified in Section 4.1(d)(i) [Term Loan Base Rate Option].

"Benchmark Replacement" means as is specified in Section 4.4(b) [Benchmark Replacement Setting].

"Beneficial Owner" means, for each Borrower, each of the following: (a) each individual, if any, who, directly or indirectly, owns 25% or more of such Borrower's Equity Interests; and (b) a single individual with significant responsibility to control, manage, or direct such Borrower.

"Benefit Arrangement" means an "employee benefit plan," within the meaning of Section 3(3) of ERISA, which is neither a Plan nor a Multiemployer Plan and which is maintained, sponsored or contributed to by any member of the ERISA Group.

"Black Lung Act" means, collectively, the Black Lung Benefits Revenue Act of 1977, as amended and the Black Lung Benefits Reform Act of 1977, as amended.

"Blocked Property" means any property: (a) owned, directly or indirectly, by a Sanctioned Person; (b) due to or from a Sanctioned Person; (c) in which a Sanctioned Person otherwise holds any interest; (d) located in a Sanctioned Jurisdiction; or (e) that otherwise would cause a violation by the Lenders or Administrative Agent of any applicable Sanctions if the Lenders were to obtain an encumbrance on, lien on, pledge of, or security interest in such property, or provide services in consideration of such property.

"Bonding Subsidiary" means a Subsidiary of the Borrower the sole purpose of which is to own a leasehold interest in a coal lease where the lessor thereof is a Person who is not an Affiliate of the Borrower (but not to operate any Mining Operations thereon) and to enter into surety or similar arrangements to provide payment assurances to the lessor thereof related to the cost of acquiring such leasehold interest and any bonus bid and royalty payments thereunder, and Bonding Subsidiaries shall mean, collectively, each and every Bonding Subsidiary.

"Borrower" means as is specified in the introductory paragraph.

"Borrowing Date" means, with respect to any Loan, the date of the making, renewal or conversion thereof, which shall be a Business Day.

"Borrowing Tranche" means specified portions of Term Loans consisting of simultaneous loans under the same Interest Rate Option, and having the same Interest Period. For

the avoidance of doubt, all Term Loans to which a Base Rate Option applies shall constitute one Borrowing Tranche.

"Business Day" means any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed, or are in fact closed, for business in Pittsburgh, Pennsylvania (or, if otherwise, the Lending Office of the Administrative Agent); provided that, when used in connection with an amount that bears interest at a rate based on SOFR or any direct or indirect calculation or determination of SOFR, the term "Business Day" means any such day that is also a U.S. Government Securities Business Day.

"Capital Expenditures" means any expenditure that, in accordance with GAAP, is or should be included in "purchase of property and equipment" or similar items, or which should otherwise be capitalized, reflected in the consolidated statement of cash flows of the Borrower and its Subsidiaries.

"Capital Lease Obligations" means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Management Bank" means any Person that, at the time it enters into an Other Lender Provided Financial Service Product, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Other Lender Provided Financial Service Product.

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

"Certificate of Beneficial Ownership" means, for each Borrower, a certificate in form and substance acceptable to the Administrative Agent (as amended or modified by the Administrative Agent from time to time in its sole discretion), certifying, among other things, the Beneficial Owner of such Borrower.

"CFTC" means the Commodity Futures Trading Commission.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Official Body or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Official Body; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Law) and (y) all requests, rules, regulations, guidelines, interpretations 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 or foreign regulatory authorities (whether or not having the force of Law), in each case pursuant to

Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

"Change of Control" shall have the meaning specified in Section 10.1(j).

"CIP Regulations" means as is specified in Section 11.12 [No Reliance on Administrative Agent's Customer Identification Program].

"Closing Date" means February 8, 2024.

"Coal Act" means the Coal Industry Retiree Health Benefits Act of 1992, as amended.

"Coal Supply Agreement" means with respect to the Borrower or any of its Subsidiaries an agreement or contract in effect on the Closing Date or thereafter entered into for the sale, purchase, exchange, processing or handling of coal with an initial term of more than one year.

"Code" means the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

"Collateral" means all of the "Collateral" and "Pledged Collateral" as defined in any Collateral Document and all other assets that become subject to (or purported to be subject to) the Liens created by the Collateral Documents from time to time.

"Collateral Documents" means the Security Agreement, the Pledge Agreement, the Patent, Trademark and Copyright Security Agreements, and any other agreement, document or instrument granting a Lien in Collateral in favor of the Administrative Agent for the benefit of the Secured Parties.

"Commitment" means, as to any Lender, its Term Loan Commitment and Commitments means the aggregate of the Term Loan Commitments of all of the Lenders.

"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.

"Communications" means as is specified in Section 12.5(d)(ii) [Platform].

"Compliance Authority" means (a) the United States government, including, without limitation, the U.S. Department of State, and the U.S. Department of the Treasury and its Office of Foreign Assets Control; (b) the government of Canada or any agency thereof; (c) the European Union or any agency thereof; (d) the government of the United Kingdom or any agency thereof; and (e) the United Nations Security Council.

"Compliance Certificate" means as is specified in Section 8.16(a) [Certificate of the Borrower].

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

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated EBITDA" for any period of determination shall mean with respect to the Borrower and its consolidated Subsidiaries for such period of determination: (a) Consolidated Net Income, plus (b) the sum of the following, without duplication and to the extent deducted in determining Consolidated Net Income: (i) interest expense (net of interest income), (ii) income tax expense, (iii) depreciation, depletion, amortization (including, without limitation, amortization of intangibles, deferred financing fees, and any amortization included in pension or other employee benefit expenses) and all other non-cash items reducing Consolidated Net Income (including, without limitation, write-downs and impairment of property, plant, equipment and intangibles, other long-lived assets, the impact of purchase accounting and asset retirement obligations accretion expenses, but excluding any such non-cash charge that represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), (iv) non-cash debt extinguishment costs, (v) non-cash impairment charges or asset write-offs and non-cash charges, including non-cash charges due to cumulative effects of changes in accounting principles (but excluding any such non-cash charge that represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), and (vi) costs and expenses, including fees, incurred directly in connection with the consummation of the transactions contemplated under the Loan Documents, plus (c) cash dividends or distributions received from Affiliates (other than received from the Borrower or any Subsidiary of the Borrower) to the extent not included in determining Consolidated Net Income, minus (d) the sum of the following, without duplication and to the extent included in determining Consolidated Net Income, (i) non-cash debt extinguishment gains and (ii) non-cash gains (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 EBITDA in a prior period under this Agreement), including non-cash gains due to cumulative effects of changes in accounting principles and income tax benefits All items included in the definition of Consolidated EBITDA

shall be determined in each case for the applicable Person for the period of determination on a consolidated basis in accordance with GAAP.

For purposes of determining the Total Net Leverage Ratio under this Agreement, in the event that the Borrower or any Subsidiary of the Borrower:

A. acquires in a Permitted Acquisition, or any other acquisition or Investment permitted hereunder with an aggregate fair market value (as reasonably determined by the Borrower in good faith) in excess of $3,000,000 (the "Acquired Person") during any period of determination, then Consolidated EBITDA of the Borrower and its Subsidiaries shall be increased for such period of determination by the Consolidated EBITDA of the Acquired Person, subject to the following:

(1) the Consolidated EBITDA of the Acquired Person shall be based upon financial statements reasonably acceptable to the Administrative Agent (the "Acquired Person's Consolidated EBITDA"); and

(2) the Permitted Acquisition of the Acquired Person shall be deemed to have occurred on the first day of the period of determination with the Acquired Person's Consolidated EBITDA for periods prior to the actual date of the consummation of such acquisition based upon the Acquired Person financial statements and in an amount and calculated in a manner reasonably acceptable to the Administrative Agent and with Acquired Person's Consolidated EBITDA for periods on or after the date of consummation of such Permitted Acquisition based upon the actual operating results of the Acquired Person after giving effect to such Permitted Acquisition; or

B. Disposes of any assets with an aggregate fair market value (as reasonably determined by the Borrower in good faith) in excess of $3,000,000 pursuant to Section 9.7 of this Agreement, then Consolidated EBITDA of the Borrower and its Subsidiaries shall, with respect to such dispossessed assets, shall be increased or decreased, as applicable, for such period of determination by the Consolidated EBITDA attributable to such dispossessed assets, subject to the following:

(1) the Consolidated EBITDA attributable to such assets shall be based upon financial statements reasonably acceptable to the Administrative Agent (the "Dispossessed Business Consolidated EBITDA"); and

(2) the Disposition of such assets shall be deemed to have occurred on the first day of the period in which such Disposition occurred and calculated in a manner reasonably acceptable to the Administrative Agent and with the applicable Dispossessed Business Consolidated EBITDA based upon the actual operating results of such dispossessed business.

"Consolidated Interest Expense" means, for any Measurement Period, the sum of all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis, net of interest income of the Borrower and its Subsidiaries on a consolidated basis; provided that "Consolidated Interest

Expense" shall exclude one-time financing fees (including arrangement, amendment and contract fees), debt issuance costs, commissions, and expenses and, in each case, the amortization thereof.

"Consolidated Net Income" means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (i) the effect of non-cash compensation expenses related to common stock and other equity securities issued to employees, (ii) extraordinary or non-recurring gains and extraordinary or non-recurring losses for such Measurement Period, (iii) gains or losses on discontinued operations or disposal of discontinued operations or costs and expenses associated with the closure of any mines (including any reclamation or disposal obligations), (iv) equity earnings or losses of Affiliates (other than earnings or losses of the Borrower or any Subsidiary of the Borrower (but subject to the immediately succeeding clause (v) in the case of Subsidiaries)), (v) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its organizational documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (vi) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (v) of this proviso).

"Consolidated Net Tangible Assets" means, as of any particular time, the total of all the assets appearing on the most recent consolidated balance sheet prepared in accordance with GAAP of the Borrower and its Subsidiaries as of the end of the last fiscal quarter for which financial information is available (less applicable reserves and other properly deductible items) after deducting from such amount (i) all current liabilities, including current maturities of long-term debt and current maturities of obligations under capital leases (other than any portion thereof maturing after, or renewable or extendable at the option of the Borrower or the relevant Subsidiary beyond, twelve months from the date of determination) and (ii) the total of the net book values of all assets of the Borrower and its Subsidiaries properly classified as intangible assets under GAAP (including goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangible assets).

"Consolidated Working Capital" means, at any date, the excess of (i) the sum of all amounts (other than cash and Permitted Investments) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date over (ii) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries on such date, but excluding, without duplication, (a) the current portion of Debt and (b) all Debt consisting of revolving loans, letter of credit and bankers' acceptance obligations; *provided* that increases or

decreases in Consolidated Working Capital shall be (a) calculated without regard to any changes in current assets or current liabilities as a result of (i) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent, (ii) the effects of purchase accounting, (iii) the effect of fluctuations in the amount of accrued or contingent obligations, assets or liabilities under Hedging Transactions or (iv) any impact of foreign exchange translations and (b) adjusted to eliminate any distortion resulting from mergers, acquisitions and dispositions occurring during the applicable period.

"Contamination" means the presence or Release or threat of Release of Hazardous Materials in, on, under or emanating to or from the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party, which pursuant to Environmental Health and Safety Laws requires notification or reporting to an Official Body, or which pursuant to Environmental Health and Safety Laws requires performance of a Remedial Action or which otherwise constitutes a violation of Environmental Health and Safety Laws.

"Contractual Obligation" means as to any Person, any provisions 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" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Covered Entity" means (a) the Borrower and each of the Borrower's Subsidiaries; (b) each Guarantor and any Person who has pledged (or will pledge) Collateral hereunder; and (c) each Person that, directly or indirectly, controls a Person described in clauses (a) or (b) above.

"Cumulative Amount" means, at any time (the "Cumulative Amount Reference Time"), an amount (which shall not be less than zero) equal to, without duplication:

(i) $25,000,000; plus

(ii) (x) the cumulative amount of Excess Cash Flow of the Borrower and its Subsidiaries for all fiscal years completed after the Closing Date (commencing with the portion of fiscal year 2024) and prior to the Cumulative Amount Reference Time, minus (y) the portion of such Excess Cash Flow that has been (or is required to be) applied after the Closing Date and prior to the Cumulative Amount Reference Time to the prepayment of Term Loans in accordance with Section 5.1 or any other *pari passu* Debt (including the Tax Exempt Bonds or any Refinancing Notes) in accordance with the terms thereof (but excluding for purposes of this clause (y) any portion of such Excess Cash Flow with respect to which such prepayment has been waived by the Lender or other holder of such Debt entitled thereto); plus

(iii) [Reserved]; minus

(iv) the aggregate amount of any Restricted Payment made pursuant to Section 9.4(a), payments of subordinated Debt pursuant to Section 9.4(c) and any Investments made pursuant to

Section 9.3(vii) during the period commencing on the Closing Date and ending on or prior to the Cumulative Amount Reference Time (and, for purposes of this clause (iv), without taking account of the intended usage of the Cumulative Amount at such Cumulative Amount Reference Time).

"Cumulative Amount Reference Time" shall have the meaning specified in the definition of "Cumulative Amount."

"Daily Simple SOFR" means, for any day (a "SOFR Rate Day"), the interest rate per annum determined by the Administrative Agent (rounded upwards, at the Administrative Agent's discretion, to the nearest 1/100th of 1%) equal to SOFR for the day (the "SOFR Determination Date") that is 2 Business Days prior to (i) such SOFR Rate Day if such SOFR Rate Day is a Business Day or (ii) the Business Day immediately preceding such SOFR Rate Day if such SOFR Rate Day is not a Business Day in each case, as such SOFR is published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source identified by the Federal Reserve Bank of New York or its successor administrator for the secured overnight financing rate from time to time. If Daily Simple SOFR as determined above would be less than the SOFR Floor, then Daily Simple SOFR shall be deemed to be the SOFR Floor. If SOFR for any SOFR Determination Date has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the second Business Day immediately following such SOFR Determination Date, then SOFR for such SOFR Determination Date will be SOFR for the first Business Day preceding such SOFR Determination Date for which SOFR was published in accordance with the definition of "SOFR"; provided that SOFR determined pursuant to this sentence shall be used for purposes of calculating Daily Simple SOFR for no more than 3 consecutive SOFR Rate Days. If and when Daily Simple SOFR as determined above changes, any applicable rate of interest based on Daily Simple SOFR will change automatically without notice to the Borrower, effective on the date of any such change.

"Debt" shall mean for any Person as of any date of determination the sum, without duplication, of any and all indebtedness, obligations or liabilities of such Person for or in respect of: (i) all indebtedness for borrowed money (including, without limitation, all subordinated indebtedness), (ii) all amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (iii) all indebtedness in respect of any other transaction (including production payments (excluding royalties), installment purchase agreements, forward sale or purchase agreements, capitalized leases, conditional sales agreements, deferred purchase price of property or services and indebtedness secured by a Lien on property owned or being purchased by such Person, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements, (iv) reimbursement obligations (contingent or otherwise) under any letter of credit, (v) all indebtedness and other obligations of each Securitization Subsidiary in respect of any Permitted Receivables Financing, (vi) all payments such Person would have to make in the event of an early termination, on the date such Debt is being terminated, in respect of outstanding Hedging Transactions, (vii) all obligations of such Person in respect of Disqualified Equity Interests or (viii) the amount of all indebtedness (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) in respect of all Guaranties by such Person (the "Guarantying

Person") of Debt described in clauses (i) through (vii) above of other Persons (each such other Person being a "Primary Obligor" and the obligations of a Primary Obligor which are subject to a Guaranty by a Guarantying Person being "Primary Obligations") (it being understood that if the Primary Obligations of the Primary Obligor do not constitute Debt, then the Guaranty by the Guarantying Person of the Primary Obligations of the Primary Obligor shall not constitute Debt). It is expressly agreed that obligations in respect of any current trade liabilities (which are incurred in the ordinary course of business and which are not represented by a promissory note or other evidence of indebtedness) and current intercompany liabilities (but not any refinancings, extensions, renewals or replacements thereof) incurred in the ordinary course of business shall not be deemed "Debt" for purposes hereof. For purposes of determining the Debt outstanding at any time under any Permitted Receivables Financing, the amount of such outstanding Debt shall equal the sum of (i) either (x) the drawn amount of commitments that has been invested in receivables under the Existing Receivables Financing (or any similarly structured Permitted Receivables Financing) at such time or (y) the principal amount of loans under an alternatively structured Permitted Receivables Financing at such time, plus (ii) the sum of the undrawn amounts of letters of credit issued thereunder at such time.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, 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.

"Defaulting Lender" means, subject to Section 3.3(e) [Defaulting Lender Cure], any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the

ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by an Official Body 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 Official Body) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.3(e) [Defaulting Lender Cure]) upon delivery of written notice of such determination to the Borrower and each Lender.

"Designated Non-Cash Consideration" means the fair market value (as reasonably determined by the Borrower in good faith) of non-cash consideration received by the Borrower or any of its Subsidiaries in connection with a Disposition that is so designated as "Designated Non-Cash Consideration."

"Dispose" or "Disposition" has the meaning specified in Section 9.7.

"Disqualified Equity Interests" means any equity interests which, by their terms (or by the terms of any security into which they are convertible or for which they are exchangeable), or upon the happening of any event, (a) mature (excluding any maturity as the result of an optional redemption by the issuer thereof) or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are redeemable at the option of the holder thereof, in whole or in part, or require the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the date that is ninety-one (91) days after the Latest Maturity Date (determined as of the date of issuance thereof), or (b) are convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) cash, (ii) debt securities or (iii) any equity interests referred to in (a) above, in each case at any time prior to the date that is ninety-one (91) days after the Latest Maturity Date (determined as of the date of issuance thereof). Notwithstanding the foregoing, any equity interests that would constitute Disqualified Equity Interests solely because holders of the equity interests have the right to require the issuer of such equity interests to repurchase such equity interests upon the occurrence of a change of control or an asset sale will not constitute Disqualified Equity Interests if the terms of such equity interests provide that the issuer may not repurchase or redeem any such equity interests pursuant to such provisions unless such repurchase or redemption is permitted under the terms of this Agreement.

"Dollar", "Dollars", "U.S. Dollars" and the symbol "$" means, in each case, lawful money of the United States of America.

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

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

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

"Effective Date" means the date indicated in a document or agreement to be the date on which such document or agreement becomes effective, or, if there is no such indication, the date of execution of such document or agreement.

"Effective Federal Funds Rate" means for any day the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1% announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Effective Federal Funds Rate" as of the date of this Agreement; provided that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Effective Federal Funds Rate" for such day shall be the Effective Federal Funds Rate for the last day on which such rate was announced. Notwithstanding the foregoing, if the Effective Federal Funds Rate as determined under any method above would be less than zero percent (0.00%), such rate shall be deemed to be zero percent (0.00%) for purposes of this Agreement.

"Eligibility Date" means, with respect to each Loan Party and each Swap, the date on which this Agreement or any other Loan Document becomes effective with respect to such Swap (for the avoidance of doubt, the Eligibility Date shall be the Effective Date of such Swap if this Agreement or any other Loan Document is then in effect with respect to such Loan Party, and otherwise it shall be the Effective Date of this Agreement and/or such other Loan Document(s) to which such Loan Party is a party).

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 12.8(b)(iv) [Assignment and Assumption Agreement], (v) [No Assignment to Certain Persons] and (vi) [No Assignment to Natural Persons] (subject to such consents, if any, as may be required under Section 12.8(b)(iii) [Required Consents]).

"Eligible Contract Participant" means an "eligible contract participant" as defined in the CEA and regulations thereunder.

"Environmental Health and Safety Claim" means any administrative, regulatory or judicial action, suit, claim, written notice of non-compliance or violation, written notice of investigation, written notice of liability or potential liability, or proceeding relating in any way to any Environmental Health and Safety Laws, any Environmental Health and Safety Permit, any Hazardous Materials, any Contamination, or the performance of any Remedial Action.

"Environmental Health and Safety Laws" means, collectively, any federal, state, local or foreign statute, Law (including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f300j, the Federal Air Pollution Control Act, 42 U.S.C. § 7401 et seq., the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 to 136y, the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq. the Mine Safety and Health Act, 30 U.S.C. §§ 801 et seq., the Surface Mining Control and Reclamation Act 30 U.S.C. §§ 1201 et seq., the Atomic Energy Act, 42 U.S.C. § 2011 et seq., the National Historic Preservation Act, 16 U.S.C. § 470 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Wild and Scenic Rivers Act, 16 U.S.C. §§ 12711278, each as amended, or any equivalent state or local statute, and any amendments thereto), code, consent decree, settlement agreement, directive or any binding judicial or agency interpretation, policy or guidance, in each case regulating: (a) pollution or pollution control; (b) Contamination or Remedial Actions; (c) protection of human health from exposure to Hazardous Materials; (d) protection of natural resources or the environment, including endangered or threatened species or Environmentally Sensitive Areas; (e) employee health safety in the workplace and the protection of employees from exposure to Hazardous Materials in the workplace (but excluding workers compensation and wage and hour laws); and (f) the presence, use, management, generation, manufacture, processing, extraction, mining, treatment, recycling, refining, reclamation, labeling, transport, storage, collection, distribution, disposal or Release or threat of Release of Hazardous Materials.

"Environmental Health and Safety Orders" means all decrees, orders, directives, judgments, opinions, rulings writs, injunctions, settlement agreements or consent orders issued by or entered into with an Official Body relating or pertaining to Contamination, Environmental Health and Safety Laws, Environmental Health and Safety Permits, Hazardous Materials or Remedial Actions.

"Environmental Health and Safety Permit" means any applicable Permit required under any of the Environmental Health and Safety Laws.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Health and Safety Law, Environmental Health and Safety Permit, or Environmental Health and Safety Orders, (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 into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmentally Sensitive Area" means (i) any wetland as defined by applicable Environmental Health and Safety Laws; (ii) any area designated as a coastal zone pursuant to

applicable Environmental Health and Safety Laws; (iii) any area of historic or archeological significance or scenic area as defined or designated by applicable Environmental Health and Safety Laws; (iv) habitats of endangered species or threatened species as designated by applicable Environmental Health and Safety Laws; (v) a floodplain or other flood hazard area as defined pursuant to any applicable Environmental Health and Safety Laws; (vi) streams, rivers or other water bodies or springs classified, or designated or as otherwise protected by applicable Environmental Health and Safety Laws as a fishery, as having exceptional or high quality or value or as having recreational use; (vii) any area classified, designated or protected by applicable Environmental Health and Safety Laws as unsuitable for mining; and (viii) any man-made or naturally occurring surface feature classified, designated or protected by applicable Environmental Health and Safety Laws from disturbance, the effects of blasting, subsidence and mining operations.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

"ERISA Group" means, at any time, the Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control or treated as a single employer under Section 414(b), (c), (m) or (o) of the Internal Revenue Code.

"Erroneous Payment" has the meaning assigned to it in Section 11.15(a).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to it in Section 11.15(d).

"Erroneous Payment Impacted Class" has the meaning assigned to it in Section 11.15(d).

"Erroneous Payment Return Deficiency" has the meaning assigned to it in Section 11.15(d).

"Erroneous Payment Subrogation Rights" has the meaning assigned to it in Section 11.15(d).

"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.

"Event of Default" means any of the events described in Section 10.1 [Events of Default].

"Excess Cash Flow" shall mean, for any period, an amount (if positive) equal to, without duplication:

(a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for non-cash charges reducing Consolidated Net Income, including for depreciation and amortization, plus (iii) the amount of the decrease, if any, in Consolidated Working Capital for such fiscal year, plus (iv) cash gains excluded from the calculations of Consolidated Net Income for such period pursuant to the definition thereof, plus (v) cash returned from deposits that were deducted pursuant to clause (b)(iii)(H) below of this definition in determining Excess Cash Flow,

minus

(b) the sum, without duplication, of (i) the amount of all non-cash credits increasing such Consolidated Net Income, plus (ii) the amount of the increase, if any, in Consolidated Working Capital for such fiscal year, plus (iii) the amounts for such period paid from Internally Generated Cash (except to the extent made using the Cumulative Amount representing amounts generated under clauses (ii) and (iii) of the definition of the term "Cumulative Amount") of:

(A) to the extent paid in such period, reclamation liabilities required under law to be paid,

(B) scheduled repayments of Debt for borrowed money (excluding repayments of revolving loans except to the extent the applicable revolving commitments are permanently reduced in connection with such repayments) and scheduled repayments of Capital Lease Obligations (excluding any interest expense portion thereof), provided that, for the avoidance of doubt, any borrowing under the ABL Facility or repayment thereof (without a corresponding reduction in the commitments thereunder) shall not increase or decrease Excess Cash Flow,

(C) Capital Expenditures,

(D) Permitted Acquisitions and other Investments permitted pursuant to Section 9.3(ii), (iv), (vii), or (viii),

(E) pre-funding of royalty payments in the ordinary course of business,

(F) distributions to non-controlling interests (provided that Consolidated Net Income with respect to such non-controlling interests was not excluded from such Consolidated Net Income),

(G) federal coal lease expenditures,

(H) deposits in such period of cash collateral to secure mining-related liabilities and cash payments in such period in respect of any non-current mining-related liability that is not expensed in such period, and

(I) cash payments that reduce an accrual or reserve that was added pursuant to clause (a)(ii) above of this definition in determining Excess Cash Flow.

"Excluded Accounts" means (a) any deposit account that is used solely for payment of payroll, bonuses, other compensation and related expenses, in each case, for employees or former employees, (b) escrow accounts to the extent the use of such escrowed funds is permitted under this Agreement and the amount on deposit therein in connection with any letter of intent is in respect of a purchase that would reasonably be expected to result in a Permitted Acquisition or other permitted Investment, (c) fiduciary or trust accounts, (d) zero-balance accounts, so long as the balance in such account is zero at the end of each Business Day, (e) any other deposit accounts with an aggregate daily balance as at the end of each Business Day of less than $3,000,000 in the aggregate for all such deposit accounts, (f) assets subject to Liens permitted under clause (xii) of the definition of "Permitted Liens", and (g) commodity accounts.

"Excluded Hedge Liability or Liabilities" means, with respect to each Loan Party, each of its Swap Obligations if, and only to the extent that, all or any portion of this Agreement or any other Loan Document that relates to such Swap Obligation is or becomes illegal under the CEA, or any rule, regulation or order of the CFTC, solely by virtue of such Loan Party's failure to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap. Notwithstanding anything to the contrary contained in the foregoing or in any other provision of this Agreement or any other Loan Document, the foregoing is subject to the following provisos: (a) if a Swap Obligation arises under a master agreement governing more than one Swap, this definition shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guaranty or security interest is or becomes illegal under the CEA, or any rule, regulations or order of the CFTC, solely as a result of the failure by such Loan Party for any reason to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap, (b) if a guarantee of a Swap Obligation would cause such obligation to be an Excluded Hedge Liability but the grant of a security interest would not cause such obligation to be an Excluded Hedge Liability, such Swap Obligation shall constitute an Excluded Hedge Liability for purposes of the guaranty but not for purposes of the grant of the security interest, and (c) if there is more than one Loan Party executing this Agreement or the other Loan Documents and a Swap Obligation would be an Excluded Hedge Liability with respect to one or more of such Persons, but not all of them, the definition of Excluded Hedge Liability or Liabilities with respect to each such Person shall only be deemed applicable to (i) the particular Swap Obligations that constitute Excluded Hedge Liabilities with respect to such Person, and (ii) the particular Person with respect to which such Swap Obligations constitute Excluded Hedge Liabilities.

"Excluded Property" means (a) those assets, including, without limitation any undeveloped land, which in the reasonable discretion of the Administrative Agent, the taking of Liens thereupon is impractical, prohibited by law or commercially unreasonable, (b) assets subject to certificates of title, (c) the assets of any Non-Guarantor Subsidiary, (d) voting equity interests in any Foreign Subsidiary in excess of 65% of all outstanding voting equity interests in such Foreign Subsidiary, (e) the assets with respect to which any pledge or security interests thereof would be (i) prohibited by Law or (ii) in the case of equity interests of non-wholly owned Subsidiaries or Permitted Joint Ventures, prohibited by the organizational documents of such non-wholly owned Subsidiaries or Permitted Joint Ventures, except to the extent such prohibition is ineffective or rendered unenforceable under applicable Law (including the UCC), (f) assets subject to Liens permitted under clause (ix)(A) of the definition of "Permitted Liens", but only to the extent described as an exclusion to collateral in the UCC financing statement filed by, or on behalf of, the Administrative Agent, as secured party, against the applicable Loan Party, (g) Excluded Accounts, provided that, for the avoidance of doubt, any proceeds of Collateral held from time to time in any such Excluded Account shall not cease to be Collateral solely because such proceeds are held in an Excluded Account, (h) any owned real property so long as such real property is not subject to any Liens other than Permitted Liens, (i) any real property lease with a Loan Party as lessee so long as such real property is not subject to any Liens other than Permitted Liens, (j) any contract or lease agreement if the grant of a security interest in such contract or lease agreement is prohibited by the terms of such contract or lease agreement or would require the consent of another party thereto or would give another party thereto any rights of termination or acceleration, except to the extent that (x) the term in such contract or lease providing for such prohibition or right of termination or acceleration is ineffective or rendered unenforceable under applicable Law (including Sections 9-406 through 9-409 of the UCC) or principles of equity or (y) any consent or waiver has been obtained that would permit the Administrative Agent's security interest or Lien to attach notwithstanding the prohibition or restriction on the pledge of or security interest in such contract or lease agreement, (k) any property which is subject to a Lien permitted under clause (vii) or (x) of the definition of Permitted Liens (including but not limited to the equipment listed on Schedule 1.1(C) and, in the case of clause (vii), excluding any inventory), in each case where the governing documents prohibit the applicable Loan Party from granting any other Liens in such property or to the extent the grant of a security interest therein would violate or invalidate such documents or would create a termination right in favor of any other party thereto (other than to the extent that any such prohibition would be rendered ineffective pursuant to Sections 9-406 through 9-409 of the UCC or any other applicable law or principles of equity and other than to the extent all necessary consents to the creation, attachment and perfection of the Administrative Agent's Liens thereon have been obtained), and, in any event, immediately upon the ineffectiveness, lapse or termination of such terms that prohibit such Loan Party from granting any other Liens in such property or the obtainment of such consents to the creation, attachment and perfection of Agent's Liens thereon, such property shall cease to constitute an Excluded Property, (l) any intent-to-use trademark applications prior to the filing, and acceptance by the United States Patent and Trademark Office, of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark registrations under applicable federal law, (m) "as-extracted collateral" (as defined in the UCC), (n) any assets with respect to which any pledge or security interests thereof would result in adverse tax consequences to the Borrower or

any of its Affiliates, as reasonably determined by the Borrower in consultation with the Administrative Agent and (o)(A) any account, instrument, chattel paper, or other obligation or property of any kind due from, owed by, or belonging to, a Sanctioned Person or Sanctioned Jurisdiction or (B) any lease under which the lessee is a Sanctioned Person or Sanctioned Jurisdiction; provided that "Excluded Property" (1) shall not include any and all proceeds, products, substitutions and replacements of Excluded Property specified in clauses (a) through (n) of this definition to the extent such proceeds, products, substitutions and replacements do not themselves constitute Excluded Property under clauses (a) through (m) of this definition and (2) shall not include any proceeds of Excluded Property specified in clause (n).

"Excluded Swap Obligation" means, with respect to any Guarantor, at any time, any obligation (a "Swap 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, if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is illegal at such time 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) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time such guarantee or grant of a security interest becomes effective with respect to such related Swap Obligation. 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 Guaranty or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in such Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.11 [Replacement of a Lender]) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 5.9(g) [Status of Lenders], amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 5.9(g) [Status of Lenders], and (d) any U.S. federal withholding Taxes imposed under FATCA (except to the extent imposed due to the failure of the Borrower to provide documentation or information to the IRS, if and to the extent that such documentation or information is in the Borrower's possession and is required under applicable Law to be provided to the IRS to establish an exemption from or reduction in such Taxes).

"Existing ABL Credit Agreement" means that certain Credit Agreement, dated as of April 27, 2017, among the Borrower and certain of its subsidiaries, the lenders party thereto and the ABL Agent, as amended, restated, supplemented or otherwise modified from time to time.

"Existing ABL Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of April 27, 2017, among the ABL Agent, Credit Suisse AG, Cayman Islands Branch, as the Existing Administrative Agent and the Existing Collateral Agent, as amended and supplemented by that certain Additional Joinder Agreement, dated July 2, 2020, pursuant to which Citibank, N.A. as Trustee became an additional Term Debt Agent (as defined therein), as further amended by the termination letter, dated the Closing Date, pursuant to which Existing Administrative Agent and Existing Collateral acknowledged and agreed that they are no longer parties to such Intercreditor Agreement, as further amended and supplemented by that certain Additional Joinder Agreement, dated the Closing Date, pursuant to which Administrative Agent became an additional Term Debt Agent (as defined therein), as further and supplemented after the date hereof pursuant to which any additional Term Debt Agent (as defined therein) becomes a party thereto, and as further amended, restated, supplemented or otherwise modified from time to time.

"Existing Administrative Agent" means Credit Suisse AG, Cayman Island Branch, in its capacity as administrative agent pursuant to the Existing Credit Agreement.

"Existing Collateral Agent" means Credit Suisse AG, Cayman Island Branch, in its capacity as collateral agent pursuant to the Existing Credit Agreement.

"Existing Credit Agreement" means that certain Credit Agreement, dated as of March 7, 2017, among the Borrower, the lenders party thereto and Credit Suisse AG, Cayman Island Branch, as administrative agent and collateral agent, as the same has been amended, supplemented or otherwise modified prior to the date hereof.

"Existing Pari Passu Intercreditor Agreement" means that certain Pari Passu Intercreditor Agreement, dated as of June 1, 2020, among Credit Suisse AG, Cayman Islands Branch, as the Existing Administrative Agent and the Existing Collateral Agent, Citibank, N.A., as representative and collateral agent for the Initial Other First Lien Claimholders (as defined therein), each additional representative and collateral agent from time to time party thereto for the Other First Lien Claimholders (as defined therein) of the Series (as defined therein) with respect to which it is acting in such capacity, and the Borrower and certain of its subsidiaries, as amended, supplemented or otherwise modified from time to time.

"Existing Receivables Financing" means the receivables financing pursuant to the following agreements, each dated as of October 5, 2016, and in each case as may be amended, restated, supplemented or otherwise modified from time to time: (1) the Second Amended and Restated Purchase and Sale Agreement by and among Arch Coal Sales Company, Inc., certain of the Borrower's Subsidiaries as the Originators (as defined therein) thereunder and the Borrower, (2) the Second Amended and Restated Sale and Contribution Agreement by and among the Borrower and Arch Receivable Company, LLC, (3) the Third Amended and Restated Receivables Purchase Agreement by and among Arch Receivable Company, LLC, Arch Coal Sales Company,

Inc., certain financial institutions from time to time parties thereto, as LC Participants (as defined therein), certain financial institutions from time to time parties thereto, as conduit purchasers, related committed purchasers, and purchaser agents and PNC Bank, National Association, as Administrator (as defined therein) on behalf of the Purchasers (as defined therein) and as LC Bank (as defined therein), (4) the Third Amended and Restated Performance Guaranty between the Borrower and PNC Bank, National Association, as Administrator (as defined therein), (5) the Amended and Restated Originator Performance Guaranty among certain of the Borrower's Subsidiaries as the Originators (as defined therein) and PNC Bank, National Association, as Administrator (as defined therein) and (6) other related agreements and documents.

"Facility Termination Date" means the date as of which all of the following shall have occurred: (a) the aggregate Commitments have been terminated, and (b) all Obligations have been paid in full (other than (i) Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement and (ii) with respect to any Lender Provided Interest Rate Hedge, Erroneous Payment Subrogation Rights, Lender Provided Foreign Currency Hedge, or Other Lender Provided Financial Service Product, to the extent arrangements satisfactory to the Secured Parties counterparties thereto have been made).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any amended or successor version of such section that is described above), any intergovernmental agreement entered into in connection with any of the foregoing and any law, rule, regulation, or other official written practice implementing such intergovernmental agreement.

"FCPA" has the meaning specified in Section 6.26.

"Foreign Lender" means any Lender that is not a U.S. Person.

"Foreign Subsidiaries" means, for any Person, each Subsidiary of such Person that is (i) a "controlled foreign corporation" (a "CFC") within the meaning of Section 957 of the Internal Revenue Code, (ii) any Subsidiary of a CFC or (iii) any Subsidiary substantially all of the assets of which constitute equity interests (or equity interests and indebtedness) of CFCs or of Subsidiaries described in this clause (iii).

"Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles as are in effect from time to time, subject to the provisions of Section 1.3 [Accounting Principles; Changes in GAAP], and applied on a consistent basis both as to classification of items and amounts.

"Government Official" means any officer, employee, official, representative, or any Person acting for or on behalf of any Official Body, government-owned or government-controlled association, organization, business, or enterprise, or public international organization, any political party or official thereof and any candidate for political office.

"Guarantors" means at any time each of the Significant Subsidiaries of the Borrower that is party to the Guaranty Agreement on the Closing Date or, after the Closing Date, delivers a guarantor joinder in accordance with Section 8.8(d)(i). Notwithstanding anything herein to the contrary, no Person shall be or become a borrower or guarantor under the ABL Facility or the Tax Exempt Bonds unless such Person shall also be a Guarantor hereunder.

"Guaranty" means, with respect to any Person, any obligation of such Person guaranteeing or in effect guaranteeing any liability or obligation of any other Person in any manner, whether directly or indirectly. The amount of obligations under a Guaranty 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 Guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Guaranty Agreement" means the Guaranty Agreement, dated of even date herewith, executed and delivered by each of the Guarantors in favor of the Administrative Agent for the benefit of the Secured Parties.

"Guaranty Joinder" means a joinder by a Person as a Guarantor under the Loan Documents in substantially the form of Exhibit B.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Health and Safety Laws.

"Hedge Bank" means any Person that, at the time it enters into a Secured Hedge Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Secured Hedge Agreement.

"Hedging Transaction" shall mean any of the following transactions by the Borrower or any of its Subsidiaries: any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction of any combination of the foregoing transactions.

"Immaterial Subsidiaries" means, as of any date, any Subsidiary (i) whose assets, as of the last day of the fiscal quarter of the Borrower then most recently ended for which financial statements have been provided to the Administrative Agent under Section 8.15(a) or (b), had an aggregate book value of less than $3,000,000, (ii) whose assets, when taken together with the

assets of all other Immaterial Subsidiaries, had an aggregate book value of less than $3,000,000 as of the last day of the fiscal quarter of the Borrower then most recently ended for which financial statements have been provided to the Administrative Agent under Section 8.15(a) or (b).

"Internally Generated Cash" means with respect to any period, any cash of the Borrower or any Subsidiary generated during such period, excluding Net Cash Proceeds of any asset sale, Net Insurance/Condemnation Proceeds and any Net Cash Proceeds of any incurrence of Debt (other than proceeds of any revolving loan) or any sale or issuance of equity interests.

"Indemnified Taxes" means (i) 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, and (ii) to the extent not otherwise described in the preceding clause (i), Other Taxes.

"Indemnitee" means as is specified in Section 12.3(b) [Indemnification by the Borrower].

"Information" means all information received from the Loan Parties or any of their Subsidiaries relating to the Loan Parties or any of such Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender on a non-confidential basis prior to disclosure by the Loan Parties or any of their Subsidiaries, provided that, in the case of information received from the Loan Parties or any of their Subsidiaries after the date of this Agreement, such information is clearly identified at the time of delivery as confidential.

"Insolvency Proceeding" means, with respect to any Person, (a) a case, action or proceeding with respect to such Person (i) before any court or any other Official Body under any bankruptcy, insolvency, reorganization or other similar Law now or hereafter in effect, or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Loan Party or otherwise relating to the liquidation, dissolution, winding-up or relief of such Person, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of such Person's creditors generally or any substantial portion of its creditors; undertaken under any Law.

"Interest Period" means the period of time selected by the Borrower in connection with (and to apply to) any election permitted hereunder by the Borrower to have Term Loans bear interest under the Term SOFR Rate Option. Subject to the last sentence of this definition, such period shall be, in each case, subject to the availability thereof, one month, three months, or six months. Such Interest Period shall commence on the effective date of such Term SOFR Rate Option, which shall be (i) the Borrowing Date if the Borrower is requesting new Loans, or (ii) the date of renewal of or conversion to the Term SOFR Rate Option if the Borrower is renewing or converting to the Term SOFR Rate Option applicable to outstanding Loans. Notwithstanding the second sentence hereof: (A) any Interest Period which would otherwise end on a date which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (B) the Borrower shall not select, convert to or renew an Interest Period for any

portion of the Loans that would end after the Term Loan Maturity Date, and (C) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period.

"Interest Rate Hedge" means an interest rate exchange, collar, cap, swap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or similar agreements entered into by any Loan Party in order to provide protection to, or minimize the impact upon, such Loan Party of increasing floating rates of interest applicable to Debt.

"Interest Rate Option" means any Term SOFR Rate Option or Base Rate Option.

"Investments" means collectively all of the following with respect to any Person: (i) investments or contributions by any of the Loan Parties or their Subsidiaries in or to the capital of such Person, (ii) loans by any of the Loan Parties or their Subsidiaries to such Person, (iii) any Guaranty by any Loan Party or any Subsidiary of any Loan Party directly or indirectly of the Debt or of the other obligations of such Person, (iv) other payments by any of the Loan Parties or their Subsidiaries to such Person (except in connection with transactions for the sale of goods or services for fair value), or (v) credit enhancements of any Loan Party to or for the benefit of such Person. If the nature of an Investment is tangible property, then the amount of such Investment shall be determined by valuing such property at fair value in accordance with the past practice of the Loan Parties, and such fair values shall be reasonably satisfactory to the Administrative Agent. For the purposes of calculating the outstanding aggregate amount of such Investments, the aggregate amount shall be reduced by the aggregate amount of any quantifiable rebate, dividend, return, or other financial benefit received by such Loan Party with respect to such Investments for the period from the Closing Date through and including the date of determination.

"IRS" means the United States Internal Revenue Service.

"JV Holding Company" shall mean any Guarantor, (i) the sole asset of which is the equity interests of a single non-wholly owned Subsidiary or Permitted Joint Venture owned directly or indirectly by the Borrower and (ii) who does not have any material indebtedness, liabilities or obligations, other than tax liabilities and the Obligations.

"Labor Contracts" means all collective bargaining or other collective labor agreements among any Loan Party or Subsidiary of a Loan Party and any union or other representative of its employees.

"Latest Maturity Date" means, at any date of determination, the latest maturity date applicable to any Loan hereunder at such time, including the latest maturity date of any Refinancing Term Loans.

"Law" means any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, ruling, order, executive order, injunction, writ, decree, bond, judgment, authorization or approval or award of or any settlement arrangement, by agreement, consent or otherwise, with any Official Body, foreign or domestic.

"Lender Counterparty" shall mean each of the Lenders, Administrative Agent, arrangers and their respective Affiliates counterparty to a Secured Hedge Agreement, notwithstanding whether after entering into a Secured Hedge Agreement, such party ceases to be a Lender, arranger or an Administrative Agent or an Affiliate thereof, as the case may be.

"Lender Provided Interest Rate Hedge" means an Interest Rate Hedge which is entered into between any Loan Party and any Hedge Bank that: (a) is documented in a standard International Swaps and Derivatives Association Master Agreement or another reasonable and customary manner, (b) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner, and (c) is entered into for hedging (rather than speculative) purposes. The liabilities owing to the Hedge Bank providing any Lender Provided Interest Rate Hedge (the "Interest Rate Hedge Liabilities") by any Loan Party that is party to such Lender Provided Interest Rate Hedge shall, for purposes of this Agreement and all other Loan Documents, be "Obligations" of such Person and of each other Loan Party, be guaranteed obligations under any Guaranty Agreement and secured obligations under any other Loan Document, as applicable, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the Interest Rate Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the other Loan Documents, subject to the express provisions of Section 10.2(e) [Application of Proceeds].

"Lenders" means the financial institutions named on Schedule 1.1(B) and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a Lender. For the purpose of any provision of any Loan Document which provides for the granting of a security interest or other Lien to the Lenders or to the Administrative Agent for the benefit of the Lenders as security for the Obligations, "Lenders" shall include any Affiliate of a Lender to which such Obligation is owed.

"Lending Office" means, as to the Administrative Agent or any Lender, the office or offices of such Person described as such in such Lender's Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Borrower and the Administrative Agent.

"Lien" means any mortgage, deed of trust, pledge, lien, security interest, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security and any filed financing statement or other notice of any of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing), but, for the avoidance of doubt, shall not include any operating lease.

"Limited Condition Acquisition" means any Permitted Acquisition or other Investment permitted hereunder which the Borrower or one or more of its Subsidiaries has contractually committed to consummate, the terms of which do not condition the Borrower's or such Subsidiary's, as applicable, obligation to close such Permitted Acquisition or other Investment on the availability of third-party financing.

"Liquidity" means, as of any date of determination, the sum of, without duplication, (a) unrestricted cash or Permitted Investments as of such date of the Borrower and its Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) that are not Foreign Subsidiaries (for the avoidance of doubt, cash and Permitted Investments on deposit from time to time in an account over which either the Administrative Agent or the ABL Agent has first priority "control" (within the meaning of Article 9 of the UCC) shall be included in this clause (a)), (b) withdrawable funds from brokerage accounts of Borrower and the other Loan Parties as of such date, (c) Availability (as defined in the ABL Credit Agreement) as of such date, and (d) any unused commitments that are available to be drawn as of such date by the Borrower pursuant to the terms of any Permitted Receivables Financing. For the avoidance of doubt, any Cash Collateral (as defined in the ABL Credit Agreement) provided to the ABL Agent pursuant to the ABL Credit Agreement shall not be included in "Liquidity."

"List of Parties of Concern" means the Denied Persons List, Entity List, or Military End User List maintained by the U.S. Department of Commerce.

"LLC Division" means, in the event a Borrower or Guarantor is a limited liability company, (a) the division of any such Borrower or Guarantor into two or more newly formed limited liability companies (whether or not such Borrower or Guarantor is a surviving entity following any such division) pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any similar provision under any similar act governing limited liability companies organized under the Laws of any other State or Commonwealth or of the District of Columbia, or (b) the adoption of a plan contemplating, or the filing of any certificate with any applicable Official Body that results or may result in, any such division.

"Loan Documents" means this Agreement, the Collateral Documents, the Guaranty Agreement, the Notes, and any other instruments, certificates or documents delivered in connection herewith or therewith.

"Loan Parties" means the Borrower and the Guarantors.

"Loan Request" means that certain term loan request made by the Borrower on the Closing Date.

"Loans" means, collectively, and "Loan" means, separately, all Term Loans or any Term Loan.

"Material Adverse Change" means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Agreement or any other material Loan Document, (b) is or could reasonably be expected to be materially adverse to the business, properties, assets, financial condition, or results of operations of the Borrower and its Subsidiaries taken as a whole, (c) impairs materially or would reasonably be expected to impair materially the ability of the Loan Parties taken as a whole to pay the Obligations when due under the Loan Documents, or (d) impairs materially or would reasonably be expected to impair materially the ability of any of the Administrative Agent or any of the Lenders, to the extent permitted, to enforce their legal remedies pursuant to this Agreement or any other Loan Document.

"Material Contracts" means, collectively, all contracts, agreements or other instruments described in Regulation S-K, Item 601(b)(10) promulgated pursuant to the Securities Exchange Act of 1934, as amended, which the Borrower is required to file as an exhibit to any annual, quarterly or other report required to be filed by the Borrower under the Securities Exchange Act of 1934, as amended.

"Material Subsidiary" means any Subsidiary of the Borrower which at any time (i) has gross revenues equal to or in excess of five percent (5%) of the gross revenues of the Borrower and its Subsidiaries on a consolidated basis, or (ii) has total assets equal to or in excess of five percent (5%) of the total assets of the Borrower and its Subsidiaries, in either case, as determined and consolidated in accordance with GAAP.

"Measurement Period" means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower for which financial statements have been delivered pursuant to Section 8.15 [Reporting Requirements] (or, prior to the first delivery thereof after the Closing Date, the most recent Statements).

"Mining Laws" means any and all applicable federal, state, local and foreign statutes, laws, regulations, guidance, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions or common law causes of action relating to mining operations and activities, or oil, natural gas, minerals, and other hydrocarbons and their constituents production operations and activities. Mining Laws shall include but not be limited to, the Mineral Lands Leasing Act of 1920, the Federal Coal Leasing Amendments Act, the Surface Mining Control and Reclamation Act, all other land reclamation and use statutes and regulations relating to coal mining, the Federal Coal Mine Health and Safety Act, the Black Lung Act and the Coal Act, the Mine Safety and Health Act and the Occupational Safety and Health Act, each as amended, and their state and local counterparts or equivalents.

"Mining Operations" means (i) the removal of coal and other minerals from the natural deposits or from waste or stock piles by any surface or underground mining methods; (ii) operations or activities conducted underground or on the surface associated with or incident to the preparation, development, operation, maintenance, opening and reopening of an underground or surface mine storage or stockpiling of mined materials, backfilling, sealing and other closure procedures related to a mine or the movement, assembly, disassembly or staging of any mining equipment; (iii) milling; (iv) coal preparation, coal processing or testing; (v) coal refuse disposal, coal fines disposal or the operation and maintenance of impoundments; (vi) the operation of any mine drainage system; (vii) reclamation activities and operations; or (viii) the operation of coal terminals, river or rail load-outs or any other transportation facilities.

"Mining Title" means fee simple title to surface and/or coal or an undivided interest in fee simple title thereto or a leasehold interest in all or an undivided interest in surface and/or coal together with no less than those real property, easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, process and transport coal in the manner presently operated.

"Moody's" means Moody's Investors Service, Inc., and its successors.

"Multiemployer Plan" means any employee benefit plan which is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and to which the Borrower or any member of the ERISA Group is then making or accruing an obligation to make contributions or, within the preceding five Plan years, has made or had an obligation to make such contributions and to which it continues to have unsatisfied liability.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Borrower or any member of the ERISA Group) at least two of whom are not under common control, as such a plan is described in Sections 4063 and 4064 of ERISA.

"Net Cash Proceeds" means proceeds received by the Borrower or any Subsidiary (other than a Bonding Subsidiary or Securitization Subsidiary) after the Closing Date in cash from (a) any sale of property, net of (i) the direct out-of-pocket cash costs, fees and expenses paid or required to be paid in connection therewith (including all reasonable fees, legal fees, brokerage fees, commissions, costs and other expenses in connection therewith), (ii) taxes paid or reasonably estimated to be payable as a result thereof (including tax distributions pursuant to Section 9.4(f) and (iii) any amount required to be paid or prepaid on Debt (other than the Obligations and Debt owing to any Loan Party) secured by the property subject thereto; and (b) any sale or issuance of equity interests or incurrence of Debt, in each case net of brokers', advisors' and investment banking fees and other customary outofpocket underwriting discounts, commissions and other customary out-of-pocket cash costs, fees and expenses, in each case incurred in connection with such transaction; provided that amounts provided as a reserve, in accordance with GAAP, against any liability under any indemnification obligations or purchase price adjustment associated with any of the foregoing shall not constitute Net Cash Proceeds except to the extent and at the time any such amounts are released from such reserve.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (i) any cash payments or proceeds received by the Borrower or any Subsidiary (other than a Bonding Subsidiary or Securitization Subsidiary) (a) under any casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of any assets of the Borrower or any such Subsidiary by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by the Borrower or any such Subsidiary in connection with the adjustment or settlement of any claims of the Borrower or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including income taxes payable as a result of any gain recognized in connection therewith.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all or all affected Lenders in accordance with the terms of Section 12.1 [Modifications, Amendments or Waivers] and (b) has been approved by the Required Lenders.

"Non-Guarantor Subsidiary" means any Subsidiary of the Borrower that is a Bonding Subsidiary, an Immaterial Subsidiary, a Securitization Subsidiary, a Foreign Subsidiary, the Subsidiary of a Foreign Subsidiary or a non-wholly owned Subsidiary. The Non-Guarantor Subsidiaries, as of the date hereof, are listed on Schedule 1.1(E).

"Non-Qualifying Party" means any Loan Party that fails for any reason to qualify as an Eligible Contract Participant on the Effective Date of the applicable Swap.

"Notes" means collectively, and Note means separately, the promissory notes in the form of Exhibit C evidencing the Term Loans.

"Obligation" means any obligation or liability of any of the Loan Parties, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, under or in connection with (a) this Agreement, the Notes, or any other Loan Document, (b) any Lender Provided Interest Rate Hedge, (c) any Erroneous Payment Subrogation Rights, (d) any Lender Provided Foreign Currency Hedge, and (e) any Other Lender Provided Financial Service Product. Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall not include any Excluded Hedge Liabilities.

"Official Body" means the government of the United States of America or of any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Lender Provided Financial Service Product" means agreements or other arrangements entered into between any Loan Party and any Cash Management Bank that provides any of the following products or services to any of the Loan Parties: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH transactions, or (f) cash management, including controlled disbursement, overdraft lines, accounts or services.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are

Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.11 [Replacement of a Lender]).

"Overnight Bank Funding Rate" means for any day, the rate comprised of both overnight federal funds and overnight eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the Federal Reserve Bank of New York (or by such other recognized electronic source (such as Bloomberg) selected by the Administrative Agent for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Administrative Agent at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Borrower.

"Participant" means as is specified in Section 12.8(d) [Participations].

"Participant Register" means as is specified in Section 12.8(d) [Participations].

"Patent, Trademark and Copyright Security Agreements" means collectively the Patent, Trademark and Copyright Security Agreements in substantially the form attached as exhibits to the Security Agreement, each as executed and delivered by the applicable Loan Parties for the benefit of the Secured Parties, as the same may be supplemented, amended, restated, replaced or modified from time to time, and Patent, Trademark and Copyright Security Agreement shall mean any of the Patent, Trademark and Copyright Security Agreements.

"Payment Date" means each of (a) the first day of each calendar quarter ending after the Closing Date, (b) the Term Loan Maturity Date and (c) the date the Loans are accelerated pursuant to Section 10.2(a) or 10.2(b).

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

"Perfection Certificate" means a perfection certificate in substantially the form attached hereto as Exhibit D.

"Permit" means any and all permits, approvals, licenses, registrations, consents, notifications, identification numbers, bonds, waivers or exemptions and any other regulatory authorization, in each case, from an Official Body having jurisdiction over the applicable activity.

"Permitted Acquisition" shall have the meaning assigned to such term in Section 9.6.

"Permitted Investments" means:

(a) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof;

(b) certificates of deposit and time deposits with maturities of 18 months or less from the date of acquisition and overnight bank deposits of any Lender or of any commercial bank having capital and surplus in excess of $500,000,000;

(c) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (ii) of this definition with respect to securities issued or fully guaranteed or insured by the United States Government;

(d) commercial paper of a domestic issuer rated at least A2 by Standard & Poor's or P2 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of Standard & Poor's and Moody's cease publishing ratings of investments;

(e) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by Standard & Poor's or A by Moody's;

(f) securities with maturities of 18 months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (ii) of this definition;

(g) corporate obligations such as notes, bonds, loan participation certificates, master notes, and variable rate demand notes rated at least A by Standard & Poor's or A2 by Moody's;

(h) asset backed and mortgage backed securities and collateralized mortgage obligations rated AAA by Standard & Poor's or Aaa by Moody's;

(i) money market auction rate preferred securities and auction rate notes with auctions scheduled no less frequently than every 49 days;

(j) shares of money market mutual or similar funds which invest principally in assets satisfying the requirements of clauses (i) through (ix) of this definition; and

(k) in the case of a Person that is a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

"Permitted Joint Venture" means any Person (i) with respect to which the ownership of equity interests thereof by the Borrower or any Subsidiary of the Borrower is accounted for in accordance with the "equity method" in accordance with GAAP; (ii) engaged in a line of business permitted by Section 9.10; and (iii) with respect to which the equity interests

thereof were acquired by the Borrower or Subsidiary of the Borrower in an arm's-length transaction.

"Permitted Liens" means:

(i) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable or that are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established in accordance with GAAP;

(ii) Pledges or deposits made in the ordinary course of business to secure payment of reclamation liabilities, worker's compensation, or to participate in any fund in connection with worker's compensation, unemployment insurance, oldage pensions or other social security programs (including Liens to secure letters of credit issued to assure payment of such obligations, provided that such letters of credit are not prohibited by Section 9.1);

(iii) Liens of mechanics, materialmen, warehousemen, carriers, or other like Liens, securing obligations incurred in the ordinary course of business that are not yet due and payable and Liens of landlords securing obligations to pay lease or royalty payments that are not yet due and payable or in default beyond all applicable notice and cure periods;

(iv) Good-faith pledges or deposits made in the ordinary course of business to secure performance of bids (including bonus bids), tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amount due thereunder or other amounts as may be customary, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations, provided that such letters of credit are not prohibited by Section 9.1);

(v) Encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property, none of which materially impairs the use of such property or the value thereof, and none of which is violated in any material respect by existing or proposed structures or land use;

(vi) Liens created on the Collateral under the Loan Documents;

(vii) Liens on property leased by any Loan Party or Subsidiary of a Loan Party under capital leases (as the nature of such lease is determined in accordance with GAAP) securing obligations of such Loan Party or Subsidiary to the lessor under such leases and Purchase Money Security Interests on assets purchased by any Loan Party or Subsidiary of a Loan Party, provided that such Liens shall not extend to any assets that are not the subject of such leases or Purchase Money Security Interests; provided, further that the aggregate amount for the Borrower and its Subsidiaries of all loans, capital lease obligations and deferred payments secured as permitted by this clause (vii) shall not at any time outstanding exceed the greater of $100,000,000 and 5.0% of Consolidated Net Tangible Assets;

(viii) The following, (A) if the validity or amount thereof is being contested in good faith by appropriate and lawful proceedings diligently conducted so long as levy and execution thereon have been stayed and continue to be stayed or (B) if a final judgment is entered and such judgment is discharged within thirty (30) days of entry, and in either case they do not affect the Collateral or, in the aggregate, materially impair the ability of any Loan Party to perform its Obligations hereunder or under the other Loan Documents:

(1) Claims or Liens for taxes, assessments or charges due and payable and subject to interest or penalty, provided that the applicable Loan Party maintains such reserves or other appropriate provisions as shall be required by GAAP and pays all such taxes, assessments or charges forthwith upon the commencement of proceedings to foreclose any such Lien;

(2) Claims, Liens or encumbrances upon, and defects of title to, real or personal property other than the Collateral, including any attachment of personal or real property or other legal process prior to adjudication of a dispute on the merits; or

(3) Claims or Liens of mechanics, materialmen, warehousemen, carriers, or other statutory nonconsensual Liens;

(ix) (A) Liens securing obligations in respect of a Permitted Receivables Financing, so long as the Liens created pursuant to such Permitted Receivables Financing are limited to Receivables Assets and the assets of the applicable Securitization Subsidiary (and as further provided in clause (xii) of "Permitted Liens" below with respect to letters of credit issued pursuant to a Permitted Receivables Financing), and (B) Liens securing the ABL Obligations (provided that, to the extent the ABL Obligations constitute Debt, the Liens securing such Debt shall only be permitted under this clause (ix) to the extent such Debt is permitted to be incurred under Section 9.1(xi) or 9.1(xii)) so long as the Liens securing such ABL Obligations are limited to assets constituting Collateral or ABL Specified Collateral (or other assets of the Borrower and its Subsidiaries that the Borrower elects to include in the Collateral securing the Obligations, notwithstanding the definition of Excluded Property set forth herein) and, to the extent such Liens granted pursuant to or in respect of such ABL Obligations are subject to the ABL Intercreditor Agreement;

(x) Liens assumed in connection with (but not incurred in contemplation of) a Permitted Acquisition or any other permitted Investment, provided that (i) such Liens existed at the time such property or assets were acquired or such entity became a Subsidiary and were not created in anticipation thereof, (ii) such Liens do not extend to any other property or assets of such Person (other than the proceeds of the property or assets initially subject to such Lien) or of the Borrower or any Subsidiary and (iii) the amount of Debt secured thereby is not increased and is not prohibited by Section 9.1;

(xi) Liens relating to the pledge of the equity interests of a Bonding Subsidiary in favor of the provider of the surety bonds which provide payment assurances to the lessor of the leasehold interest leased by such Bonding Subsidiary related to the cost of such Bonding Subsidiary of acquiring such leasehold interest and any bonus bid and royalty payments to the lessor thereunder;

(xii) the pledge of cash and Permitted Investments, and deposit accounts and securities accounts containing solely such cash and Permitted Investments, securing letters of credit issued pursuant to a Permitted Receivables Financing, to the extent the amount of such cash or value of Permitted Investments does not exceed 115% of the undrawn face amount of all letters of credit issued under such Permitted Receivables Financing;

(xiii) Liens securing the Tax Exempt Bonds, any Refinancing Notes or any Permitted Refinancing of the foregoing; provided that (i) such Liens rank junior or *pari passu* with the Liens securing the Obligations pursuant to the Collateral Documents, (ii) the rights of the holders of the Tax Exempt Bonds, Refinancing Notes or such Permitted Refinancing are subject to the terms of the Existing Pari Passu Intercreditor Agreement or another *pari passu* or junior lien intercreditor agreement, as applicable, in a form reasonably acceptable to the Administrative Agent and (iii) such Liens encumber only the assets, or a subset of the assets, that secure the Obligations;

(xiv) Liens securing obligations up to $5,000,000 in the aggregate at any time outstanding;

(xv) statutory and common law banker's Liens and rights of setoff on bank deposits;

(xvi) any Lien existing on the date of this Agreement and described on Schedule 1.1(D), provided that the principal amount secured thereby is not hereafter increased (except as contemplated by Section 9.1(vi) hereof), and no additional assets other than proceeds and replacements become subject to such Lien; and

(xvii) any Lien arising out of the Permitted Refinancing of any Debt secured by any Lien that is permitted by clause (vi) of Section 9.1;

(xviii) Liens arising out of final judgments, awards, or orders not otherwise constituting an Event of Default hereunder;

(xix) option agreements and rights of first refusal granted with respect to assets that are permitted to be disposed of pursuant to the terms of Section 9.6 or Section 9.7 of this Agreement;

(xx) Liens securing Debt of Non-Guarantor Subsidiaries permitted pursuant to Section 9.1(xvii) in an aggregate amount not to exceed $10,000,000 at any time;

(xxi) precautionary filings under the Uniform Commercial Code by a lessor with respect to personal property leased to such Person under an operating lease;

(xxii) option agreements and rights of first refusal granted with respect to assets that are permitted to be disposed of pursuant to the terms of Section 9.7;

(xxiii) any leases of assets permitted by Section 9.7;

(xxiv) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and

(xxv) Liens resulting from the deposit of funds or evidences of Debt in trust for the purpose of decreasing or legally defeasing Debt of the Loan Parties permitted hereby so long as such decrease or defeasance is not prohibited hereunder.

"Permitted Receivables Financing" means a transaction or series of transactions pursuant to which a Securitization Subsidiary purchases Receivables Assets or interests therein from the Borrower or any Subsidiary of the Borrower and finances such Receivables Assets or interests therein through the issuance of Debt or equity interests or through the sale of such Receivables Assets or interests therein; provided that (a) the board of directors of the Borrower shall have approved such transaction, (b) no portion of the Debt of a Securitization Subsidiary is guaranteed by or is recourse to the Borrower or any of its other Subsidiaries (other than recourse for customary representations, warranties, covenants, indemnities and other customary matters none of which shall relate to the collectability of such Receivables Assets), and (c) neither the Borrower nor any of its other Subsidiaries has any obligation to maintain or preserve such Securitization Subsidiary's financial condition. The Existing Receivables Financing, as in effect on the Closing Date, is a Permitted Receivables Financing.

"Permitted Refinancing" means, with respect to any Debt, commitments to make loans or advances, existing letters of credit, commitments in respect of letters of credit, or unreimbursed amounts with respect to letters of credit, any refinancing, refunding, renewal, replacement or extension thereof, provided, that (i) such refinancing, refunding, renewal, replacement or extension permitted under the foregoing shall (A) not have any obligors and/or guarantors other than the obligors and/or guarantors on such Debt being extended, renewed, replaced, refunded or refinanced, (B) not be secured by any assets other than the assets (if any) securing the Debt being extended, renewed, replaced, refunded or refinanced, (C) be at least as subordinate to the Obligations as the Debt being extended, renewed, replaced, refunded or refinanced (and unsecured if the Debt being extended, renewed, replaced, refunded or refinanced is unsecured) or (D) not exceed in a principal amount the Debt being renewed, extended, replaced, refunded or refinanced plus any Permitted Refinancing Increase in respect of such modification, refinancing, refunding, renewal, replacement or extension and (ii) except with respect to a Permitted Refinancing of Debt in respect of any capital lease (as determined in accordance with GAAP) or Debt of the Borrower and its Subsidiaries secured by Purchase Money Security Interests, the Weighted Average Life to Maturity thereof is greater than or equal to, and the final maturity thereof is not earlier than, that of the Debt being refinanced, refunded, renewed, replaced or extended.

"Permitted Refinancing Increase" means, with respect to the refinancing, refunding, renewal, replacement or extension of any Debt, commitments in make loans or advances, existing letters of credit, commitments in respect of letters of credit, or unreimbursed amounts with respect to letters of credit, an amount equal to (a) any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal, replacement or extension, (b) any unpaid accrued interest and fees on the Debt commitments in make loans or advances, existing letters of credit, commitments in respect of letters of credit, unreimbursed amounts with respect to letters of credit, and letter of credit borrowings being refinanced, refunded, renewed, replaced or extended, and (c) any existing unutilized commitments to make loans or advances, existing letters of credit, unutilized commitments in respect of letters

of credit, or unreimbursed amounts with respect to letters of credit in connection with the Debt being refinanced, refunded, renewed, replaced or extended.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Official Body or other entity.

"Plan" means at any time an employee pension benefit plan (including a Multiple Employer Plan but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (i) is maintained by any member of the ERISA Group for employees of any member of the ERISA Group, or (ii) has at any time within the preceding five years been maintained by any entity which was at such time a member of the ERISA Group for employees of any entity which was at such time a member of the ERISA Group.

"Plan of Reorganization" shall mean the chapter 11 plan of reorganization of the Borrower and certain of its subsidiaries substantially in the form of the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code ECF No. 1334, Appendix A filed in the main Case of the jointly administered Chapter 11 debtors, Case No. 16-40120 on September 13, 2016, as amended, supplemented or otherwise modified from time to time.

"Platform" means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Pledge Agreement" means the Pledge Agreement, dated of even date herewith, executed and delivered by each of the Loan Parties to the Administrative Agent for the benefit of the Secured Parties.

"PNC" means PNC Bank, National Association, its successors and assigns.

"Potential Default" means any event or condition which with notice or passage of time, or both, would constitute an Event of Default.

"Prime Rate" means the interest rate per annum announced from time to time by the Administrative Agent at its Principal Office as its then prime rate, which rate may not be the lowest or most favorable rate then being charged to commercial borrowers or others by the Administrative Agent and may not be tied to any external rate of interest or index. Any change in the Prime Rate shall take effect at the opening of business on the day such change is announced.

"Principal Office" means the main banking office of the Administrative Agent in Pittsburgh, Pennsylvania.

"Prohibited Transaction" means any prohibited transaction as defined in Section 4975 of the Internal Revenue Code or Section 406 of ERISA for which neither an individual nor a class exemption has been issued by the United States Department of Labor.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Purchase Money Security Interest" means Liens upon tangible personal property securing loans to any Loan Party or Subsidiary of a Loan Party or deferred payments by such Loan Party or Subsidiary for the purchase of such tangible personal property.

"Qualified ECP Loan Party" means each Loan Party that on the Eligibility Date is (a) a corporation, partnership, proprietorship, organization, trust, or other entity other than a "commodity pool" as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that has total assets exceeding $10,000,000, or (b) an Eligible Contract Participant that can cause another person to qualify as an Eligible Contract Participant on the Eligibility Date under Section 1a(18)(A)(v)(II) of the CEA by entering into or otherwise providing a "letter of credit or keepwell, support, or other agreement" for purposes of Section 1a(18)(A)(v)(II) of the CEA.

"Ratable Share" means with respect to any Lender (and subject to Section 3.3 [Defaulting Lenders]), the proportion that such Lender's Term Loans bears to the Term Loan Commitments of all of the Lenders, provided that if the Term Loans have not yet been funded, a Lender's Ratable Share shall be determined based upon the Term Loan Commitments of the Lenders and not the amount of their Term Loans.

"Receivables Assets" means accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Borrower or any Subsidiary of the Borrower.

"Recipient" means (a) the Administrative Agent, and (b) any Lender, as applicable.

"Reclamation Laws" means all Laws relating to mining reclamation or reclamation liabilities including the Surface Mining Control and Reclamation Act of 1977, as amended, and its state and local counterparts or equivalents, including those applicable in West Virginia and Wyoming.

"Refinanced Facility" shall have the meaning specified in Section 3.4(d)(i).

"Refinancing Facility" shall have the meaning specified in Section 3.4(a).

"Refinancing Facility Effective Date" shall have the meaning specified in Section 3.4(c).

"Refinancing Facility Lender" means any Person who provides a Refinancing Facility.

"Refinancing Notes" has the meaning specified in Section 9.1(iv).

"Refinancing Term Loan" means, with respect to any Refinancing Facility, an advance made by any Refinancing Facility Lender under such Refinancing Facility.

"Register" has the meaning specified in Section 12.8(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Release" shall mean anything defined as a "release" under CERCLA or RCRA.

"Remedial Action" means any investigation, identification, preliminary assessment, characterization, delineation, feasibility study, cleanup, corrective action, removal, remediation, risk assessment, fate and transport analysis, in-situ treatment, the treatment of discharges or seeps, containment, operation and maintenance or management in-place, control, abatement or other response actions to Hazardous Materials and any closure or post-closure measures, or reclamation activities associated therewith.

"Removal Effective Date" means as is specified in Section 11.6(b) [Resignation of Administrative Agent].

"Reportable Compliance Event" means that: (a) any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint, or similar charging instrument, arraigned, custodially detained, penalized or the subject of an assessment for a penalty, by, or enters into a settlement with an Official Body in connection with the violation of any Anti-Corruption Law, or Anti-Money Laundering Law; (b) any Covered Entity engages in a transaction that has caused any Person hereunder (including the Administrative Agent, the Lenders, and any underwriter, advisor, investor, or otherwise) to be in violation of any Anti-Corruption Law, including a Covered Entity's use of any proceeds of the Facilities/Loans hereunder to directly or knowingly indirectly fund any activities or business of, with, or for the benefit of any Person that is a Sanctioned Person or to fund or facilitate any activities or business of or in any Sanctioned Jurisdiction; (c) any pledged Collateral qualifies as Blocked Property; or (d) any Covered Entity otherwise violates any of the Sanctions or Anti-Corruption Law-specific representations and covenants herein.

"Reportable Event" means a reportable event described in Section 4043 of ERISA and regulations thereunder with respect to a Plan or a Multiemployer Plan (other than any such event as to which the thirty-day notice period is waived); provided that, in the case of any such reportable event with respect to a Multiemployer Plan, such event shall only be deemed a Reportable Event for purposes of this Agreement if the Borrower has knowledge of such event.

"Required Lenders" means:

(a) If there exists fewer than three (3) Lenders, all Lenders (other than any Defaulting Lender), and

(b) If there exist three (3) or more Lenders, Lenders (other than any Defaulting Lender) having more than 50% of the sum of the aggregate outstanding amount of any Term Loans.

"Resignation Effective Date" means as is specified in Section 11.6(a) [Resignation of Administrative Agent].

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means, with respect to the Borrower, each of the chief executive officer, president, chief financial officer, treasurer and any vice president of the Borrower and, as to any document delivered on the Closing Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of the Borrower, and with respect to Administrative Agent, any officer assigned to the corporate trust office of such Person, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary, or any other officer of such Person customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Agreement, and also, with respect to a particular matter, any other officer, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Restricted Payment" has the meaning assigned to such term in Section 9.4.

"Sale and Leaseback Transaction" shall have the meaning assigned to such term in Section 9.12.

"Sanctioned Jurisdiction" means, at any time, a country, area, territory, or jurisdiction that is the target of comprehensive U.S. sanctions (as of the date of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic).

"Sanctioned Person" means any Person that is (a) located in, organized under the laws of, or ordinarily resident in a Sanctioned Jurisdiction; (b) identified on any sanctions-related list of blocked persons maintained by any Compliance Authority; or (c) owned 50% or more, in the aggregate, directly or indirectly by, controlled by, or acting for, on behalf of, or at the direction of, one or more Persons described in clauses (a) or (b) above.

"Sanctions" means all Laws relating to economic and financial sanctions, sectoral sanctions, secondary sanctions or trade embargoes administered or enforced by any Compliance Authority.

"Secured Hedge Agreement" means any agreement entered in connection with a Hedging Transaction between a Loan Party and a Lender Counterparty to the extent such agreement provides that the obligations thereunder are to be secured on a *pari passu* basis with the Obligations including any Lender Provided Interest Rate Hedges or Lender Provided Foreign Currency Hedges; provided that no such Secured Hedge Agreement 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 12.1 of this Agreement.

"Secured Parties" means, collectively, the Administrative Agent, the Lenders, the Cash Management Banks, the Hedge Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5 [Delegation of Duties], and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

"Securitization Subsidiary" means a Subsidiary of the Borrower (all of the outstanding equity interests of which, other than de minimis preferred stock and director's qualifying shares, if any, are owned, directly or indirectly, by the Borrower) that is established for the limited purpose of acquiring and financing Receivables Assets and interests therein of the Borrower or any Subsidiary of the Borrower and engaging in activities ancillary thereto.

"Security Agreement" means the Security Agreement, dated of even date herewith, executed and delivered by each of the Loan Parties to the Administrative Agent for the benefit of the Secured Parties.

"Significant Subsidiary" means individually any Subsidiary of the Borrower other than the Non-Guarantor Subsidiaries, and Significant Subsidiaries means collectively all Subsidiaries of the Borrower other than the Non-Guarantor Subsidiaries.

"SOFR" means, for any day, a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Adjustment" means, ten basis points (0.10%).

"SOFR Floor" means a rate of interest per annum equal to zero basis points (0%).

"Solvent" means, with respect to any Person on any date of determination, taking into account any right of reimbursement, contribution or similar right available to such Person from other Persons, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Standard & Poor's" means S&P Global Ratings Services, a division of S&P Global, Inc.

"Statements" means as is specified in Section 6.7(a) [Historical Statements].

"Subsidiary" means, with respect to any person (herein referred to as the "**parent**"), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, controlled or held by the parent or one or more subsidiaries of the parent, or (b) whose accounts are consolidated with the accounts of the parent or one or more subsidiaries of the parent in such parent's or subsidiary's SEC filings. Unless the context otherwise requires, Subsidiary means a Subsidiary of the Borrower.

"Subsidiary Shares" has the meaning assigned to that term in Section 6.2.

"Swap" means any "swap" as defined in Section 1a(47) of the CEA and regulations thereunder, other than (a) a swap entered into, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

"Swap Obligation" shall have the meaning assigned to that term in the definition of "Excluded Swap Obligation."

"Tax Exempt Bonds" means those certain West Virginia Economic Development Authority Solid Waste Disposal Facility Revenue Bonds (Arch Resources Project), Series 2020 and Series 2021 from time to time outstanding in an aggregate principal amount not in excess of $98,100,000.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Official Body, including any interest, additions to tax or penalties applicable thereto.

"Term Loan" means as is specified in Section 3.1 [Term Loan Commitments]; Term Loans means, collectively, all of the Term Loans.

"Term Loan Commitment" means, as to any Lender at any time, the amount initially specified opposite its name on Schedule 1.1(B) in the column labeled "Amount of Commitment for Term Loans," as such Commitment is thereafter assigned or modified and Term Loan Commitments means the aggregate Term Loan Commitments of all of the Lenders.

"Term Loan Facility" means the term loan facility provided pursuant to Article 3 [Term Loans].

"Term Loan Maturity Date" means with respect to the Term Loans, June 30, 2025, as such date may be extended with respect to certain Lenders' Term Loans pursuant to Section 12.1 [Modifications, Amendments or Waivers].

"Term Loan Priority Collateral" means all Collateral other than ABL Priority Collateral.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Rate" means, with respect to any amount to which the Term SOFR Rate Option applies, for any Interest Period, the interest rate per annum determined by the Administrative Agent (rounded upwards, at the Administrative Agent's discretion, to the nearest 1/100th of 1%) equal to the Term SOFR Reference Rate for a tenor comparable to such Interest Period, as such rate is published by the Term SOFR Administrator on the day (the "Term SOFR Determination Date") that is two (2) Business Days prior to the first day of such Interest Period. If the Term SOFR Reference Rate for the applicable tenor has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the Term SOFR Determination Date, then the Term SOFR Reference Rate shall be the Term SOFR Reference Rate for such tenor on the first Business Day preceding such Term SOFR Determination Date for which such Term SOFR Reference Rate for such tenor was published in accordance herewith, so long as such first preceding Business Day is not more than three (3) Business Days prior to such Term SOFR Determination Date. If the Term SOFR Rate, determined as provided above, would be less than the SOFR Floor, then the Term SOFR Rate shall be deemed to be the SOFR Floor. The Term SOFR Rate shall be adjusted automatically without notice to the Borrower on and as of the first day of each Interest Period.

"Term SOFR Rate Loan" means a Loan that bears interest based on the Term SOFR Rate.

"Term SOFR Rate Option" means the option of the Borrower to have Loans bear interest at the rate and under the terms specified in Section 4.1(d)(ii) [Term Loan Term SOFR Rate Option].

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Total Net Leverage Ratio" means, as of any date of determination, the ratio of the amounts under the following clauses (a) and (b):

(a) (i) the aggregate amount of Debt (determined in accordance with GAAP) (other than (x) Debt of the type described in clause (iii) of the definition thereof constituting payments made or to be made to the U.S. Federal Bureau of Land Management with respect to the acquisition of any U.S. Federal coal lease by any Loan Party or Subsidiary of any Loan Party which payments are either deferred purchase price payments or bonus bid payments related to any such lease and (y) Debt of the type described in clause (iv) of the definition thereof except to the extent of any unreimbursed drawings thereunder) of the Borrower and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) as of the date of the financial statements most recently delivered by the Borrower pursuant to Section 8.15(a) or Section 8.15(b) less (ii) the aggregate amount of Unrestricted Cash as of such date (but excluding any such Unrestricted Cash that constitute proceeds of any Debt for which this Total Net Leverage Ratio was required to be tested), to

(b) the sum of Consolidated EBITDA of the Borrower and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) for the period of four consecutive fiscal quarters ending as of the date of such financial statements.

It is expressly agreed that, for purposes of determining the Total Net Leverage Ratio, the difference between actual funded indebtedness and the fair market value of funded indebtedness recorded as required by the Statement of the Financial Accounting Standards Board No. 141 (as in effect on the Closing Date) will be excluded from indebtedness in the determination of Debt.

"Transactions" means (i) the effectiveness of the Loan Documents and the borrowing of the Loans on the Closing Date, (ii) the payment of all premiums, fees and expenses in connection with the foregoing and (iii) the refinancing of the Existing Credit Agreement.

"UCC" means the New York Uniform Commercial Code.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unliquidated Obligations" means, at any time, any Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Obligation that is: (i) any obligation (including any guarantee) that is contingent in nature at such time or (ii) an obligation to provide collateral to secure any of the foregoing types of obligations.

"Unrestricted Cash" means the aggregate amount of cash and Permitted Investments held in accounts on the consolidated balance sheet of Borrower and its Subsidiaries not to exceed $200,000,000 in the aggregate, to the extent that the use of such cash for application to payment of the Obligations or other Debt is not prohibited by law or any contract or other agreement and such cash is and Permitted Investments are free and clear of all Liens (other than Liens in favor of the Administrative Agent, the ABL Agent or any other agent or representative with respect to permitted secured Debt that is subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent) and Liens permitted pursuant to clause (xv) of the definition of Permitted Liens.

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday or Sunday or (b) a day on which the Securities Industry and Financial Markets

Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" means as is specified in Section 5.9(g)(ii)(2)(III) [Status of Lenders].

"Weighted Average Life to Maturity" means, when applied to any Debt on any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

"Withdrawal Liability" means any liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Working Capital Facility" means any Permitted Receivables Financing and any ABL Facility.

"Write-down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 "Construction". Unless the context of this Agreement otherwise clearly requires, the following rules of construction shall apply to this Agreement and each of the other Loan Documents: (a) references to the plural include the singular, the plural, the part and the whole and the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; (b) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (c) the words "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document as a whole; (d) article, section, subsection, clause, schedule and exhibit references are to this Agreement or other Loan Document, as the case may be, unless otherwise specified; (e) reference to any Person includes such Person’s successors and assigns, and in the case of an Official Body,

any other Official Body that shall have succeeded to any or all of the functions thereof; (f) reference to this Agreement or any other Loan Document, means this Agreement or such other Loan Document, together with the schedules and exhibits hereto or thereto, as amended, modified, replaced, substituted for, superseded or restated from time to time (subject to any restrictions thereon specified in this Agreement or the other applicable Loan Document); (g) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including"; (h) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time (i) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights; (j) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms; (k) section headings herein and in each other Loan Document are included for convenience and shall not affect the interpretation of this Agreement or such Loan Document, and (l) unless otherwise specified, all references herein to times of day shall constitute references to Eastern Time.

1.3 "Accounting Principles; Changes in GAAP". Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters and all financial statements to be delivered pursuant to this Agreement shall be made and prepared in accordance with GAAP (including principles of consolidation where appropriate), and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP as in effect on the Closing Date applied on a basis consistent with those used in preparing the Statements referred to in Section 6.7(a) [Historical Statements]. Notwithstanding the foregoing, if at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP 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 or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, whether a lease constitutes a capital lease or an operating lease shall be determined based on GAAP as in effect on December 31, 2018, notwithstanding any modification or interpretive change thereto after such date (including without giving effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having or purporting to have a similar result or effect)).

1.4 Benchmark Replacement Notification. Section 4.4(d) [Benchmark Replacement Setting] of this Agreement provides a mechanism for determining an alternative rate of interest in the event that the Term SOFR Rate is no longer available or in certain other circumstances. The Administrative Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the continuation of, administration of, submission of or calculation of, or

any other matter related to the Term SOFR Rate or with respect to any alternative or successor rate thereto, or replacement rate therefor.

1.5 Limited Condition Acquisitions.

(a) In connection with any action being taken primarily in connection with a Limited Condition Acquisition, for purposes of testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of consolidated total assets, if any), in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "LCA Election"), the date of determination of whether any such action is permitted hereunder may be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "LCA Test Date"), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to the LCA Test Date for which consolidated financial statements of the Borrower are available, the Borrower would have been permitted to take such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCA Election and any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in consolidated total assets of the Borrower or the Person subject to such Limited Condition Acquisition, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to the incurrence of Debt or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrower, or the prepayment, redemption, purchase, defeasance or other satisfaction of Debt on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be tested by calculating the availability under such ratio or basket on a pro forma basis (A) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have been consummated and (B) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have not been consummated.

(b) In connection with any action being taken primarily in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement which requires that no Potential Default or Event of Default, as applicable, has occurred, is continuing or would result from any such action, as applicable, such condition may, at the option of the Borrower, be deemed satisfied, so long as no Potential Default or Event of Default, as applicable, exists on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Borrower has exercised its option

under this Section 1.5, and any such Potential Default or Event of Default occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such Potential Default or Event of Default shall be deemed to not have occurred or be continuing for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

(c) In connection with any action being taken in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement which requires compliance with any representations and warranties set forth herein, such condition may, at the option of the Borrower, be deemed satisfied, so long as the Borrower is in compliance with such representations and warranties on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Borrower has exercised its option under this Section 1.5, and any such breach of a representation or warranty occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such breach shall be deemed to not have occurred for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

ARTICLE 2
[RESERVED]

ARTICLE 3
TERM LOANS

3.1 Term Loan Commitments. Subject to the terms and conditions hereof, and relying upon the representations and warranties herein specified, each Lender severally agrees to make a term loan (the "Term Loan") to the Borrower on the Closing Date in such principal amount as the Borrower shall request up to, but not exceeding, such Lender's Term Loan Commitment.

3.2 Nature of Lenders' Obligations with Respect to Term Loans; Repayment Terms.

(a) The obligations of each Lender to make Term Loans to the Borrower shall equal its Ratable Share of the requested Term Loan; provided that no Lender's Term Loan to the Borrower shall exceed its Term Loan Commitment. The failure of any Lender to make a Term Loan shall not relieve any other Lender of its obligations to make a Term Loan nor shall it impose any additional liability on any other Lender hereunder. The Lenders shall have no obligation to make Term Loans hereunder after the Closing Date, and any portion of the Term Loan Commitment not drawn on the Closing Date shall automatically expire. The Term Loan Commitments are not revolving credit commitments, and the Borrower shall not have the right to borrow, repay and reborrow under Section 3.1 [Term Loan Commitments].

(b) The Borrower shall repay to the applicable Lenders the aggregate principal amount of all Term Loans outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of voluntary and

mandatory prepayments in accordance with the order of priority set forth in Section 5.2 [Voluntary Prepayments] and Section 5.3 [Mandatory Prepayments]):

Date	Amount
April 1, 2024	$3,333,333.33
July 1, 2024	$3,333,333.33
October 1, 2024	$3,333,333.33
January 1, 2025	$3,333,333.33
April 1, 2025	$3,333,333.33

The final principal repayment installment of the Term Loans shall be repaid on the Term Loan Maturity Date and shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date.

3.3 Defaulting Lenders.

(a) 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:

(b) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as specified in the definition of Required Lenders.

(c) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 9 [Default] or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.2(c) [Setoff] shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; third, so long as no Potential Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and fourth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) [Reserved].

(e) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so

notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions specified therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the Commitments under the Term Loan Facility, 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 the 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's having been a Defaulting Lender.

3.4 Refinancing Facility.

(a) Refinancing Facility. The Borrower may extend, refinance, renew or replace, in whole or in part, the Loans under any facility with one or more term loan facilities (each, a "Refinancing Facility"); provided that any such request for a Refinancing Facility shall be in a minimum amount equal to the lesser of (i) $25,000,000 and (ii) the entire amount of any facility which is being extended, refinanced, renewed or replaced under this Section 3.4.

(b) Refinancing Facility Lender. A Refinancing Facility may be provided by (i) an existing Lender (but no Lender shall be obligated to provide a commitment in respect of a Refinancing Facility, nor shall the Borrower have any obligation to approach any existing Lenders to provide a commitment in respect of a Refinancing Facility) or (ii) any other Refinancing Facility Lender so long as any such Person is approved by any Person who would have consent rights pursuant to Section 12.8 if such Refinancing Facility Lender was becoming a Lender. Subject to any such consents being received and if not already a party hereto, any such Refinancing Facility Lender may become a party to this Agreement by entering into a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent.

(c) Effective Date. In connection with any Refinancing Facility, the Administrative Agent and the Borrower shall determine the effective date (the "Refinancing Facility Effective Date"). The Administrative Agent shall promptly notify the Borrower and the Lenders of the principal amount of the Refinancing Facility and the Refinancing Facility Effective Date.

(d) Conditions to Effectiveness of Refinancing Facility. The effectiveness of each Refinancing Facility shall be subject to the following conditions:

(i) the aggregate principal amount (or accreted value, if applicable) of any Refinancing Facility will not exceed the outstanding aggregate principal amount (or accreted value, if applicable) of any facility which it is extending, refinancing, renewing or replacing (the "Refinanced Facility") plus any Permitted Refinancing Increase;

(ii) such Refinancing Facility shall have the same guarantees as, and be secured on a *pari passu* basis with, the Obligations; provided that, if agreed by the Borrower and the relevant Refinancing Facility Lenders, the Refinancing Facility may be

subject to lesser guarantees or be unsecured or less secured, or the Liens securing the Refinancing Facility may rank junior to the Liens securing the Obligations; provided further that any Refinancing Facility that is secured on a pari passu or junior basis with the Obligations shall be subject to an intercreditor agreement reasonably satisfactory to the Administrative Agent;

(iii) such Refinancing Facility shall not be secured by a Lien on any assets of the Borrower and its Subsidiaries that does not also secure the Obligations, and, to the extent guaranteed, such Refinancing Facility shall not be guaranteed by any Subsidiary that is not a Guarantor of the Obligations;

(iv) such Refinancing Facility shall (A) have a final maturity no earlier than the maturity date of the Refinanced Facility, (B) a Weighted Average Life to Maturity no shorter than that of the Refinanced Facility and (C) shall not have any terms which require it to be voluntarily or mandatorily prepaid prior to the repayment in full of the outstanding Term Loans, unless accompanied by at least a ratable payment of such Term Loans;

(v) to the extent such terms and documentation for the Refinancing Facility are not substantially consistent with the applicable Loan Documents, they shall be reasonably satisfactory to the Administrative Agent, unless such terms (A) are more favorable to the Borrower, taken as a whole, than the Loan Documents in respect of the outstanding Term Loans (or the Lenders under the outstanding Term Loans shall receive the benefit of the more restrictive terms, which, for avoidance of doubt, may be provided to them without their consent), in each case, as certified by a Responsible Officer of the Borrower in good faith, (B) concern pricing (including interest rates, rate floors, fees, original issue discount or other fees), the amortization schedule, commitment reductions, prepayments and any prepayment premiums applicable to such Refinancing Facility or (C) apply after the Latest Maturity Date in effect at the time such Refinancing Facility is incurred; and

(vi) the proceeds of such Refinancing Facility (other than proceeds of such Refinancing Facility that are used to fund any Permitted Refinancing Increase (as set forth in clauses (a) and (b) of the definition of such term)) shall be applied, on a dollar-for-dollar basis, substantially concurrently with the incurrence thereof, to the repayment of the Refinanced Facility.

(e) Amendment. With the consent of the Lenders providing a Refinancing Facility, the Borrower and the Administrative Agent (and without the consent of any other Lenders), this Agreement shall be amended in writing to reflect any changes necessary to give effect to such Refinancing Facility in accordance with its terms (including, without limitation, to give such Refinancing Facility the benefits of Sections 5.2 and 5.3, as applicable).

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 5.4 or Section 12.1 to the contrary.

ARTICLE 4
INTEREST RATES

4.1 Interest Rate Options. The Borrower shall pay interest in respect of the outstanding unpaid principal amount of the Loans as selected by it from the Base Rate Option or the Term SOFR Rate Option specified below applicable to Term Loans, it being understood that, subject to the provisions of this Agreement, the Borrower may select different Interest Rate Options and different Interest Periods to apply simultaneously to the Loans comprising different Borrowing Tranches and may convert to or renew one or more Interest Rate Options with respect to all or any portion of the Loans comprising any Borrowing Tranche; provided that there shall not be at any one time outstanding more than one Borrowing Tranche of Term Loans; provided further that if an Event of Default or Potential Default exists and is continuing, then for so long as such Event of Default or Potential Default is continuing, no outstanding Borrowing Tranche may be converted to, or continued as, a Term SOFR Rate Loan. If at any time the designated rate applicable to any Loan made by any Lender exceeds such Lender's highest lawful rate, the rate of interest on such Lender's Loan shall be limited to such Lender's highest lawful rate. The applicable Base Rate or Term SOFR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(b) [Reserved].

(c) [Reserved].

(d) Term Loan Interest Rate Options. The Borrower shall have the right to select from the following Interest Rate Options applicable to the Term Loans:

(i) Term Loan Base Rate Option: A fluctuating rate per annum (computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed) equal to the Base Rate plus the Applicable Margin, such interest rate to change automatically from time to time effective as of the effective date of each change in the Base Rate; or

(ii) Term Loan Term SOFR Rate Option: A rate per annum (computed on the basis of a year of 360 days and actual days elapsed) equal to the Term SOFR Rate as determined for each applicable Interest Period plus the SOFR Adjustment for the applicable Interest Period plus the Applicable Margin.

(d) Rate Quotations. The Borrower may call the Administrative Agent on or before the date on which a Loan Request is to be delivered to receive an indication of the rates then in effect, but it is acknowledged that such projection shall not be binding on the Administrative Agent or the Lenders nor affect the rate of interest which thereafter is actually in effect when the election is made.

4.2 Conforming Changes Relating to the Term SOFR Rate. With respect to the Term SOFR Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further

action or consent of any other party to this Agreement or any other Loan Document; provided that, the Administrative Agent shall provide notice to the Borrower and the Lenders of each such amendment implementing such Conforming Changes reasonably promptly after such amendment becomes effective.

4.3 Interest After Default. To the extent permitted by Law, upon the occurrence of an Event of Default and until such time such Event of Default shall have been cured or waived, at the discretion of the Administrative Agent or upon written demand by the Required Lenders to the Administrative Agent:

(a) Interest Rate. The rate of interest for each Loan otherwise applicable pursuant to Section 4.3 [Interest Rate Options], respectively, shall be increased by 2.0% per annum;

(b) Other Obligations. Each other Obligation hereunder if not paid when due shall bear interest at a rate per annum equal to the sum of the rate of interest applicable to Term Loans under the Base Rate Option plus an additional 2.0% per annum from the time such Obligation becomes due and payable until the time such Obligation is paid in full; and

(c) Acknowledgment. The Borrower acknowledges that the increase in rates referred to in this Section 4.3 reflects, among other things, the fact that such Loans or other amounts have become a substantially greater risk given their default status and that the Lenders are entitled to additional compensation for such risk; and all such interest shall be payable by Borrower upon demand by Administrative Agent.

4.4 Rate Unascertainable; Increased Costs; Illegality; Benchmark Replacement Setting.

(a) Unascertainable; Increased Costs. If at any time:

(i) the Administrative Agent shall have determined (which determination shall be conclusive and binding absent manifest error) that Term SOFR Rate cannot be determined pursuant to the definition thereof; or

(ii) the Required Lenders determine that for any reason in connection with any request for a Term SOFR Rate Loan or conversion thereto or continuation thereof that the Term SOFR Rate does not adequately and fairly reflect the cost to such Lenders of funding, establishing or maintaining such Loan during the applicable Interest Period, as applicable, and the Required Lenders have provided notice of such determination to the Administrative Agent,

then the Administrative Agent shall have the rights specified in Section 4.4(c) [Administrative Agent's and Lender's Rights].

(b) Illegality. If at any time any Lender shall have determined, or any Official Body shall have asserted, that the making, maintenance or funding of any Term SOFR Rate Loan, or the determination or charging of interest rates based on the Term SOFR Rate, has been made impracticable or unlawful by compliance by such Lender in good faith with any Law or any

interpretation or application thereof by any Official Body or with any request or directive of any such Official Body (whether or not having the force of Law), then the Administrative Agent shall have the rights specified in Section 4.4(c) [Administrative Agent's and Lender's Rights].

(c) Administrative Agent's and Lender's Rights. In the case of any event specified in Section 4.4(a) [Unascertainable; Increased Costs] above, the Administrative Agent shall promptly notify the Lenders and the Borrower thereof, and in the case of an event specified in Section 4.4(b) [Illegality] above, such Lender shall promptly so notify the Administrative Agent and endorse a certificate to such notice as to the specific circumstances of such notice, and the Administrative Agent shall promptly send copies of such notice and certificate to the other Lenders and the Borrower. Upon such date as shall be specified in such notice (which shall not be earlier than the date such notice is given), the obligation of (i) the Lenders, in the case of such notice given by the Administrative Agent, or (ii) such Lender, in the case of such notice given by such Lender, to allow the Borrower to select, convert to, renew or continue a Term SOFR Rate Loan, as applicable, shall be suspended (to the extent of the affected Term SOFR Rate Loan or Interest Periods) until the Administrative Agent shall have later notified the Borrower, or such Lender shall have later notified the Administrative Agent, of the Administrative Agent's or such Lender's, as the case may be, determination that the circumstances giving rise to such previous determination no longer exist. Upon determination by the Administrative Agent under Section 4.4(a) [Unascertainable; Increased Costs], (i) if the Borrower has previously notified the Administrative Agent of its selection of, conversion to or renewal of a Term SOFR Rate Option and the Term SOFR Rate Option has not yet gone into effect, such notification shall be deemed to provide for selection of, conversion to or renewal of a Base Rate Loan, and (ii) any outstanding affected Term SOFR Rate Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. If any Lender notifies the Administrative Agent of a determination under Section 4.4(b) [Illegality], the Borrower shall, subject to the Borrower's indemnification Obligations under Section 5.10 [Indemnity], as to any Loan of the Lender to which a Term SOFR Rate Option applies, on the date specified in such notice either convert such Loan to a Base Rate Loan otherwise available with respect to such Loan or prepay such Loan in accordance with Section 5.2 [Voluntary Prepayments]. Absent due notice from the Borrower of conversion or prepayment, such Loan shall automatically be converted to a Base Rate Loan upon such specified date.

(d) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and any agreement executed in connection with an Interest Rate Hedge shall be deemed not to be a "Loan Document" for purposes of this Section titled "Benchmark Replacement Setting"), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement

is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement, and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to paragraph (iv) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document except, in each case, as expressly required pursuant to this Section.

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate or based on a term rate and either (I) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor; and (B) if a tenor that was removed pursuant to clause (A) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or

(II) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a given Benchmark, the Borrower may revoke any pending request for a Loan bearing interest based on or with reference to such Benchmark or conversion to or continuation of Loans bearing interest based on or with reference to such Benchmark to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Base Rate Loan or conversion to a Base Rate Loan. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(vi) Definitions. As used in this Section:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor of such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (iv) of this Section.

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to this Section.

"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) The sum of: (A) Daily Simple SOFR and (B) the SOFR adjustment;

(2) the sum of (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower, giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market

convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment;

provided that if the Benchmark Replacement as determined pursuant to the foregoing would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents; and provided further, that any Benchmark Replacement shall be administratively feasible as determined by the Administrative Agent in its sole discretion.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower, giving due consideration to (A) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Date" means a date and time determined by the Administrative Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (A) the date of the public statement or publication of information referenced therein and (B) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate or is based on a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date determined by the Administrative Agent, which date shall promptly follow the date of the Benchmark no longer being representative as set forth in the public statement or publication of information referenced therein;

For the avoidance of doubt, if such Benchmark is a term rate or is based on a term rate, the "Benchmark Replacement Date" will be deemed to have

occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means, the occurrence of one or more of the following events, with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate or is based on a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by an Official Body having jurisdiction over the Administrative Agent, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate or is based on a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate or is based on a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) or an Official Body having jurisdiction over the Administrative Agent announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate or is based on a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative of the underlying market and economic reality that such

Benchmark is intended to measure and that representativeness will not be restored.

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

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 4.4(d) titled "Benchmark Replacement Setting" and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 4.4(d) titled "Benchmark Replacement Setting."

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Term SOFR Rate or, if no floor is specified, zero.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or any successor thereto.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

4.5 Selection of Interest Rate Options. If the Borrower fails to select a new Interest Period to apply to any Borrowing Tranche of Loans under the Term SOFR Rate Option at the expiration of an existing Interest Period applicable to such Borrowing Tranche, the Borrower shall be deemed to have converted such Borrowing Tranche to the Base Rate Option to Term Loans as the case may be, commencing upon the last day of the existing Interest Period. If the Borrower provides any Loan Request related to a Loan at the Term SOFR Rate Option but fails to identify an Interest Period therefor, such Loan Request shall be deemed to request an Interest Period of one (1) month. Any Loan Request that fails to select an Interest Rate Option shall be deemed to be a request for the Base Rate Option.

ARTICLE 5
PAYMENTS; TAXES; YIELD MAINTENANCE

5.1 Payments. All payments and prepayments to be made in respect of principal, interest, or other fees or amounts due from the Borrower hereunder shall be payable prior to 11:00

a.m. Eastern Time on the date when due without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower, and without set-off, counterclaim or other deduction of any nature, and an action therefor shall immediately accrue. Such payments shall be made to the Administrative Agent at the Principal Office for the account of the ratable accounts of the Lenders with respect to the Term Loans in U.S. Dollars and in immediately available funds, and the Administrative Agent shall promptly distribute such amounts to the Lenders in immediately available funds; provided that in the event payments are received by 11:00 a.m. Eastern Time by the Administrative Agent with respect to the Loans and such payments are not distributed to the Lenders on the same day received by the Administrative Agent, the Administrative Agent shall pay the Lenders interest at the Effective Federal Funds Rate with respect to the amount of such payments for each day held by the Administrative Agent and not distributed to the Lenders. The Administrative Agent's statement of account, ledger or other relevant record shall, in the absence of manifest error, be conclusive as the statement of the amount of principal of and interest on the Loans and other amounts owing under this Agreement.

5.2 Voluntary Prepayments.

(a) Right to Prepay. The Borrower shall have the right at its option from time to time to prepay the Loans in whole or part without premium or penalty (except as provided in Section 5.11 [Replacement of a Lender] below, in Section 5.8 [Increased Costs] and Section 5.10 [Indemnity]). Whenever the Borrower desires to prepay any part of the Loans, it shall provide a prepayment notice to the Administrative Agent by 1:00 p.m. Eastern Time at least one (1) Business Day prior to the date of prepayment of Term Loans that bear interest at the Base Rate Option and at least three (3) Business Days prior to the date of prepayment of the Term Loans that bear interest at the Term SOFR Rate Option setting forth the following information:

(i) the date, which shall be a Business Day, on which the proposed prepayment is to be made;

(ii) a statement indicating the application of the prepayment between Loans to which the Base Rate Option applies and Loans to which the Term SOFR Rate Option applies; and

(iii) the total principal amount of such prepayment, which shall not be less than $1,000,000 (unless a lesser amount is required to repay such Loan in full).

All prepayment notices shall be irrevocable; provided that, subject to the Borrower's obligations under Section 5.10, the Borrower may condition any prepayment notice on the occurrence of any subsequent event (including a Change of Control, refinancing transaction or Permitted Acquisition or other Investment) and rescind such prepayment notice if such transaction shall not be consummated or shall otherwise be delayed. The principal amount of the Loans for which a prepayment notice is given, together with accrued and unpaid interest on such principal amount, shall be due and payable on the date specified in such prepayment notice as the date on which the proposed prepayment is to be made. Except as provided in Section 4.4(c) [Administrative Agent's and Lender's Rights], if the Borrower prepays a Loan but fails to specify the applicable Borrowing Tranche which the Borrower is prepaying, the prepayment shall be

applied first to Base Rate Loans to the full extent thereof, then to Term SOFR Rate Loans. Any prepayment hereunder shall be subject to the Borrower's Obligation to indemnify the Lenders under Section 5.10 [Indemnity]. Voluntary prepayments of Term Loans shall be applied as directed by the Borrower in the prepayment notice described above.

5.3 Mandatory Prepayments.

(a) Debt Issuances. Within five (5) Business Days of any issuances, offerings or placements of any Debt of any Loan Party in excess of $100,000,000 in the aggregate not permitted by Section 9.1 (other than a Refinancing Facility or Refinancing Notes), the Borrower shall immediately pay or cause to be paid an aggregate amount equal to 100% of the Net Cash Proceeds of such issuance, offering or placement to the Administrative Agent for distribution to the applicable Lenders in accordance with each such Lender's Ratable Share of the Term Loan Facility based on the aggregate amount of Term Loans outstanding at such time.

(b) Application of Payments. All prepayments required pursuant to this Section 5.3 shall be applied first to Base Rate Loans, then to Term SOFR Rate Loans. In accordance with Section 5.10 [Indemnity], the Borrower shall indemnify the Lenders for any loss or expense, including loss of margin, incurred with respect to any such prepayments applied against Loans subject to a Term SOFR Rate Option on any day other than the last day of the applicable Interest Period.

5.4 Pro Rata Treatment of Lenders. Each borrowing shall be allocated to each Lender according to its Ratable Share, and each selection of, conversion to or renewal of any Interest Rate Option and each payment or prepayment by the Borrower with respect to principal, interest, fees shall (except as otherwise may be provided with respect to a Defaulting Lender and except as provided in Sections 4.4(c) [Administrative Agent's and Lender's Rights] in the case of an event specified in Section 4.4 [Rate Unascertainable; Etc.], 5.11 [Replacement of a Lender] or 5.8 [Increased Costs]) be payable ratably among the Lenders entitled to such payment in accordance with the amount of principal, interest and fees, as specified in this Agreement.

5.5 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff, counterclaim or banker's lien or other any right, by receipt of voluntary payment, by realization upon security, or by any other non-pro rata source, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than the pro-rata share of the amount such Lender is entitled thereto, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the

purchase price restored to the extent of such recovery, together with interest or other amounts, if any, required by Law (including court order) to be paid by the Lender or the holder making such purchase; and

(ii) the provisions of this Section 5.5 shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of the Loan Documents (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

5.6 Administrative Agent's Clawback.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (x) in the case of Loans to which the Base Rate Option applies, prior to 12:00 noon (Pittsburgh, Pennsylvania time) on the proposed Borrowing Date of such Borrowing Tranche of Loans and (y) otherwise, prior to the proposed date of any Borrowing Tranche of Loans that such Lender will not make available to the Administrative Agent such Lender's Ratable Share, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 3.2 [Nature of Lenders' Obligations with Respect to Term Loans; Repayment Terms] and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing Tranche of Loans available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Effective Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to Loans under the Base Rate Option. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing Tranche of Loans to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing Tranche of Loans. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any

payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Effective Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

5.7 Interest Payment Dates. Interest on Loans to which the Base Rate Option applies shall be due and payable in arrears on each Payment Date. Interest on Loans to which the Term SOFR Rate Option applies shall be due and payable on the last day of each Interest Period and, if such Interest Period is longer than three (3) months, also at the end of each three-month period during such Interest Period. Interest on mandatory prepayments of principal under Section 5.3 [Mandatory Prepayments] shall be due on the date such mandatory prepayment is due. Interest on the principal amount of each Loan or other monetary Obligation shall be due and payable on demand after such principal amount or other monetary Obligation becomes due and payable (whether on the stated Term Loan Maturity Date, upon acceleration or otherwise). Interest shall be computed to, but excluding, the date payment is due.

5.8 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) 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;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender, or the relevant market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender, (whether of principal, interest or any other amount) then, upon request of such Lender, 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 upon the occurrence of any Change in Law imposing a reserve percentage on any interest rate based on SOFR, the Administrative Agent, in its reasonable discretion, may

modify the calculation of each such SOFR-based interest rate to add (or otherwise account for) such reserve percentage.

(b) Capital Requirements. If any Lender 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 or liquidity 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 such Lender, to a level below that which such Lender or such Lender's holding company 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 the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) 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 paragraph (a) or (b) of this Section 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 ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 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 this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

5.9 Taxes.

(a) FATCA. For purposes of this Section 5.9, the term "applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Official Body in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 5.9) the applicable

Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Official Body in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.9) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Official Body. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Each Lender shall severally indemnify the Administrative Agent, within ten (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 any of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.8(a) [Successors and Assigns Generally] 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 Official Body. 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 Section 5.9(e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to an Official Body pursuant to this Section 5.9, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Official Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed

documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation specified in Section 5.9(g)(ii)(1), 5.9(g)(ii)(2) and 5.9(g)(ii)(4) below) 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.

(ii) Without limiting the generality of the foregoing,

(1) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(2) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor form), 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;

(II) executed copies of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit P-1 to the effect that such

Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor form); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-2 or Exhibit P-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-4 on behalf of each such direct and indirect partner;

(3) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(4) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.9 (including by the payment of additional amounts pursuant to this Section 5.9), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5.9 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Official Body with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 5.9(h) (plus any penalties, interest or other charges imposed by the relevant Official Body) in the event that such indemnified party is required to repay such refund to such Official Body. Notwithstanding anything to the contrary in this Section 5.9(h)), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.9(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Status of the Agent. The Administrative Agent shall deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which the Administrative Agent becomes the administrative agent hereunder or under any other Loan Document (and from time to time thereafter upon the reasonable request of the Borrower) executed copies of either (i) IRS Form W-9 (or any successor form) or (ii) a U.S. branch withholding certificate on IRS Form W-8IMY (or any successor form) evidencing its agreement with the Borrower to be treated as a U.S. person (with respect to amounts received on account of any Lender) and IRS Form W-8ECI (with respect to amounts received on its own account), with the effect that, in either case, the Borrower will be entitled to make payments hereunder to the Administrative Agent without withholding or deduction on account of the U.S. federal withholding tax.

(j) Survival. Each party's obligations under this Section 5.9 shall survive the resignation of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations.

5.10 Indemnity. In addition to the compensation or payments required by Section 5.8 [Increased Costs] or Section 5.9 [Taxes], the Borrower shall indemnify each Lender against all liabilities, losses or expenses (including any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain any Loan, from fees payable to terminate the deposits from which such funds were obtained or from the

performance of any foreign exchange contract, but excluded from the loss of anticipated profits) which such Lender sustains or incurs as a consequence of any:

(a) payment, prepayment, conversion or renewal of any Loan to which a Term SOFR Rate Option applies on a day other than the last day of the corresponding Interest Period (whether or not any such payment or prepayment is mandatory, voluntary or automatic and whether or not any such payment or prepayment is then due); or

(b) attempt by the Borrower to revoke (expressly, by later inconsistent notices or otherwise) in whole or part any notice relating to prepayments under Section 5.2 [Voluntary Prepayments] or 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 Loan other than a Loan under the Base Rate Option on the date or in the amount notified by the Borrower, or

(c) any assignment of a Loan under the Term SOFR Rate Option on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 5.11 [Replacement of a Lender].

If any Lender sustains or incurs any such loss or expense, it shall from time to time notify the Borrower of the amount determined in good faith by such Lender (which determination may include such assumptions, allocations of costs and expenses and averaging or attribution methods as such Lender shall deem reasonable) to be necessary to indemnify such Lender for such loss or expense. Such notice shall specify in reasonable detail the basis for such determination. Such amount shall be due and payable by the Borrower to such Lender ten (10) Business Days after such notice is given.

5.11 Replacement of a Lender. If any Lender requests compensation under Section 5.8 [Increased Costs], or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Official Body for the account of any Lender pursuant to Section 5.9 [Taxes] and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 5.12 [Designation of a Different Lending Office], or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.8 [Successors and Assigns]), all of its interests, rights (other than its existing rights to payments pursuant to Section 5.8 [Increased Cost] or Section 5.9 [Taxes]) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.8 [Successors and Assigns];

(b) such Lender shall have received payment of an amount equal to the 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 5.10 [Indemnity]) 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);

(c) in the case of any such assignment resulting from a claim for compensation under Section 5.8 [Increased Costs] or payments required to be made pursuant to Section 5.9 [Taxes], such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Law; and

(e) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

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.

Each party hereto agrees that (i) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

5.12 Designation of a Different Lending Office. If any Lender requests compensation under Section 5.8 [Increased Costs], or the Borrower is or will be required to pay any Indemnified Taxes or additional amounts to any Lender or any Official Body for the account of any Lender pursuant to Section 5.9 [Taxes], then such Lender shall (at the request of the Borrower) 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 5.8 [Increased Costs] or Section 5.9 [Taxes], as the case may be, in the future, and (ii) would not subject such Lender to economic, legal or regulatory disadvantage.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

The Loan Parties, jointly and severally, represent and warrant to the Administrative Agent and each of the Lenders as follows:

6.1 Organization and Qualification. Each Loan Party and each Subsidiary of each Loan Party is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each Loan Party and each Subsidiary of each Loan Party has the lawful power to own or lease its properties and to engage in

the business it presently conducts or proposes to conduct, except where the failure to have such power would not reasonably be expected to result in any Material Adverse Change. Each Loan Party and each Subsidiary of each Loan Party is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it or both makes such licensing or qualification necessary and where the failure to so qualify would reasonably be expected to result in a Material Adverse Change.

6.2 Shares of Borrower; Subsidiaries; and Subsidiary Shares. As of the Closing Date, Schedule 6.2 states the name of each of the Borrower's Subsidiaries, its jurisdiction of incorporation, its authorized capital stock, the issued and outstanding shares (referred to herein as the "Subsidiary Shares") and the owners thereof if it is a corporation, its outstanding partnership interests (the "Partnership Interests") and the owners thereof if it is a partnership and its outstanding limited liability company interests, (the "LLC Interests") and the owners thereof if it is a limited liability company. As of the Closing Date, Schedule 6.2 also sets forth the jurisdiction of incorporation of the Borrower, its authorized capital stock (the "Borrower Shares") and the voting rights associated therewith. The Borrower and each Subsidiary of the Borrower has good title to all of the Subsidiary Shares, Partnership Interests and LLC Interests it purports to own, free and clear in each case of any Lien, other than Permitted Liens permitted pursuant to Section 9.2 [Liens; Negative Pledge]. Except as set forth on Schedule 6.2, all Borrower Shares, Subsidiary Shares, Partnership Interests and LLC Interests have been validly issued, and all Borrower Shares, all Partnership Interests, all LLC Interests and all Subsidiary Shares are fully paid and nonassessable. All capital contributions and other consideration required to be made or paid in connection with the issuance of the Partnership Interests and LLC Interests have been made or paid, as the case may be, except where the failure to do so would not result in a Material Adverse Change. As of the Closing Date, there are no options, warrants or other rights outstanding to purchase any such Subsidiary Shares, Partnership Interests or LLC Interests except as indicated on Schedule 6.2.

6.3 Power and Authority. Each Loan Party has full power to enter into, execute, deliver and carry out this Agreement and the other Loan Documents to which it is a party, to incur the Debt contemplated by the Loan Documents and to perform its Obligations under the Loan Documents to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its part.

6.4 Validity and Binding Effect. This Agreement has been duly and validly executed and delivered by each Loan Party, and each other Loan Document which any Loan Party is required to execute and deliver on or after the date hereof will have been duly executed and delivered by such Loan Party on the required date of delivery of such Loan Document. This Agreement and each other Loan Document constitutes, or will constitute, legal, valid and binding obligations of each Loan Party which is or will be a party thereto on and after its date of delivery thereof, enforceable against such Loan Party in accordance with its terms, except to the extent that enforceability of any of such Loan Document may be limited by Insolvency Proceedings or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance.

6.5 No Conflict. Neither the execution and delivery of this Agreement or the other Loan Documents by any Loan Party, nor the consummation of the transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them will (a) conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents of any Loan Party or any Subsidiary of any Loan Party or (ii) except as would not reasonably be expected to result in Material Adverse Change, any Law or any agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party or any Subsidiary of any Loan Party is a party or by which any Loan Party or any Subsidiary of any Loan Party is bound or subject to, or (b) result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Loan Party or any Subsidiary of any Loan Party (other than the Liens granted under the Loan Documents and Liens permitted pursuant to Section 9.2 [Liens; Negative Pledge] that are subject to an Applicable Intercreditor Agreement).

6.6 Litigation. Except as set forth on Schedule 6.6, there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Official Body which individually or in the aggregate would reasonably be expected to result in a Material Adverse Change. None of the Loan Parties nor any Subsidiary of any Loan Party is in violation of any order, writ, injunction or any decree of any Official Body which would reasonably be expected to result in a Material Adverse Change.

6.7 Financial Statements.

(a) Historical Statements. The Borrower has delivered to the Lenders or their affiliates copies of its audited consolidated year-end financial statements for and as of the end of the fiscal year ended December 31, 2022 (the "Statements"). The Statements were compiled from the books and records maintained by the Borrower's management, are correct and complete in all material respects and fairly represent the consolidated financial condition of the Borrower and its Subsidiaries as of their dates and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied.

(b) Material Adverse Change. Since December 31, 2022, there has been no Material Adverse Change.

6.8 Margin Stock. None of the Loan Parties or any Subsidiaries of any Loan Party engages or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U, T or X as promulgated by the Board of Governors of the Federal Reserve System). No part of the proceeds of any Loan has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or which is inconsistent with the provisions of the regulations of the Board of Governors of the Federal Reserve System.

6.9 Full Disclosure. Neither this Agreement nor any other Loan Document, nor any certificate, statement, agreement or other documents furnished in writing by or on behalf of a Loan Party or any Subsidiary thereof to any Agent or any Lender in connection herewith (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains with respect to the Borrower and its Subsidiaries any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not materially misleading; provided that to the extent any such certificate, statement, agreement or other document was based upon or constitutes a forecast or projection, such Loan Party represents only that the relevant Loan Party acted in good faith and utilized assumptions believed by it to be reasonable at the time made available to the Lenders (it being understood that any such forecasts or projections are subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, that no assurance can be given that any such forecasts or projections will be realized and that actual results may differ from any such forecasts or projections and such differences may be material).

6.10 Taxes. Except where failure to do so would not reasonably be expected to result in a Material Adverse Change, (a) all federal and state, local and other tax returns required to have been filed by or with respect to any Loan Party and any Subsidiary of any such Loan Party have been filed, and (b) payment or adequate provision has been made for the payment of all Taxes that have or may become due pursuant to said tax returns or to assessments received, except to the extent that such Taxes are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. As of the Closing Date, other than as set forth on Schedule 6.10, there are no agreements or waivers extending the statutory period of limitations applicable to any federal income tax return of any Loan Party or Subsidiary of any Loan Party (other than any extension obtained in the ordinary course of business).

6.11 Patents, Trademarks, Copyrights, Licenses, Etc. Each Loan Party and each Subsidiary of each Loan Party owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, registrations, franchises, permits and rights, without conflict with the rights of others, necessary for the Loan Parties to own and operate their properties and to carry on their businesses as presently conducted and planned to be conducted by such Loan Parties and Subsidiaries, except where the failure to so own or possess with or without such conflict would not reasonably be expected to result in a Material Adverse Change.

6.12 Liens in the Collateral. The Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof, except as may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting the rights of creditors generally and by principles of equity. Upon (i) the filing of financing statements relating to said security interests in each office and in each jurisdiction where required in order to perfect the security interests described above, (ii) taking possession of possessory Collateral by the Administrative Agent (or by the ABL Agent as bailee for the Administrative Agent pursuant to the ABL Intercreditor Agreement, if applicable) with respect to possessory Collateral and (iii) the entering of Control Agreements, the Liens created by the Security Agreement and the Pledge Agreement in favor of the Administrative Agent for the

benefit of the Secured Parties will constitute fully perfected first priority Liens (subject only to Liens permitted pursuant to Section 9.2 [Liens; Negative Pledge]) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral and second priority Liens (subject only to Liens permitted pursuant to Section 9.2 [Liens; Negative Pledge]) in and to the assets of the Loan Parties (other than Excluded Property) that constitute ABL Priority Collateral, in each case, to the extent perfection can be obtained by filing such financing statements, by entering into such Control Agreements or by taking possession of such possessory Collateral.

6.13 Insurance. As of the Closing Date, Schedule 6.13 lists all material insurance policies to which any Loan Party or Subsidiary of any Loan Party is a party, all of which are valid and in full force and effect as of the Closing Date. Such policies provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each Loan Party and each Subsidiary of each Loan Party in accordance with prudent business practice in the industry of the Loan Parties and their Subsidiaries.

6.14 ERISA Compliance. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change:

(a) The Borrower and each other member of the ERISA Group are in compliance with any applicable provisions of ERISA with respect to all Benefit Arrangements, Plans, and Multiemployer Plans. There has been no Prohibited Transaction with respect to any Benefit Arrangement or any Plan or, to the knowledge of the Borrower, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any liability of the Borrower or any other member of the ERISA Group. No Plan is in "at risk" status within the meaning of Section 303(i) of ERISA or Section 430(i) of the Internal Revenue Code. The Borrower and all other members of the ERISA Group have made when due any and all payments required to be made under any agreement relating to a Multiemployer Plan or a Multiple Employer Plan or any Law pertaining thereto. With respect to each Plan and Multiemployer Plan, the Borrower and each other member of the ERISA Group (i) have fulfilled their obligations under the minimum funding standards of ERISA and the Internal Revenue Code, (ii) have not applied for a waiver of the minimum funding standards under Section 302(c) of ERISA or Section 412(c) of the Internal Revenue Code; (iii) have not incurred any liability to the PBGC, and (iv) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA or the Internal Revenue Code. All Plans, Benefit Arrangements and, to the knowledge of the Borrower, Multiemployer Plans have been administered in accordance with their terms and applicable Law.

(b) Neither the Borrower nor any other member of the ERISA Group has instituted proceedings to terminate any Plan.

(c) No event requiring notice to the PBGC under Section 303(k)(4) of ERISA or Section 430(k) of the Internal Revenue Code has occurred or is reasonably expected to occur with respect to any Plan, and no amendment with respect to which security is required under Section 436(f) of the Internal Revenue Code has been made or is reasonably expected to be made to any Plan.

(d) To the extent that any Benefit Arrangement is insured, the Borrower and all other members of the ERISA Group have paid when due all premiums required to be paid. To the extent that any Benefit Arrangement is funded other than with insurance, the Borrower and all other members of the ERISA Group have made when due all contributions required to be paid.

(e) Neither the Borrower nor any other member of the ERISA Group has withdrawn from a 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. To the knowledge of the Borrower, no Multiemployer Plan or Multiple Employer Plan has been terminated within the meaning of Title IV of ERISA.

(f) Neither the Borrower nor any member of the ERISA Group (i) currently has, or with the last six years has had, any obligation to contribute to a Multiemployer Plan, (ii) has incurred any Withdrawal Liability that remains outstanding or (iii) has incurred any liability in connection with a transaction described in Section 4212(c) of ERISA, except to the extent such liability has been fully satisfied or discharged.

6.15 Employment Matters. (a) Each of the Loan Parties and each of their Subsidiaries is in compliance with the Labor Contracts and all applicable federal, state and local labor and employment Laws including those related to wage and hour, equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance continuation, worker adjustment and relocation notices, immigration controls and worker and unemployment compensation, except where the failure to comply could not reasonably be expected to result in a Material Adverse Change. There are no outstanding grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of any of the Loan Parties or any of their Subsidiaries which in any case could reasonably be expected to result in a Material Adverse Change.

(b) Except as could not reasonably be expected to result in a Material Adverse Change: (i) each of the Loan Parties, each of their respective Subsidiaries and each of the "related persons" (as defined in the Coal Act) of each Loan Party and each Subsidiary of each Loan Party are in compliance with the Coal Act; (ii) none of the Loan Parties, any Subsidiary of any Loan Party nor any related person of any Loan Party or its Subsidiaries has any liability under the Coal Act except with respect to premiums or other payments required thereunder which have been paid when due; (iii) the Loan Parties and their respective Subsidiaries are in compliance with the Black Lung Act; and (iv) none of the Loan Parties nor any of their Subsidiaries has any liability under the Black Lung Act except with respect to premiums, contributions or other payments required thereunder which have been paid when due.

6.16 Environmental and Safety Matters. Except as set forth on Schedule 6.16:

(a) the Loan Parties and their Subsidiaries and the real property are and have been in substantial compliance with all Environmental Health and Safety Laws and Environmental Health and Safety Orders (if any such orders are in effect), except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change;

(b) (i) the Loan Parties and their Subsidiaries hold and are operating in compliance with applicable Environmental Health and Safety Permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change, (ii) none of the Loan Parties has received any written notice from an Official Body that such Official Body has or intends to suspend, revoke or adversely amend or alter, whether in whole or in part, any such Environmental Health and Safety Permit, and (iii) there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Official Body challenging an application for, or the modification, amendment or issuance of, any Environmental Health and Safety Permit, except, in the case of either (i), (ii) or (iii), which could not reasonably be expected to result in a Material Adverse Change;

(c) there are no pending or, to the knowledge of any Loan Party, threatened Environmental Health and Safety Claims against any Loan Party or any Subsidiary of any Loan Party, in each case which could reasonably be expected to result in a Material Adverse Change;

(d) neither the Loan Parties nor their Subsidiaries, nor their real property, are subject to any Environmental Health and Safety Orders, except where the existence of any such Environmental Health and Safety Orders could not reasonably be expected to result in a Material Adverse Change;

(e) no Lien or encumbrance on the ownership, occupancy, use or transferability of the Loan Parties' real property, whether owned or leased (other than Liens permitted pursuant to Section 9.2 [Liens; Negative Pledge]), authorized by Environmental Health and Safety Laws exists against any of the Loan Parties' real property, whether owned or leased, which such Lien or encumbrance could reasonably be expected to result in a Material Adverse Change, and none of the Loan Parties has any reason to believe that such a Lien or encumbrance (other than Liens permitted pursuant to Section 9.2 [Liens; Negative Pledge]) may be imposed, attached or be filed or recorded against any real property, whether owned or leased, of any Loan Party or any Subsidiary, which Lien or encumbrance could reasonably be expected to result in a Material Adverse Change.

6.17 Title to Real Property. Each Loan Party and each Subsidiary of each Loan Party has (i) Mining Title to all Active Operating Properties that are necessary or appropriate for the Borrower and its Subsidiaries to conduct their respective operations in all material respects, (ii) and, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, good and valid title to all of their other respective assets, in the case of both the foregoing items (i) and (ii) of this sentence, free and clear of all Liens and encumbrances except Liens permitted pursuant to Section 9.2 [Liens; Negative Pledge], and subject to the terms and conditions of the applicable leases; provided, however, a Loan Party or a Subsidiary of a Loan Party shall not be in breach of the foregoing in the event that (x) it fails to own a valid leasehold interest which, either considered alone or together with all other such valid leaseholds which it fails to own, is not material to the continued operations of such Loan Party or Subsidiary of such Loan Party or (y) such Loan Party's or such Subsidiary's interest in a leasehold is less than fully marketable because the consent of the lessor to future assignments has not been obtained.

6.18 Status of Pledged Collateral. All the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral to be pledged pursuant to the Pledge Agreement are or will be upon issuance validly issued and nonassessable and owned beneficially and of record by the pledgor thereof free and clear of any Lien or restriction on transfer, except for (i) Liens securing any ABL Facility or other permitted secured Debt that is subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and (ii) other Permitted Liens arising by operation of law, and as otherwise provided by the Pledge Agreement and except as the right of the Secured Parties to dispose of the Subsidiary Shares, Partnership Interests or LLC Interests may be limited by the Securities Act of 1933, as amended, and the regulations promulgated by the Securities and Exchange Commission thereunder and by applicable state securities laws. Other than to the extent delivered to the Administrative Agent pursuant to Section 7.1 or in connection with any joinder of a Guarantor, there are no shareholder, partnership, limited liability company or other agreements or understandings with respect to the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral, except for the partnership agreements and limited liability company agreements described on Schedule 6.18. The Loan Parties have delivered true and complete copies of the partnership agreements and limited liability company agreements described on Schedule 6.18 to the Administrative Agent.

6.19 Consents and Approvals. No consent, approval, exemption, order or authorization of, or a registration or filing with, any Official Body or any other Person is necessary under any Law in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents by any Loan Party, except for any consents (i) that have been obtained prior to the Closing Date and are in full force and effect or (ii) of which the failure to obtain would not reasonably be expected to result in a Material Adverse Change.

6.20 No Event of Default; Compliance With Instruments and Material Contracts. No event has occurred and is continuing, and no condition exists or will exist after giving effect to the borrowings of the Term Loans made on the Closing Date under or pursuant to the Loan Documents which constitutes an Event of Default or Potential Default. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of (a) any term of its certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents or (b) any agreement or instrument to which it is a party or by which it or any of its properties may be subject or bound where such violation could reasonably be expected to result in a Material Adverse Change. All Material Contracts to which any Loan Party or Subsidiary of any Loan Party is bound are valid, binding and enforceable upon such Loan Party or Subsidiary and to the best knowledge of the Borrower upon each of the other parties thereto in accordance with their respective terms except in each case to the extent the same could not reasonably be expected to result in a Material Adverse Change. None of the Loan Parties or their Subsidiaries is bound by any Contractual Obligation, or subject to any restriction in any organization document, or any requirement of Law which could reasonably be expected to result in a Material Adverse Change.

6.21 Compliance with Laws. The Loan Parties and their Subsidiaries are in compliance in all material respects with all applicable Laws (other than Environmental Health and Safety Laws which are specifically addressed in Section 6.16, but including all Mining Laws (to the extent not covered by Environmental Health and Safety Laws which are specifically addressed in Section

6.16)) in all jurisdictions in which any Loan Party or Subsidiary of any Loan Party is doing business except where the failure to do so would not reasonably be expected to result in a Material Adverse Change.

6.22 Investment Companies. None of the Loan Parties is an "investment company" registered or required to be registered under the Investment Company Act of 1940.

6.23 Surety Bonds. All surety, reclamation and similar bonds required to be maintained by the Borrower or any of its Subsidiaries under any Environmental Health and Safety Laws or Contractual Obligation are in full force and effect except for any failure which individually or when taken together with all failures under all such bonds would not reasonably be expected to result in a Material Adverse Change, and were not and will not be terminated, suspended, revoked or otherwise adversely affected by virtue of the consummation of the financing (including all Loans made after the Closing Date) contemplated by this Agreement, provided that certain of such bonds may be terminated, suspended or revoked so long as, taken together, such events could not reasonably be expected to result in a Material Adverse Change. All required guaranties of, and letters of credit with respect to, such surety, reclamation and similar bonds are in full force and effect except where such failure to be in full force and effect could not reasonably be expected to result in a Material Adverse Change.

6.24 Coal Supply Agreements. As of the Closing Date, all Coal Supply Agreements to which the Borrower or any of its Subsidiaries is subject or by which it is bound are in full force and effect, except for any failure which individually or when taken together with all failures under all Coal Supply Agreements would not reasonably be expected to result in a Material Adverse Change.

6.25 Solvency. On the Closing Date and after giving effect to the initial Loans hereunder, each of the Loan Parties is Solvent.

6.26 Sanctions. Each Loan Party represents and warrants that each Covered Entity, and its directors and officers, and, to the knowledge of any Loan Party, any employee, agent, or affiliate acting on behalf of such Covered Entity: (a) is not a Sanctioned Person; (b) does not do any business in or with, or derive any of its operating income from direct or indirect investments in or transactions involving, any Sanctioned Jurisdiction or Sanctioned Person; and (c) is not in violation of Sanctions, and is not, directly or indirectly, taking any act that would cause any Covered Entity to be in violation of applicable Sanctions. Each Covered Entity has instituted and maintains policies and procedures reasonably designed to ensure compliance with applicable Sanctions. Each Loan Party represents and warrants that there is no Blocked Property pledged as Collateral. None of the Borrower or any Subsidiary of the Borrower is identified on any List of Parties of Concern maintained by the U.S. Department of Commerce.

6.27 Anti-Corruption LawsEach Loan Party represents and warrants that each Covered Entity, and its directors and officers, and, to the knowledge of any Loan Party, any employee, agent, or affiliate acting on behalf of such Covered Entity, is not in violation of, and has not, during the past five (5) years, directly or knowingly indirectly, taken any act that could cause any Covered Entity to be in violation of Anti-Corruption Laws, including any act in furtherance of an offer,

payment, promise to pay, authorization, or ratification of payment, directly or indirectly, of any money or anything of value (including any gift, sample, rebate, travel, meal and lodging expense, entertainment, service, equipment, debt forgiveness, donation, grant or other thing of value, however characterized) to any Government Official or any Person in violation of Anti-Corruption Laws. No Covered Entity nor any of its directors, officers, employees, or to the knowledge of any Loan Party, its agents or affiliates acting on behalf of such Covered Entity has, during the past five (5) years, received formal notice that it is subject of an investigation by an Official Body regarding compliance with Anti-Corruption Law. Each Covered Entity has instituted and maintains policies and procedures reasonably designed to promote compliance with Anti-Corruption Laws.Certificate of Beneficial Ownership
. As of the Closing Date, to the best knowledge of the Borrower, the Certificate of Beneficial Ownership executed and delivered to the Administrative Agent and Lenders for each Borrower on or prior to the date of this Agreement, as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date hereof and as of the date any such update is delivered.

ARTICLE 7
CONDITIONS OF LENDING

7.1 Conditions of Lending.

This Agreement shall become effective and the Lenders shall make the Term Loans available to the Borrower on the first date on which each of the following conditions is satisfied or waived (in accordance with Section 12.1).

(a) The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement from the Lenders and the Borrower;

(ii) evidence reasonably satisfactory to the Administrative Agent that substantially concurrently with the making of the Term Loans on the Closing Date, the Existing Credit Agreement shall have been repaid in full and arrangements reasonably satisfactory to the Administrative Agent shall have been made for the termination and release of guarantees, Liens and security interests granted in connection therewith;

(iii) A certificate dated the Closing Date and signed by the Secretary or an Assistant Secretary or other Authorized Officer of each of the Loan Parties, certifying as appropriate as to: (A) all corporate or limited liability company action taken by each Loan Party in connection with this Agreement and the other Loan Documents, together with copies of resolutions or written consent; (B) the names of the Authorized Officers authorized to sign the Loan Documents and their true signatures; and (C) copies of its organizational documents as in effect on the Closing Date certified by the appropriate state official where such documents are filed in a state office together with certificates from the appropriate state officials as to the continued existence and good standing of each Loan Party in each state where organized;

(iv) a written opinion of Latham & Watkins LLP, counsel for the Loan Parties, dated the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent;

(v) a written opinion of Jackson Kelly LLP, as West Virginia, Virginia and Kentucky counsel for the Loan Parties, dated the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent;

(vi) a certificate from a Responsible Officer of the Borrower as to the following certifications (as of the Closing Date): (A) the representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party are true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality," "Material Adverse Change" or similar language, in all respects) on and as of the date thereof, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct in all material respects as of such earlier date) and (B) no Event of Default or Potential Default has occurred and is continuing;

(vii) an executed Loan Request;

(viii) the Statements;

(ix) Notes payable to the Lenders (and their registered assigns) to the extent requested by any Lender;

(x) a solvency certificate substantially in the form attached hereto as Exhibit F certified by the chief financial officer or the treasurer of the Borrower that the Borrower and its Subsidiaries on a consolidated basis are Solvent after giving effect to the Transactions;

(xi) executed counterparts of the Guaranty Agreement, the Security Agreement and the Pledge Agreement;

(xii) executed counterparts of applicable joinder documentation with respect to the ABL Intercreditor Agreement and Pari Passu Intercreditor Agreement;

(xiii) proper financing statements under the Uniform Commercial Code of the applicable jurisdictions of organization covering the Collateral described in the Security Agreement, appropriate equity certificates (where applicable) representing the Pledged Collateral (as defined in the Pledge Agreement) accompanied by and related powers executed in blank, and instruments, if any, evidencing any Pledged Notes (as defined in the Security Agreement) indorsed in blank;

(xiv) Patent, Trademark and Copyright Security Agreements, in recordable form for the United States Patent and Trademark Office and United States Copyright Office, as applicable, covering the registered intellectual property listed on the

applicable schedules to such Patent, Trademark and Copyright Security Agreements, duly executed by the Borrower and each other person that is a Loan Party on the Closing Date;

(xv) except as set forth in Section 8.17, evidence that adequate insurance required to be maintained under this Agreement is in full force and effect, with additional insured, mortgagee and/or lender loss payable special endorsements attached thereto in form and substance reasonably satisfactory to the Administrative Agent, naming the Administrative Agent as additional insured, mortgagee and/or lender loss payee, as applicable;

(xvi) the Perfection Certificate; and

(xvii) bring down (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches.

(b) The Borrower shall have paid all fees payable on or before the Closing Date as required by this Agreement, any other Loan Document and any engagement or fee letter with the arrangers or any of their Affiliates, including and together with, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid hereunder or under any such letter or document.

(c) The Administrative Agent shall have received, at least five Business Days prior to the Closing Date (to the extent requested by the Administrative Agent at least ten Business Days prior to the Closing Date), all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(d) Without limiting the generality of the provisions of the last paragraph of Section 11.3, for purposes of determining compliance with the conditions specified in this Section 7.1, each Lender 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 written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE 8
AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that until the Facility Termination Date, the Borrower shall, and shall cause each of its Subsidiaries to, comply at all times with the following affirmative covenants:

8.1 Preservation of Existence, Etc. The Borrower shall maintain its legal existence as a corporation. The Borrower shall cause each of its Subsidiaries (other than Immaterial Subsidiaries) to maintain its legal existence as a corporation, limited partnership or limited liability company, as the case may be, except as otherwise expressly permitted in Section 9.6 or Section

9.7. The Borrower shall maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify or maintain such qualification could not reasonably be expected to result in a Material Adverse Change. The Borrower shall cause each of its Subsidiaries (other than Immaterial Subsidiaries) to maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify would not reasonably be expected to result in a Material Adverse Change.

8.2 Payment of Liabilities, Including Taxes, Etc. Except where failure to do so could not reasonably be expected to result in a Material Adverse Change, the Borrower shall, and shall cause each of its Subsidiaries to, duly pay and discharge all Taxes imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid after becoming due, might become a lien or charge upon any properties of the Borrower or any Subsidiary of the Borrower other than any such Tax or claim which is being contested in good faith and by proper proceedings and with respect to which there are proper reserves as required by GAAP.

8.3 Maintenance of Insurance. Each Loan Party shall, and shall cause each of its Subsidiaries to, insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers' compensation, public liability and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with reputable and financially sound insurers, including self-insurance to the extent customary. The Loan Parties shall deliver to the (x) Administrative Agent on the Closing Date, at the reasonable request of the Administrative Agent and annually thereafter an original certificate of insurance of the Loan Parties' independent insurance broker describing and certifying as to the existence of the insurance on the Collateral required to be maintained by this Agreement and the other Loan Documents, together with a copy of the endorsement described in the next sentence attached to such certificate and, (y) at the request of the Administrative Agent, from time to time a summary schedule indicating all insurance then in force with respect to each of the Loan Parties. Such policies of insurance shall contain special endorsements, in form and substance reasonably acceptable to the Administrative Agent, which shall specify the Administrative Agent as an additional insured, mortgagee and lender loss payee as its interests may appear, with the understanding that any obligation imposed upon the insured (including the liability to pay premiums) shall be the sole obligation of the applicable Loan Parties and not that of the insured. Upon the occurrence of an Event of Default under Sections 10.1(a) (unless that has been waived), 10.1(k) or 10.1(l), monies constituting insurance proceeds or condemnation proceeds (other than any insurance proceeds or condemnation proceeds constituting ABL Priority Collateral) shall be paid to the Administrative Agent and applied in accordance with Section 10.1(e) and the Collateral Documents.

8.4 Maintenance of Properties and Leases. Except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, the Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its respective material properties, necessary

or useful in the proper conduct of the business of the Borrower or such Subsidiary of the Borrower, in good working order and condition, ordinary wear and tear excepted (except as otherwise expressly permitted by this Agreement). Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its Subsidiaries to, maintain in full force and effect all material patents, trademarks, service marks, trade names, copyrights, licenses and franchises necessary for the ownership and operation of its properties and business if the failure to so maintain the same would constitute a Material Adverse Change.

8.5 Inspection Rights. The Borrower shall, and shall cause each of its Subsidiaries to, permit any of the officers or authorized employees or representatives of the Administrative Agent and each Lender (so long as no Event of Default has occurred and is continuing, at the Administrative Agent's or such Lender's expense) to visit and inspect during normal business hours any of its properties and to examine and make excerpts from its books and records and discuss its business affairs, finances and accounts with its officers, all in such detail and at such times and as often as the Administrative Agent or such Lender may reasonably request, provided that (i) each Lender shall provide the Borrower and the Administrative Agent with reasonable notice prior to any visit or inspection by such Lender (and the Administrative Agent shall provide the Borrower with reasonable notice prior to any visit or inspection by the Administrative Agent), (ii) no Lender shall exercise any rights under this clause (e) until an Event of Default has occurred and is continuing, (iii) all such visits and inspections shall be made in accordance with the Borrower's standard safety, visit and inspection procedures, (iv) no such visit or inspection shall interfere with such Borrower's normal business operation and (v) without the Borrower's express written permission, no such visit shall include any collection of samples of soil, groundwater, wastewater, building material or other environmental media.

8.6 Keeping of Records and Books of Account. The Borrower shall, and shall cause each Subsidiary of the Borrower to, maintain and keep proper books of record and account which enable the Borrower and its Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by applicable Laws of any Official Body having jurisdiction over the Borrower or any Subsidiary of the Borrower, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs.

8.7 Compliance with Laws; Use of Proceeds.

(a) The Borrower shall, and shall cause each of its Subsidiaries to, comply with all applicable Laws (other than Environmental Health and Safety Laws which are specifically addressed in Section 8.10 in all respects, provided that it shall not be deemed to be a violation of this Section 8.7 if any failure to comply with any Law would not result in fines, penalties, costs, other similar liabilities or injunctive relief which in the aggregate could not reasonably be expected to result in a Material Adverse Change.

(b) The Borrower will use the proceeds of the Term Loans funded on the Closing Date solely (i) to refinance a portion of the Debt outstanding under the Existing Credit Agreement (as defined below), (ii) pay fees and expenses incurred in connection with the Transactions, and (iii) for general corporate purposes of the Borrower and its Subsidiaries. The Borrower will not, directly or knowingly indirectly, use the proceeds of the Loans or lend,

contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (a) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or (b) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise). No part of the proceeds of the Loans will be used, directly or knowingly indirectly, in violation of the Anti-Corruption Laws. The Borrower will not use the proceeds of any Term Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock.

(c) The Borrower shall, and shall cause each of its Subsidiaries to, maintain in effect measures or policies and procedures reasonably designed to promote compliance by the Borrower, each of its Subsidiaries and the respective directors, officers, employees and agents of the Borrower and its Subsidiaries with the FCPA and any other applicable Anti-Corruption Laws and applicable Sanctions.

8.8 Additional Subsidiaries, Collateral; Further Assurances.

(a) Collateral Documents and Liens.

(i) The Borrower shall and shall cause each of the Loan Parties to execute and deliver to the Administrative Agent for the benefit of the Secured Parties, the Collateral Documents reasonably necessary, or as the Administrative Agent may reasonably deem necessary, to grant first priority perfected liens and security interests (subject only to Liens permitted pursuant to Section 9.2) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral and second priority Liens (subject only to Liens permitted pursuant to Section 9.2) in and to the assets of the Loan Parties that constitute ABL Priority Collateral in favor of the Administrative Agent for the benefit of the Secured Parties, other than Excluded Property.

(ii) The Borrower shall and shall cause each Loan Party, from time to time, at its expense, to preserve and protect the Administrative Agent's Lien on the Collateral as a continuing first priority perfected Lien (subject only to Liens permitted pursuant to Section 9.2) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral and second priority Liens (subject only to Liens permitted pursuant to Section 9.2) in and to the assets of the Loan Parties (other than Excluded Property) that constitute ABL Priority Collateral, except to the extent otherwise permitted hereunder, and shall do such other acts and things as may be necessary or as the Administrative Agent may reasonably deem necessary from time to time in order to preserve, perfect and protect the Liens granted under the Loan Documents and to exercise and enforce its rights and remedies thereunder with respect to the Collateral, except to the extent otherwise permitted hereunder.

(b) Equity Interests in Bonding Subsidiaries. In the event that the Borrower or any Subsidiary of the Borrower is required to pledge the equity interests of any Bonding Subsidiary

in favor of any provider of surety bonds required by the lessor of the leasehold interest held by such Bonding Subsidiary as otherwise permitted by Section 9.14, then prior to the granting of such lien, the Borrower shall use commercially reasonable good faith effort to grant a second priority perfected lien in such equity interests to the Administrative Agent for the benefit of the Secured Parties subject to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

(c) Requirements for Permitted Joint Ventures. Notwithstanding the foregoing provisions of this Section 8.8 with respect to any Permitted Joint Venture, neither the Borrower nor any Subsidiary of the Borrower shall be required to pledge the equity interests of such Permitted Joint Venture if and to the extent such equity interests shall constitute Excluded Property, provided that, in the case of a Person that becomes a Permitted Joint Venture after the Closing Date and whose equity interests shall constitute Excluded Property, upon the date such Person becomes a Permitted Joint Venture, (x) the equity interests of such Permitted Joint Venture shall be held by a JV holding Company and (y) the equity interests in such JV Holding Company shall constitute Collateral.

(d) Requirements for Significant Subsidiaries.

(i) Guarantees. Within forty-five (45) days (or such longer period as may be extended by the Administrative Agent in its reasonable discretion) after any Significant Subsidiary is formed or acquired after the Closing Date or a Subsidiary becomes a Significant Subsidiary, the Borrower shall: (i) cause each such Significant Subsidiary to execute a guarantor joinder pursuant to which it shall (x) join as a Guarantor, a "Pledgor" (as defined in the "Pledge Agreement") and a "Debtor" (as defined in the Security Agreement) under each of the documents to which the Guarantors are parties and (y) grant a lien and pledge its assets, other than Excluded Property, to the Administrative Agent for the benefit of the Secured Parties on a first priority perfected basis (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral and second priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute ABL Priority Collateral; (ii) execute and deliver to the Administrative Agent documents, modified as appropriate to relate to such Significant Subsidiary, in the forms described in Sections 7.1(a)(iii), 7.1(a)(iv) and 7.1(a)(vi) (iii) provide the Administrative Agent, in writing, with updates to the Schedules attached hereto as may be necessary or appropriate to update the same with respect to each joining Guarantor and (iv) deliver to the Administrative Agent such other documents and agreements as the Administrative Agent may reasonably request.

(ii) Collateral. Within forty-five (45) days (or such longer period as may be extended by the Administrative Agent in its reasonable discretion) after any Significant Subsidiary is formed or acquired after the Closing Date or a Subsidiary becomes a Significant Subsidiary, the Borrower shall cause such new Significant Subsidiary to, unless the Administrative Agent otherwise agrees in its reasonable discretion, (i) execute and deliver to the Administrative Agent a Perfection Certificate, relating to such Significant Subsidiary, (ii) execute and deliver to the Administrative Agent a joinder agreement to the ABL Intercreditor Agreement (if any) in the manner provided

therein, (iii) cause all of the issued and outstanding capital stock, partnership interests, member interests or other equity interest of such Significant Subsidiary (except to the extent constituting Excluded Property) that are owned by another Loan Party to be pledged on a first priority perfected basis to the Administrative Agent for the benefit of the Secured Parties pursuant to the Pledge Agreement (subject only to Liens permitted pursuant to Section 9.2), (iv) execute and deliver to the Administrative Agent for the benefit of the Secured Parties any other applicable Collateral Documents in form and substance reasonably satisfactory to the Administrative Agent, including without limitation, Patent, Trademark and Copyright Security Agreements (subject to the below proviso) necessary or reasonably requested by the Administrative Agent to grant first priority perfected liens and security interests (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral and second priority Liens (subject only to Liens permitted pursuant to Section 9.2) in and to the assets of the Loan Parties (other than Excluded Property) that constitute ABL Priority Collateral in favor of the Administrative Agent for the benefit of the Secured Parties (other than Excluded Property), including proper financing statements under the Uniform Commercial Code of the applicable jurisdictions of organization covering the Collateral described in the relevant Collateral Documents and appropriate equity certificates and powers evidencing the Collateral pledged pursuant to the Pledge Agreement, (v) obtain Uniform Commercial Code, lien, tax and judgment searches (including searches of the applicable real estate indexes), with the results, form scope and substance of such searches to be reasonably satisfactory to the Administrative Agent and (vi) if reasonably requested by the Administrative Agent, deliver opinions of legal counsel with respect to such new Significant Subsidiary, including, if reasonably requested by the Administrative Agent, opinions of local counsel in each applicable jurisdiction, with such opinions to be reasonably satisfactory to the Administrative Agent in its reasonable discretion.

(e) Further Assurances. Each Loan Party shall, from time to time, at its expense, faithfully preserve and protect the Administrative Agent's Lien on Collateral as a continuing first priority perfected Lien, subject only to Liens permitted pursuant to Section 9.2, and shall do such other acts and things as the Administrative Agent in its sole discretion may deem necessary or advisable from time to time in order to preserve, perfect and protect the Liens granted under the Loan Documents and to exercise and enforce its rights and remedies thereunder with respect to the Collateral.

8.9 Sanctions and other Anti-Money Laundering Laws; Anti-Corruption Laws. Each Loan Party hereby agrees that it shall: (a) promptly, but in no event no later than ten (10) days from the occurrence thereof, notify the Administrative Agent and each of the Lenders in writing upon the occurrence of a Reportable Compliance Event; (b) immediately provide substitute Collateral to the Administrative Agent if, at any time, any Collateral becomes Blocked Property; and (c) conduct its business in compliance with applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions and maintain in effect policies and procedures reasonably designed to promote compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions by each Covered Entity, and its directors and officers, and any employee, agent or affiliate acting on behalf of such Covered Entity in connection with this Agreement.

8.10 Environmental Health and Safety Matters. The Borrower shall, and shall cause each of its Subsidiaries to (i) comply with applicable Environmental Health and Safety Laws and Environmental Health and Safety Orders; (ii) obtain, maintain in full force and effect and comply with the terms and conditions of all Environmental Health and Safety Permits; (iii) take reasonable precautions to prevent Contamination on the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party; (iv) take reasonable precautions against the imposition, attachment, filing or recording of any Lien (other than Permitted Liens) or other encumbrance authorized by Environmental Health and Safety Laws (other than Permitted Liens) to be imposed, attached or be filed or recorded against the real property or any other real property owned or leased by any of them; and (v) perform or pay for performance of any Remedial Actions necessary to (A) comply with Environmental Health and Safety Laws or respond to any Environmental Health and Safety Claim and Environmental Health and Safety Order related to the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party, or (B) to manage Contamination at, in, on, under, emanating to or from or otherwise affecting the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party; except, in the case of each of clauses (i) through (v) above, as could not reasonably be expected to result in a Material Adverse Change; provided, in each case, that a failure to take such actions described above shall not be a violation of this Section 8.10 if the Borrower or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental Health and Safety Laws.

8.11 Subordination of Intercompany Loans. Each Loan Party agrees that any intercompany Debt, loans or advances owed by (i) any Loan Party to any other Loan Party and (ii) any Loan Party to any Non-Guarantor Subsidiary shall be subordinated to the payment of the Obligations.

8.12 [Reserved].

8.13 Organizational Changes. The Borrower shall not, and shall not permit any of its Subsidiaries that are Loan Parties to, effect any change (A) in its legal name, (B) [Reserved], (C) in its identity or organizational structure, or (D) in its jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), unless it shall have given the Administrative Agent prior written notice thereof (or, solely in the case of the Borrower, ten calendar days' prior written notice thereof) clearly describing such change and providing such other information in connection therewith as the Administrative Agent may reasonably request.

8.14 Keepwell. Each Qualified ECP Loan Party jointly and severally (together with each other Qualified ECP Loan Party) hereby absolutely unconditionally and irrevocably (a) guarantees the prompt payment and performance of all Swap Obligations owing by each Non-Qualifying Party (it being understood and agreed that this guarantee is a guaranty of payment and not of collection), and (b) undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non-Qualifying Party's obligations under this Agreement or any other Loan Document in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 8.14 for the maximum amount of such liability that can be hereby incurred without

rendering its obligations under this Section 8.14, or otherwise under this Agreement or any other Loan Document, voidable under applicable Law, including applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Loan Party under this Section 8.14 shall remain in full force and effect until the Facility Termination Date. Each Qualified ECP Loan Party intends that this Section 8.14 constitute, and this Section 8.14 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18(A)(v)(II) of the CEA.

8.15 Reporting Requirements. The Borrower covenants and agrees that, until the Facility Termination Date, the Borrower will furnish or cause to be furnished to the Administrative Agent, for delivery to each of the Lenders:

(a) Quarterly Financial Statements. Within forty-five (45) calendar days after the end of each of the first three fiscal quarters in each fiscal year (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), financial statements of the Borrower and its Subsidiaries, consisting of a consolidated balance sheet as of the end of such fiscal quarter, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the fiscal quarter then ended and the fiscal year through that date, all in reasonable detail and certified (subject to normal year-end audit adjustments) by the Chief Executive Officer, President, Treasurer or Chief Financial Officer of the Borrower as having been prepared in accordance with GAAP, consistently applied, and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year. The Borrower will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 8.15(a) if within forty-five (45) days after the end of its fiscal quarter (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), the Borrower delivers to the Administrative Agent (for delivery to each of the Lenders) a copy of the Borrower's Form 10Q as filed with the SEC and the financial statements contained therein meet the requirements described in this Section.

(b) Annual Financial Statements. Within ninety (90) days after the end of each fiscal year of the Borrower (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), financial statements of the Borrower and its Subsidiaries consisting of a consolidated balance sheet as of the end of such fiscal year, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the fiscal year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding fiscal year, and certified, in the case of the consolidated financial statements, by independent certified public accountants of nationally recognized standing reasonably satisfactory to the Administrative Agent (it being understood and agreed that Ernst & Young LLP is reasonably satisfactory). The certificate or report of accountants shall be free of qualifications (other than (i) any consistency qualification that may result from a change in the method used to prepare the financial statements as to which such accountants concur and (ii) any "going concern" or like qualifications as may be required as a result of a projected failure to comply with a financial covenant in any ABL Facility

or an upcoming maturity date under the Facility or any Working Capital Facility that is scheduled to occur within one (1) year of the time the report and opinion are delivered) and shall not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Loan Party under any of the Loan Documents. The Borrower will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 8.15(b) if within ninety (90) days after the end of its fiscal year (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), the Borrower delivers to the Administrative Agent (for delivery to each of the Lenders) a copy of the Borrower's Annual Report and Form 10K as filed with the SEC and the financial statements and certification of public accountants contained therein meet the requirements described in this Section.

8.16 Certificates; Notices; Additional Information. The Borrower covenants and agrees that until the Facility Termination Date, the Borrower will furnish or cause to be furnished to the Administrative Agent, for delivery to each of the Lenders:

(a) Certificate of the Borrower. Concurrently with any delivery of financial statements under Section 8.15(a) and (b), a certificate of the Borrower signed by a Responsible Officer (a "Compliance Certificate"), substantially in the form of Exhibit E: (i) confirming that, no Event of Default or Potential Default exists and is continuing on the date of such Compliance Certificate, (ii) containing a list of each Significant Subsidiary and each Non-Guarantor Subsidiary (and whether such Subsidiary is a Bonding Subsidiary, an Immaterial Subsidiary, a Securitization Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary), other than those set forth on Schedule 6.2, (iii) confirming that each Significant Subsidiary has joined the Loan Documents in accordance with the requirements of Section 8.8, (iv) [Reserved], and (v) setting forth the reasonably detailed calculations of the covenants set forth in Sections 9.15, 9.16 and 9.17 each as of the end of such applicable period.

(b) SEC Website. (A) The delivery by the Borrower to the Administrative Agent of annual reports on Form 10-K of the Borrower and its consolidated subsidiaries shall satisfy the requirements of Section 8.15(b) solely to the extent such annual reports include the information specified herein and (B) the delivery by the Borrower to the Administrative Agent of quarterly reports on Form 10-Q of by the Borrower and its consolidated subsidiaries shall satisfy the requirements of Section 8.15(a) solely to the extent such quarterly reports include the information specified herein.

(c) Notices. Written notice to the Administrative Agent for distribution to the Lenders:

(i) promptly after any Responsible Officer of the Borrower has learned of the occurrence of any Potential Default or Event of Default; and

(ii) promptly after any Responsible Officer of the Borrower has learned of any event which would reasonably be expected to result in a Material Adverse Change.

(d) Certain Events. Written notice to the Administrative Agent for distribution to the Lenders as required by Section 8.16(a), with respect to any proposed acquisition of assets pursuant to such Section of the occurrence of any event for which the Borrower is required to make a mandatory prepayment pursuant to Section 5.3, any material amendment to the organizational documents of any Loan Party, and of any material change in accounting policies or financial reporting practices by any Loan Party.

(e) Environmental Health and Safety Matters. Reasonably prompt written notice upon Borrower or applicable Subsidiary obtaining actual knowledge of any of the following which has resulted or could reasonably be expected to result in a Material Adverse Change: (A) the existence of material Contamination; (B) the receipt by Borrower or any of its Subsidiaries of a material Environmental Health and Safety Claim or Environmental Health and Safety Order; (C) the imposition, attachment, filing or recording against the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party of a Lien (other than a Permitted Lien) or other encumbrance authorized under Environmental Health and Safety Laws; (D) the inability to obtain or renew a material Environmental Health and Safety Permit, a notice from an Official Body that it has, will or intends to suspend, revoke or adversely amend or alter, in whole or in part, any Environmental Health and Safety Permit or knowledge that a Person has filed a suit or claim or instituted a proceeding challenging the application for, or the modification, amendment or issuance of any Environmental Health and Safety Permit; or (E) any violation of Environmental Health and Safety Laws, Environmental Health and Safety Permits or Environmental Health and Safety Order by the Borrower or any of its Subsidiaries; provided, in each case, that a failure to provide such written notice shall not be a violation of this Section 8.16(e) if the Borrower or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental Health and Safety Laws.

(f) Other Reports and Information.

(i) Any reports, notices or proxy statements generally distributed by the Borrower to its stockholders on a date no later than the date supplied to such stockholders and regular or periodic reports, including Forms 10-K, 10-Q and 8-K, registration statements and prospectuses, filed by the Borrower or any other Loan Party with the Securities and Exchange Commission, provided that, subject to Section 8.16(b), the foregoing reports shall be deemed to have been delivered on the date on which such report is posted on the SEC's web site at www.sec.gov, and such posting shall be deemed to satisfy this reporting requirement,

(ii) Promptly upon their becoming available to the Borrower, a copy of any material order in any material proceeding to which the Borrower or any other Loan Party is a party issued by any Official Body,

(iii) Promptly upon request, such other reports and information as any of the Lenders may from time to time reasonably request, and

(iv) Promptly upon request by any Lender, all documentation and other information that such Lender reasonably 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.

(g) Platform. The Borrower hereby acknowledges that (i) the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material nonpublic information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.9; (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC". Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents, (2) notification of changes in the terms of the Term Loan Facility provided for by this Agreement and (3) all financial statements, reports and certificates delivered pursuant to Sections 8.15(a) and 8.15(b).

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 Communications 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 any Borrower or its securities for purposes of United States Federal or state securities laws.

8.17 Post-Closing Covenants. The Borrower shall, and shall cause its Subsidiaries to, satisfy the requirements set forth in Schedule 8.17 on or before the date specified for such requirements, in each case as such date may be extended at the sole discretion of the Administrative Agent.

ARTICLE 9
NEGATIVE COVENANTS

The Borrower covenants and agrees that until the Facility Termination Date, the Borrower shall, and shall cause each of its Subsidiaries to, comply with the following negative covenants:

9.1 Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time create, incur, assume or suffer to exist any Debt, except:

(i) Debt under the Loan Documents or in respect of any of the other Obligations;

(ii) Debt (including, without limitation, letters of credit) on account of any demand, request or requirement of any Official Body for any surety bond, letter of credit or other financial assurance pursuant to any Mining Laws, Reclamation Laws or Environmental Health and Safety Laws, or any related Permit, in each case, in the ordinary course of business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances;

(iii) Debt of the Borrower constituting unsecured notes not to exceed an aggregate principal amount of $500,000,000; provided that (1) (x) the final stated maturity of such Debt shall not be sooner than the Latest Maturity Date at the time such Debt is issued, (y) the Weighted Average Life to Maturity of such Debt is greater than the Weighted Average Life to Maturity of each class of Term Loans then in effect and (z) such Debt does not have scheduled amortization or payments of principal and shall not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than pursuant to customary asset sale, event of loss, excess cash flow (provided that such excess cash flow sweep does not require the application of any excess cash flow that would otherwise be required to be applied to the prepayment of the Term Loans pursuant to Section 5.3 hereof) or change of control prepayment provisions and a customary acceleration right after an event of default, in each case, to the extent permitted under Section 9.5), in each case prior to the Latest Maturity Date at the time such Debt is incurred, (2) no Potential Default or Event of Default (or no Potential Default or Event of Default under Section 10.1(a)), 10.1(k) or 10.1(l) in the event that such Debt is used to fund a Limited Condition Acquisition) shall have occurred or be continuing at the time of occurrence of such Debt or would result therefrom, (3) the Borrower can demonstrate pro forma compliance with Sections 9.15, 9.16 and 9.17 after giving pro forma effect to the incurrence of such Debt as if it had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to incurring such Debt for which consolidated financial statements of the Borrower are delivered (or are required to be delivered) pursuant to Section 8.15(a), (4) to the extent guaranteed, such Debt shall not be guaranteed by a Subsidiary that is not a Guarantor of the Obligations (and, for the avoidance of doubt, the guarantee of such Debt in accordance with this clause (iii) is permitted) and (5) to the extent subordinated, such Debt must be on subordination terms reasonably satisfactory to the Administrative Agent.

(iv) Debt of the Borrower constituting (A) unsecured senior or senior subordinated debt securities, (B) debt securities that are secured by a Lien ranking junior to the Liens securing the Obligations or (C) debt securities that are secured by a Lien ranking *pari passu* with the Liens securing the Obligations in an aggregate principal amount, which constitutes a Permitted

Refinancing of some or all of the Term Loans incurred hereunder and has an aggregate principal amount which does not exceed the principal amount of the Term Loans hereunder which are being so refinanced except with respect to any Permitted Refinancing Increase (such Debt, the "Refinancing Notes"); provided that (1) with respect to Refinancing Notes incurred under clause (C) hereof, (x) the final stated maturity of such Refinancing Notes shall not be sooner than the maturity date of the Term Loans being refinanced, (y) the Weighted Average Life to Maturity of such Refinancing Notes is greater than or equal to the Weighted Average Life to Maturity of the Term Loans being refinanced and (z) such Refinancing Notes shall not be subject to any mandatory prepayment, repurchase or redemption provisions, unless the prepayment, repurchase or redemption of such Debt is accompanied by the prepayment of a pro rata portion of the outstanding principal of the Term Loans hereunder pursuant to Section 5.3 hereof, (2) with respect to Refinancing Notes incurred under clause (A) or (B) hereof, (x) the final stated maturity of such Refinancing Notes shall not be sooner than the maturity date of the Term Loans being refinanced, (y) the Weighted Average Life to Maturity of such Refinancing Notes is greater than the Weighted Average Life to Maturity of the Term Loans being refinanced and (z) such Refinancing Notes do not have scheduled amortization or payments of principal and shall not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than pursuant to customary asset sale, event of loss, excess cash flow (provided that such excess cash flow sweep does not require the application of any excess cash flow that would otherwise be required to be applied to the prepayment of the Term Loans pursuant to Section 5.3 hereof) or change of control prepayment provisions and a customary acceleration right after an event of default, in each case, to the extent permitted under Section 9.5), in each case prior to the Latest Maturity Date at the time such Refinancing Notes are incurred, (3) no Potential Default or Event of Default shall have occurred or be continuing at the time of occurrence of such Refinancing Notes or would result therefrom, (4) to the extent secured, (x) such Debt shall not be secured by a Lien on any asset of the Borrower and its Subsidiaries that does not also secure the Obligations and (y) such Debt shall be subject to a *pari passu* or junior lien intercreditor agreement, as applicable, on terms reasonably acceptable to the Administrative Agent, (5) to the extent guaranteed, such Debt shall not be guaranteed by a Subsidiary that is not a Guarantor of the Obligations (and, for the avoidance of doubt, the guarantee of such Debt in accordance with this clause (iv) is permitted), (6) to the extent subordinated, such Debt must be on subordination terms reasonably satisfactory to the Administrative Agent and (7) the proceeds of such Refinancing Notes (other than proceeds of such Refinancing Notes that are used to fund a Permitted Refinancing Increase (as set forth in clauses (a) and (b) of the definition of such term) in connection with such Refinancing Notes) shall be applied, on a dollar-for-dollar basis, substantially concurrently with the incurrence thereof, to the prepayment of the Term Loans being refinanced;

(v) (A) Debt of any Loan Party payable to any other Loan Party (including Disqualified Equity Interests issued to any Loan Party), it being understood and agreed that such Debt (other than Disqualified Equity Interests) is subordinated to the Obligations of the Loan Parties under the Loan Documents, (B) Debt of any Non-Guarantor Subsidiary payable to any other Non-Guarantor Subsidiary, (C) loans or guaranties from any Non-Guarantor Subsidiary to any Loan Party, it being understood and agreed that such Debt is subordinated to the Obligations of the Loan Parties under the Loan Documents, and (D) Debt of any Non-Guarantor Subsidiary payable to any Loan Party to the extent such Debt would constitute a permitted Investment under Section 9.3(xvi);

(vi) Debt of the Borrower and its Subsidiaries existing on the Closing Date and included on Schedule 9.1 and any Permitted Refinancings thereof;

(vii) [reserved];

(viii) Debt or other obligations of the Borrower and its Subsidiaries in respect of any capital lease (as determined in accordance with GAAP) or Debt of the Borrower and its Subsidiaries secured by Purchase Money Security Interests so long as the aggregate amount for the Borrower and its Subsidiaries of all Debt and other obligations permitted by this clause (viii) shall not exceed, at any time outstanding the greater of $100,000,000 and 5.0% of Consolidated Net Tangible Assets;

(ix) Debt (x) of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary) in connection with any Permitted Acquisition or Permitted Joint Venture or Debt of any Person that is assumed by the Borrower any Subsidiary in connection with any Permitted Acquisition or Permitted Joint Venture; provided that (i) such Debt was not incurred in contemplation of such Permitted Acquisition or Permitted Joint Venture and (ii) immediately prior and after giving pro forma effect to the assumption of such Debt, the Total Net Leverage Ratio is no greater than 3.00:1.00 as if such Debt was assumed at the beginning of the most recent four consecutive fiscal quarters ending prior to such assumption for which consolidated financial statements of the Borrower have been (or were required to be) delivered to the Administrative Agent pursuant to Sections 8.15(a) or (b) or (y) constituting a Permitted Refinancing of the foregoing;

(x) subject to Section 9.3 and Section 9.14, Debt of any Bonding Subsidiary payable to the Borrower;

(xi) Debt of (i) the Securitization Subsidiaries pursuant to Permitted Receivables Financings and (ii) the Loan Parties pursuant to an ABL Credit Agreement shall not exceed, in the aggregate for clauses (i) and (ii), at any time outstanding the greater of $300,000,000 and 15.0% of Consolidated Net Tangible Assets, and in each case, any Permitted Refinancing thereof;

(xii) Debt (i) in respect of Hedging Transactions entered into in the ordinary course of business consistent with past practice or (ii) arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds or other cash management services including, but not limited to, treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements, in each case entered into or arising in the ordinary course of business;

(xiii) Debt (including any Permitted Refinancing thereof) secured by Liens permitted by clause (xiv) of the definition of Permitted Liens;

(xiv) Guaranties in respect of Debt otherwise permitted hereunder;

(xv) Debt relating to the financing of insurance policy premiums;

(xvi) other unsecured or subordinated Debt in an aggregate principal amount not to exceed the greater of $50,000,000 and 2.5% of Consolidated Net Tangible Assets; and

(xvii) Debt of Non-Guarantor Subsidiaries which, when combined with the aggregate amount of Investments permitted pursuant Section 9.3(xvi), does not exceed at any one time the greater of $10,000,000 and 0.50% of Consolidated Net Tangible Assets.

9.2 Liens; Negative Pledge. The Borrower shall not, and shall not permit any of its Subsidiaries to, (i) at any time create, incur, assume or suffer to exist any Lien on any of its respective property or assets, tangible or intangible, now owned or hereafter acquired, except, Permitted Liens, and (ii) at any time, directly or indirectly, enter into any Contractual Obligation that prohibits or restricts the Borrower's or its Subsidiaries' ability to grant a security interest or Lien on any of the Collateral to the Administrative Agent or any of the other Secured Parties in connection with this Agreement or any other Loan Document (as such Agreement or Loan Documents may be amended, restated, modified or supplemented); provided that the foregoing clause (ii) shall not apply to any Contractual Obligations which:

(a) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower and do not extend beyond such Subsidiary and its subsidiaries;

(b) arise in connection with any Permitted Lien under clause (vii) of such definition to the extent such restrictions relate to the assets (and any proceeds in respect thereof) which are the subject of such Lien;

(c) arise under loan documents or other agreements in connection with Debt permitted by Section 9.1 (other than secured Debt permitted by Section 9.1(viii)), including the ABL Documents, and documents in connection with the Permitted Refinancing of any of the foregoing; provided that such restrictions (i) apply solely to Non-Guarantor Subsidiaries or (ii) are no more restrictive with respect to the Borrower and its Subsidiaries than the limitations (taken as a whole) set forth in the Loan Documents and do not materially impair the Borrower's ability to grant the security interests to the Administrative Agent contemplated by the Loan Documents or pay the Obligations under the Loan Documents as and when due (as reasonably determined in good faith by the Borrower);

(d) are contained in agreements relating to any Disposition permitted by Section 9.7 solely with respect to the assets that are the subject of such Disposition;

(e) are customary provisions in joint venture agreements and other similar agreements applicable solely to such joint venture or the equity interests therein;

(f) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby, so long as such restrictions relate solely to the assets subject thereto;

(g) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary;

(h) are customary limitations existing under or by reason of leases entered into in the ordinary course of business;

(i) are restrictions on cash or other deposits imposed under contracts entered into in the ordinary course of business;

(j) are customary provisions restricting assignment of any agreements;

(k) are restrictions imposed by any agreement relating to any Permitted Receivables Financing to the extent that such restrictions relate to the assets (and any proceeds in respect thereof) that are the subject of such Permitted Receivables Financing; or

(l) are set forth in any agreement evidencing an amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the Contractual Obligations referred to in clauses (a) through (k) above; provided, that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Borrower, not materially less favorable to the Loan Party with respect to such limitations than those applicable pursuant to such Contractual Obligation prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

9.3 Loans and Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time make any Investment in notes or securities of, or any partnership interest (whether general or limited) or limited liability company interest in, or any other Investment or interest in, or make any capital contribution to, any other Person, or agree, become or remain liable to do any of the foregoing, except:

(i) trade credit extended on usual and customary terms in the ordinary course of business and stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Borrower or any Subsidiary in satisfaction of judgments;

(ii) (A) Investments by the Borrower or any of its Subsidiaries in any Loan Party and (B) Investments by any Non-Guarantor Subsidiary in any other Non-Guarantor Subsidiary;

(iii) (A) Permitted Investments and Investments in cash and (B) any Investments arising in connection with any Hedging Transactions;

(iv) Investments in Permitted Joint Ventures as permitted by Section 8.8(c);

(v) bonds required in the ordinary course of business of the Borrower and its Subsidiaries, including without limitation, surety bonds, royalty bonds or bonds securing performance by the Borrower or a Subsidiary of the Borrower under bonus bids;

(vi) loans by the Borrower to any Bonding Subsidiary; provided, however (x) prior to any loan being made to any Bonding Subsidiary, such loan shall be evidenced by a note, reasonably satisfactory to the Administrative Agent, and such note shall be pledged pursuant to the applicable Collateral Document to the Administrative Agent for the benefit of the Secured Parties and (y) any loans by the Borrower to any Bonding Subsidiary shall in each and every case be subject to Section 9.14;

(vii) so long as no Event of Default is continuing immediately prior to making such Investment or would result therefrom, Investments in an amount equal to the greater of (a) $50,000,000 or (b) 3.0% of Consolidated Net Tangible Assets;

(viii) other Investments, in connection with or related to the operations of the Borrower and its Subsidiaries, provided that, (i) the Total Net Leverage Ratio is less than or equal to 1.50:1.00 and (ii) the pro forma Liquidity of the Borrower is greater than or equal to $200,000,000, each after giving pro forma effect to such Investment and the transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to the making of such Investment for which consolidated financial statements of the Borrower are delivered (or are required to be delivered) pursuant to Section 8.15(a) or (b).

(ix) Investments arising as a result of Permitted Receivables Financings;

(x) Investments by Borrower of the type described in clause (i) of the definition of Investments in any Bonding Subsidiary, provided that any such Investments by the Borrower in any Bonding Subsidiary shall in each case be subject to Section 9.14;

(xi) any transaction which is an Investment permitted by Section 9.6 (including, without limitation, any Permitted Acquisition), Section 9.7 (including, without limitation, Investments arising out of the receipt by Borrower or any Subsidiary of noncash consideration for the sale of assets permitted thereunder) or Section 9.4;

(xii) any guaranty which is permitted under Section 9.1;

(xiii) (A) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and (B) loans or advances to employees made in the ordinary course of business and consistent with past practice, provided that such loans and advances to all such employees do not exceed an aggregate amount outstanding at any time equal to the greater of $10,000,000 and 0.50% of Consolidated Net Tangible Assets;

(xiv) Investments existing as of the Closing Date and set forth on Schedule 9.3, and extensions, renewals, modifications, restatements or replacements thereof; provided that no such extension, renewal, modification, restatement or replacement shall increase the amount of the original loan, advance or investment, except by an amount equal to any premium or other reasonable amount paid in respect of the underlying obligations and fees and expenses incurred in connection with such extension, renewal, modification, restatement or replacement;

(xv) to the extent constituting an Investment, the repurchase, repayment, defeasance or retirement of any Debt of the Borrower or any Subsidiary to the extent such repurchase, prepayment or retirement is expressly permitted hereunder; and

(xvi) Investments by the Borrower and the Guarantors in Non-Guarantor Subsidiaries, which, when combined with the aggregate amount of Debt permitted pursuant Section 9.1(xvii), does not exceed at any time the greater of $10,000,000 and 0.50% of Consolidated Net Tangible Assets.

9.4 Dividends and Related Distributions. The Borrower shall not, and shall not permit any of its Subsidiaries to, declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any shares of capital stock or other equity interests of the Borrower or any Subsidiary of the Borrower or directly or indirectly redeem, purchase, retire or otherwise acquire for value any shares of any class of the capital stock or other equity interests of the Borrower or any Subsidiary of the Borrower or set aside any amount for any such purposes (any of the above, a "Restricted Payment"), except that:

(a) Restricted Payments in an amount when added to the Restricted Payments permitted under clause (c) of this Section 9.4, shall not, in any fiscal year, exceed $100,000,000 and so long as no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom;

(b) any Subsidiary of the Borrower may declare and pay dividends or make any other distribution (by reduction of capital or otherwise) to, or repurchase its capital stock or equity interests from, the Borrower or any other Subsidiary of the Borrower (or, in the case of non-wholly owned Subsidiaries of the Borrower, to the Borrower or any other Subsidiary that is a direct or indirect parent of such non-wholly-owned Subsidiary and to each other owner of equity interests of such non-wholly owned Subsidiary on a pro rata basis (or more favorable basis from the perspective of the Borrower or its applicable Subsidiary) based on their relative ownership interests);

(c) (A) so long as no Event of Default shall exist immediately prior to or after giving effect to such stock purchase or redemption, stock purchases or redemptions (other than repurchases described in clause (B) of this Section 9.4(c)) in connection with the rights of employees or members of the board of directors of the Borrower or any of its Subsidiaries of any capital stock or equity interests issued pursuant to an employee or board of directors equity subscription agreement, equity option agreement or equity ownership arrangement or other compensation plan permitted to be issued hereunder, provided that the aggregate consideration of such stock purchase and redemptions made pursuant to this clause (A) when added to the Restricted Payments permitted under clause (a) of this Section 9.4 shall not, in any fiscal year, exceed $100,000,000 and (B) repurchases of equity interests deemed to occur upon (1) the exercise of stock options if the equity interests represent a portion of the exercise price thereof or (2) the withholding of a portion of equity interests issued to employees and other participants under an equity compensation program of the Borrower and its Subsidiaries, in each case to cover withholding tax obligations of such persons in respect of such issuance;

(d) dividends or other distributions payable solely in capital stock or equity interests;

(e) the Borrower may declare and make Restricted Payments; provided that, (i), the Total Net Leverage Ratio is less than 1.00:1.00 and (ii) the pro forma Liquidity of the Borrower is greater than or equal to $200,000,000, each after giving pro forma effect to such Restricted Payment and the transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to the making of such Restricted Payment for which consolidated financial statements of the Borrower are delivered (or are required to be delivered) pursuant to Section 8.15(a) or (b); or

(f) for any taxable year in which the Borrower is a member of a consolidated, combined, unitary or similar income tax group (a "Tax Group") of which a parent entity is the common parent, or in which the Borrower is disregarded as an entity separate from a parent entity that is a C corporation for U.S. federal income tax purposes, to such parent entity to pay the consolidated, combined, unitary or similar income tax liabilities of such Tax Group or taxes of such parent entity, as applicable, to the extent attributable to the taxable income, gross receipts or gross profits of the Borrower or its subsidiaries in an aggregate amount not to exceed the amount of such taxes that the Borrower and its subsidiaries would have paid for such taxable period had the Borrower and its subsidiaries been a standalone corporate taxpayer or a standalone Tax Group for all applicable taxable periods (without duplication, for the avoidance of doubt, of any such taxes paid by the Borrower or any of its subsidiaries directly to the relevant taxing authority).

9.5 Payment of Other Debt. The Borrower shall not, and shall not permit any of its Subsidiaries to, prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity in any manner any Debt that is owed to a third party that is subordinated to the Obligations or Debt that is secured by a Lien ranking junior to the Liens securing the Obligations (excluding, for the avoidance of doubt, permitted unsecured Debt, any Permitted Receivables Financing and the ABL Obligations), except:

(i) the conversion (or exchange) of any such Debt to, or the payment of any such Debt from the proceeds of the issuance of, the common stock or other equity interests of the Borrower (other than Disqualified Equity Interests);

(ii) for a Permitted Refinancing thereof;

(iii) payments of or in respect of any such Debt in an aggregate amount not to exceed the Cumulative Amount, so long as (x) no Event of Default is continuing immediately prior to making such payment or would result therefrom and (y) the Total Net Leverage Ratio does not exceed 2.50:1.00 after giving pro forma effect to such payment; or

(iv) so long as no Event of Default has occurred and is continuing, other payments of or in respect of any such Debt in an aggregate amount not to exceed $100,000,000.

9.6 Liquidations, Mergers, Consolidations, Acquisitions. The Borrower shall not, and shall not permit any of its Subsidiaries to, dissolve, liquidate or wind up its affairs, or consummate

any merger or consolidation, or acquire by purchase, lease or otherwise all or substantially all of the assets or capital stock of any other Person, provided that:

(i) (A) any Loan Party, other than the Borrower, may consolidate or merge into the Borrower or any other Loan Party and the security interest granted by the Borrower pursuant to the Collateral Documents shall remain in full force and effect, (B) any Non-Guarantor Subsidiary may consolidate or merge into any other Non-Guarantor Subsidiary, (C) any Non-Guarantor Subsidiary may consolidate or merge into any Loan Party, so long as such Loan Party survives such merger or consolidation and the security interest granted by the Borrower pursuant to the Collateral Documents shall remain in full force and effect, and (D) any transaction otherwise permitted by Section 9.7 and Section 9.3 shall be permitted under this Section 9.6;

(ii) the Borrower or any Subsidiary may acquire, whether by purchase or by merger, (A) all of the ownership interests of another Person or (B) all or substantially all of the assets of another Person or of a business or division of another Person (each a "Permitted Acquisition"), provided that each of the following requirements is met:

(1) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be substantially the same as, or shall support or be complementary to, one or more line or lines of business conducted by the Loan Parties and shall comply with Section 9.10, in the case of any merger a Loan Party shall be the surviving entity after giving effect to such transaction and, to the extent that a Significant Subsidiary is acquired or formed in connection with or as a result of such acquisition, the Loan Parties shall comply with the provisions of Section 9.9 and Section 8.8(d) and, to the extent the assets or business acquired constitute Collateral, the Loan Parties shall comply with the provisions of Section 8.8(a);

(2) no Potential Default or Event of Default shall exist immediately prior to and immediately after giving effect to such Permitted Acquisition; provided that, subject to Section 1.5, in the case of any Limited Condition Acquisition, at the option of the Borrower, this Section 9.6(ii)(2) may be deemed satisfied so long as no Potential Default or Event of Default exists on the date the definitive agreements for such Limited Condition Acquisition are entered into; and

(3) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, shall be located in the United States and the Person acquired (if applicable) shall be organized under the laws of any State of the United States; provided that the Borrower or any its Subsidiaries shall be permitted to consummate Permitted Acquisitions that do not satisfy the requirements of this clause (3) in an aggregate amount of up to the greater of $30,000,000 and 1.50% of Consolidated Net Tangible Assets;

(iii) the Borrower or any of its Subsidiaries may acquire by purchase, lease or otherwise all or substantially all of the assets or equity interests of a Securitization Subsidiary; and

(iv) any Subsidiary of the Borrower that holds only de minimis assets and is not conducting any material business may dissolve or otherwise wind up its affairs.

9.7 Dispositions of Assets or Subsidiaries. The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, convey, assign, license, lease, abandon, securitize or enter into a securitization transaction, or otherwise transfer or dispose of (collectively, to "Dispose"; and "Disposition" shall have a correlative meaning), voluntarily or involuntarily, any of its properties or assets, tangible or intangible (including sale, assignment, discount or other disposition of accounts, contract rights, chattel paper, equipment, general intangibles with or without recourse or of capital stock, shares of beneficial interest, partnership interests or limited liability company interests of a Subsidiary of the Borrower), except:

(i) (A) transactions involving the sale of inventory in the ordinary course of business, (B) any Disposition of assets in the ordinary course of business which are no longer necessary or required in the conduct of any Loan Party's business or the grant in the ordinary course of business of any non-exclusive easements, permits, licenses, rights of way, surface leases or other surface rights or interests, (C) any sale of accounts arising from the export outside of the U.S. of goods or services by any Loan Party, provided that, in the case of this clause (C), (x) at the time of any such sale, no Event of Default shall exist or shall result from such sale, (y) such sale shall be for fair market value and (z) the consideration to be paid to the Borrower and its Subsidiaries as permitted by this clause (C) shall consist solely of cash, (D) any lease, sublease or non-exclusive license of assets (with a Loan Party as the lessor, sublessor or licensor) in the ordinary course of business, provided that the interests of the Loan Parties in any such lease, sublease or license are subject to the Administrative Agent's first priority security interest (subject only to Permitted Liens) in and to the assets of the Loan Parties (other than Excluded Property) that constitute Term Loan Priority Collateral and second priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties (other than Excluded Property) that constitute ABL Priority Collateral, and (E) transfers of condemned property as a result of the exercise of "eminent domain" or other similar policies to the respective Official Body or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of properties that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement;

(ii) (x) any Disposition of assets by the Borrower or any Subsidiary of the Borrower which is a Guarantor to any other Loan Party, (y) any Disposition of assets by any Non-Guarantor Subsidiary to any Loan Party or (z) any Disposition of assets by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary;

(iii) any Disposition of property by the Borrower or any of its Subsidiaries of assets with a fair market value (as reasonably determined by the Borrower in good faith) of less than $5,000,000;

(iv) any Disposition (including by capital contribution) of Receivables Assets pursuant to a Permitted Receivables Financing;

(v) (x) any Disposition where the fair market value (as reasonably determined by the Borrower in good faith) of the assets subject thereto, when aggregated with the fair market value of all other assets subject to Dispositions made within the same fiscal year

are less than $50,000,000; provided that (A) at the time of any such Disposition, no Event of Default shall exist or shall result from such Disposition and (B) the Net Cash Proceeds for all such Dispositions are applied as a mandatory prepayment of the Loans in accordance with, and to the extent required under, the provisions of Section 5.3; plus (y) any other Disposition of assets; provided that (in the case of this clause (y) only): (A) at the time of any such Disposition, no Event of Default shall exist or shall result from such disposition, (B) such Disposition shall be for fair market value (as determined by the Borrower in good faith), (C) the consideration to be paid to the Borrower and its Subsidiaries as permitted by this clause (v) shall consist of cash in an amount that is not less than 75% of such consideration; provided, however, for purposes of this clause (C), the following will be deemed to be cash: (1) any reclamation and other liabilities arising under applicable Permits, applicable workers' compensation acts and the federal black lung laws and other liabilities associated with the applicable employees, in each case that are assumed by the transferee with respect to the applicable sale, transfer or lease pursuant to a customary assumption or similar agreement, (2) any letters of credit with respect to the reimbursement of which the Borrower or its Subsidiaries are obligated, to the extent such letters of credit relate to the assets or business subject to such sale, transfer or lease and are cancelled no later than 60 days following such sale, transfer or lease and for which the transferee with respect to the applicable sale, transfer or lease has guaranteed or indemnified the reimbursement of any drawing thereunder on customary terms and (3) any Designated Non-Cash Consideration received by the Borrower or any of its Subsidiaries in such Disposition (provided that (x) the aggregate fair market value of such Designated Non-Cash Consideration, as reasonably determined by the Borrower in good faith, taken together with the fair market value at the time of receipt of all other Designated Non-Cash Consideration received pursuant to this clause (3) minus (y) the amount of Net Cash Proceeds previously realized in cash from prior Designated Non-Cash Consideration shall not exceed $75,000,000) and (D) the Net Cash Proceeds for all such Dispositions are applied as a mandatory prepayment of the Loans in accordance with, and to the extent required under, the provisions of Section 5.3;

(vi) any Disposition of assets as part of an Investment which is either (x) an Investment in a Permitted Joint Venture which is permitted by Section 9.9 or (y) an Investment permitted by Section 9.3;

(vii) any transactions otherwise permitted by Section 9.6 or Section 9.4; and

(viii) those Dispositions set forth on Schedule 9.7.

9.8 Affiliate Transactions. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or carry out any transaction (including purchasing property or services from or selling property or services to) with any Affiliate of the Borrower involving an aggregate consideration in excess of $5,000,000 unless (1) such transaction is not otherwise prohibited by this Agreement and (2) such transaction is either (a) entered into upon fair and reasonable arm's-length terms and conditions or (b) would be entered into by a prudent Person in the position of the Borrower or such Subsidiary; provided, however that this Section 9.8 shall not prohibit (i) the consummation of the Transactions, (ii) any dividend, distribution or Investment which is not

otherwise prohibited by this Agreement, (iii) any transaction described on Schedule 9.8 (including any modification, extension or renewal thereof on terms no less favorable to the parties thereto than the terms of such transaction as described on such Schedule) which is not otherwise prohibited by this Agreement, (iv) any transaction provided for in, or in connection with, a Permitted Receivables Financing, (v) any transaction between or among Loan Parties and (vi) payments to directors and officers of the Borrower and its Subsidiaries in respect of the indemnification of such Persons in such respective capacities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, pursuant to the organizational documents or other corporate action of the Borrower or its Subsidiaries, respectively, or pursuant to applicable law.

9.9 Subsidiaries, Partnerships and Joint Ventures. The Borrower shall not, and shall not permit any of its Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) Non-Guarantor Subsidiaries (including any Securitization Subsidiary which is the subject of clause (iii) below), (ii) any Significant Subsidiary which has complied with Section 9.5, and (iii) any Securitization Subsidiary whose equity interests are pledged to the Administrative Agent for the benefit of the Secured Parties (pursuant to the Pledge Agreement).

Neither the Borrower nor any Subsidiary of the Borrower shall become or agree to become a joint venturer or hold a joint venture interest in any joint venture except that the Loan Parties may make an Investment in a Permitted Joint Venture, so long as the Borrower and its Subsidiaries at all times are in compliance with all requirements of the following clauses (A) through (F) or to the extent otherwise permitted under Section 9.3:

(A) the Permitted Joint Venture is either a corporation, limited liability company, trust, or a limited partnership or another form of an entity or arrangement that permits the Borrower and its Subsidiaries to limit their liability, as a matter of Law, for the obligations of the Permitted Joint Venture;

(B) the Investment is either (y) of the type described in clauses (i), (ii) or (iv) of the definition of Investments, or (z) of the type described in clauses (iii) or (v) of the definition of Investments and, on the date such Investment is made, the amount of the Guaranty or other obligation, as the case may be, is reasonably estimable;

(C) other than the amount of an Investment permitted under clause (B) immediately above of the type described in clause (iii) or clause (v) of the definition of Investments, there is no recourse to any Loan Party or any Subsidiary of any Loan Party for any Debt or other liabilities or obligations (contingent or otherwise) of the Permitted Joint Venture;

(D) the Total Net Leverage Ratio shall be no more than 1.50:1.00 after giving pro forma effect to the transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to the Investment for which consolidated financial statements of the Borrower are available (provided that, for the avoidance of doubt, any Consolidated EBITDA of such Permitted Joint Venture shall not be included in such calculation of the Total Net Leverage Ratio); and

(E) to the extent that the equity interests owned, directly or indirectly, by the Borrower in such Permitted Joint Venture constitutes Excluded Property, such equity interests shall be held by a JV Holding Company and the equity interest of such JV Holding Company shall constitute Collateral; and

(F) no Potential Default or Event of Default shall exist immediately prior to and immediately after giving effect to such Investment in a Permitted Joint Venture.

9.10 Continuation of or Change in Business. The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the business of the Loan Parties and their Subsidiaries, substantially as conducted and operated by the Loan Parties and their Subsidiaries, taken as a whole, as of the Closing Date or business that supports or is complimentary to such business or is a reasonable extension thereof.

9.11 Fiscal Year. Change its fiscal year from the twelve-month period beginning January 1 and ending December 31 or make any material change in its accounting treatment or reporting practices (except as required by GAAP) that would be materially disadvantageous to the Lenders.

9.12 Sale and Leaseback Transactions . The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Person (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Person to any Person (other than the Borrower or any of its Subsidiaries) in connection with such lease (such transaction, a "Sale and Leaseback Transaction"); provided that the foregoing shall not prohibit any such Sale and Leaseback Transaction in which such lease, to the extent constituting Debt, is permitted to be incurred under Section 9.1 and in which the leased property is permitted to be Disposed of by Section 9.7.

9.13 Changes in Organizational Documents and Loan Party Information. (i) The Borrower shall not, and shall not permit any of its Subsidiaries that are Loan Parties to, amend in any respect its certificate of incorporation (including any provisions or resolutions relating to capital stock), by-laws, certificate of limited partnership, partnership agreement, certificate of formation or limited liability company agreement if such change would be materially adverse to the Lenders as determined by the Borrower in good faith (provided that any amendment of any provision in the limited liability company agreement, operating agreement or partnership agreement of any Loan Party that permits a pledgee of such Loan Party's limited liability, membership or partnership interests (or such pledgee's designee or any purchaser of such interests) to be substituted for the member or partner under such agreement upon the exercise of such pledgee's rights with respect to its collateral shall be deemed to be materially adverse to the Lenders).

9.14 Transactions With Respect to the Bonding Subsidiaries. Except as otherwise expressly permitted under this Agreement, the Borrower shall not permit any Bonding Subsidiary

to (x) own any assets other than a leasehold interest, as lessee, in a coal lease where the lessor is a Person that is not an Affiliate of the Borrower and cash and Permitted Investments necessary to assure either the lessor of such leasehold interest of the performance of all obligations by such Bonding Subsidiary thereunder or to assure the provider of surety bonds described in the following clause (y) that such Bonding Subsidiary is able to perform its obligations to such provider under the described surety bonds; and (y) incur any Debt or other obligation or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) except those to the lessor of the coal lease owned by such Bonding Subsidiary and those in favor of the provider of the surety bonds which provide payment assurances to such lessor under the coal lease owned by such Bonding Subsidiary related to the cost of acquiring such leasehold interest, the bonus bid and royalty payments thereunder and the costs and expenses incidental to such lease; provided, however that in lieu of any surety bond such Bonding Subsidiary may request that the Borrower obtain a letter of credit on behalf of such Bonding Subsidiary and such Bonding Subsidiary may incur reimbursement obligations in connection therewith.

9.15 Maximum Total Leverage Ratio. Permit at any time the Total Net Leverage Ratio calculated as of the end of each fiscal quarter for the four fiscal quarters then ended, to exceed 2.00 to 1.00.

9.16 Minimum Interest Coverage Ratio. Permit the ratio of Consolidated EBITDA to Consolidated Interest Expense of the Borrower and its Subsidiaries, calculated as of the end of each fiscal quarter for the four fiscal quarters then ended, to be less than 3.50 to 1.00.

9.17 Minimum Liquidity. The Borrower shall not at any time permit Liquidity to be less than $100,000,000.

9.18 No Restriction in Agreements on Dividends or Certain Loans. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or be bound by any agreement (i) which prohibits or restricts, in any manner the payment of dividends by any of its Subsidiaries (whether in cash, securities, property or otherwise), or (ii) which prohibits or restricts in any manner the making of any loan to the Borrower by any of its Subsidiaries or payment of any Debt or other obligation owed to any Loan Party, other than, in each case, (A) restrictions applicable to a Securitization Subsidiary in connection with a Permitted Receivables Financing, (B) restrictions imposed by any applicable law, rule or regulation (including applicable currency control laws and applicable state or provincial corporate statutes restricting the payment of dividends or any other distributions in certain circumstances), (C) restrictions in effect under any Contractual Obligation outstanding on the Closing Date and set forth on Schedule 9.18, and (D) restrictions pursuant to any Contractual Obligation described in clauses (a) through (l) of Section 9.2.

9.19 Anti-Corruption Laws; Anti-Money Laundering Laws; and International Trade Laws. Each Loan Party shall not and, for as long as any Lender has any outstanding Commitment or Loans hereunder, such Loan Party shall not permit its directors and officers, and any employee, agent, or affiliate acting on behalf of such Loan Party in connection with this Agreement, nor such Loan Party's Subsidiaries to: (a) become a Sanctioned Person; (b) directly or knowingly indirectly, provide, use, or make available the proceeds of any Loan hereunder (i) to fund any activities or business of, with, or for the benefit of any Person that, at the time of such funding or facilitation,

is a Sanctioned Person, (ii) to fund or facilitate any activities or business of or in any Sanctioned Jurisdiction, (iii) in any manner violates Anti-Corruption Laws, Anti-Money Laundering, or Sanctions (including the Administrative Agent, any Lender, underwriter, advisor, investor, or otherwise) or (iv) in violation of any applicable Law, including, without limitation, any applicable Anti-Corruption Law, Anti-Money Laundering Law or Sanctions; (c) repay the Loan with Blocked Property or funds derived from any unlawful activity; or (d) permit any Collateral to become Blocked Property. The Borrower shall not and, for as long as any Lender has any outstanding Commitment or Loans hereunder, the Borrower shall not permit its Subsidiaries to become a Person identified on any List of Parties of Concern maintained by the U.S. Department of Commerce.

ARTICLE 10
DEFAULT

10.1 Events of Default. An Event of Default shall mean the occurrence or existence of any one or more of the following events or conditions (whatever the reason therefor and whether voluntary, involuntary or effected by operation of Law):

(a) Payments Under Loan Documents. The Borrower shall fail to pay (i) any principal of (or premium with respect to) any Loan (including scheduled installments, mandatory prepayments, or the payment due at maturity) when due hereunder or (ii) any interest on any Loan or any fee owing hereunder or under other Loan Document within three (3) Business Days after such interest or fee becomes due in accordance with the terms hereof or thereof.

(b) Breach of Warranty. Any representation or warranty made at any time by the Borrower herein or by any of the Loan Parties in any other Loan Document, or in any certificate, other instrument or statement furnished pursuant to the provisions hereof or thereof, shall prove to have been false or incorrect in any material respect as of the time it was made or furnished.

(c) Breach of Negative Covenants or Certain Other Covenants. Any of the Loan Parties shall default in the observance or performance of any covenant contained in Section 8.1 (solely with respect to the Borrower's legal existence), Article 9, or Section 8.16(c).

(d) Breach of Other Covenants. Any of the Loan Parties shall default in the observance or performance of any other covenant, condition or provision hereof or of any other Loan Document and such default shall continue unremedied for a period of thirty (30) days after the earlier of (x) any Responsible Officer of the Borrower becomes aware of the occurrence thereof or (y) the date upon which the Borrower has received written notice of such default from the Administrative Agent.

(e) Defaults in Other Agreements or Debt; Bonding Matters.

(i) A default or event of default shall occur at any time under the terms of any other agreement involving borrowed money or the extension of credit or any Debt under which any Loan Party or a Subsidiary of any Loan Party may be obligated as a borrower, guarantor, counterparty or other party in excess of $50,000,000 in the aggregate,

and such default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto) any indebtedness or other obligation when due (whether at stated maturity, by acceleration or otherwise) or if such default or event of default permits or causes (or with the giving of notice would permit or cause) the acceleration of any indebtedness or other obligation or the termination of any commitment to lend in amount in excess of $50,000,000.

(ii) One or more surety, reclamation or similar bonds securing obligations of the Borrower or any Subsidiary of the Borrower (or any required guaranties thereof or required letters of credit with respect thereto) with an aggregate face amount of $50,000,000 or more shall be actually terminated, suspended or revoked prior to the full and complete satisfaction or discharge of such obligations by the Borrower or any Subsidiary of the Borrower and not replaced within 30 days of such termination, suspension or revocation; provided that the Borrower or any Subsidiary of the Borrower shall be permitted to replace such surety bonds with self-bonding obligations to the extent permitted by any Person to which satisfaction of the obligations secured by such bonds are owed prior to full satisfaction of the obligations secured by such bonds.

(f) Judgments or Orders. Any judgments or orders (including with respect to any Environmental Health and Safety Claims and Environmental Health and Safety Order) (x) for the payment of money in excess of $50,000,000 in the aggregate shall be entered against any Loan Party or any Subsidiary of any Loan Party by a court having jurisdiction in the premises or (y) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change shall be entered against any Loan Party, which judgment, in either case, is not discharged, vacated, bonded or stayed pending appeal within a period of sixty (60) days from the date of entry; provided, however, that any such judgment or order under subclause (x) of this clause (f) shall not be an Event of Default under this Section (f) if and for so long as the amount of such judgment or order in excess of $50,000,000 is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof (and such insurer has been notified of the potential claim and does not dispute coverage).

(g) Loan Document Unenforceable. Any of the Loan Documents shall cease to be legal, valid and binding agreements enforceable against any Loan Party executing the same or such party's successors and assigns (as permitted under the Loan Documents) in accordance with the respective terms thereof or shall in any way be terminated (except in accordance with its terms), or cease to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby, or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a portion of the Collateral that is not de minimis;

(h) Uninsured Losses; Proceedings Against Assets. There shall occur any material uninsured damage to or loss, theft or destruction of any of the Collateral in excess of $50,000,000 (it being understood that the amount of deductibles payable in connection with such claim shall not be included in such threshold) or the Collateral or any other of the Loan Parties' or any of their Subsidiaries' assets in excess of $50,000,000 in the aggregate are attached, seized,

levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within thirty (30) days thereafter;

(i) Events Relating to Plans and Benefit Arrangements. Any of the following occurs, in each case, which individually or in the aggregate, could reasonably be expected to have a Material Adverse Change: (i) any Reportable Event, which could reasonably be expected to constitute grounds for the termination of any Plan by the PBGC or the appointment of a trustee to administer or liquidate any Plan, shall have occurred and be continuing; (ii) proceedings shall have been instituted or other action taken to terminate any Plan, or a termination notice shall have been filed with respect to any Plan; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) the Borrower or any member of the ERISA Group shall fail to make any contributions when due, after the expiration of any applicable grace period, to a Plan or a Multiemployer Plan; or (v) the Borrower or any member of the ERISA Group is assessed Withdrawal Liability with respect to a Multiemployer Plan;

(j) Change of Control. (i) Any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) 50% or more of the voting capital stock of the Borrower or (ii) within a period of twelve (12) consecutive calendar months, individuals who (1) were directors of the Borrower on the first day of such period, (2) were nominated for election by the Borrower, or (3) were approved for appointment by the Board shall cease to constitute a majority of the board of directors of the Borrower, provided that the appointment of any directors of the Borrower pursuant to the Plan of Reorganization shall not result in an Event of Default (a "Change of Control");

(k) Involuntary Proceedings. An Insolvency Proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Loan Party or Material Subsidiary of a Loan Party in an involuntary case under any applicable Debtor Relief Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of such Loan Party or Subsidiary for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;

(l) Voluntary Proceedings. Any Loan Party or Material Subsidiary of a Loan Party shall commence a voluntary Insolvency Proceeding or other case under any applicable Debtor Relief Law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or other similar official) of itself or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing.

10.2 Consequences of Event of Default.

(a) Events of Default Other than Bankruptcy, Insolvency or Reorganization Proceedings. If an Event of Default shall occur and be continuing, the Administrative Agent, as the case may be, may, and upon the request of the Required Lenders, shall, by written notice to the Borrower, take one or more of the following actions: (i) declare the unpaid principal amount of the Term Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Debt of the Borrower to the Lenders hereunder and under the other Loan Documents to be forthwith due and payable, and the same shall thereupon become and be immediately due and payable to the Administrative Agent for the benefit of each Lender without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, or (ii) exercise rights and remedies in respect of the Collateral in accordance with Section 8 of the Security Agreement and/or the comparable provisions of any other Collateral Document.

(b) Bankruptcy, Insolvency or Reorganization Proceedings. If an Event of Default specified under Section 10.1(k) or 10.1(l) shall occur, the unpaid principal amount of the Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Debt of the Borrower to the Lenders under the Loan Documents shall be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.

(c) Set-off. If an Event of Default shall have occurred and be continuing, each Lender and its Affiliates which has agreed in writing to be bound by the provisions of Section 5.5 is hereby authorized at any time and from time to time, 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 or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the Obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or Affiliate, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Debt. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and 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.

(d) Suits, Actions, Proceedings. If an Event of Default shall occur and be continuing and if the Administrative Agent shall have accelerated the maturity of the Term Loans pursuant to any of the foregoing provisions of this Section 10.2, then the Administrative Agent may, to the extent permitted by Law, proceed to protect and enforce its rights by suit in equity, action at law and/or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement or the other Loan Documents, including as permitted by applicable Law the obtaining of the ex parte appointment of a receiver, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Administrative Agent or the Lenders; and

(e) Application of Proceeds. From and after the date on which the Administrative Agent, as the case may be, has taken any action pursuant to this Section 10.2 and until the Facility Termination Date, any and all proceeds received by the Administrative Agent from the sale or other disposition of the Collateral, or any part thereof, or the exercise of any remedy by Administrative Agent or any Lender from the exercise of any remedy by Administrative Agent or any Lender shall be applied as follows:

(i) first, to pay the Administrative Agent for all costs, expenses, indemnities and disbursements, including reasonable attorneys' fees and legal expenses, incurred by the Administrative Agent in connection with realizing on the Collateral or collection of any Obligations of any of the Loan Parties under any of the Loan Documents, including advances made by the Lenders or any one of them or Administrative Agent for the reasonable maintenance, preservation, protection or enforcement of, or realization upon, the Collateral, including advances for taxes, insurance, repairs and the like and reasonable expenses incurred to sell or otherwise realize on, or prepare for sale or other realization on, any of the Collateral;

(ii) second, to pay in full all other Obligations (including fees, indemnities, charges and disbursements of counsels to the Administrative Agent) owing to the Administrative Agent in its capacity as such;

(iii) third, to pay in full all Obligations consisting of interest (including interest or other amounts that accrue or become due during the pendency of any proceeding under Debtor Relief Laws or that would have accrued or become due under the terms of the Loan Documents but for the effect of any such proceeding, regardless of whether allowed or allowable in such proceeding) on the Term Loans, and scheduled periodic payments then due under Secured Hedge Agreements (the amounts so applied to be distributed among the beneficiaries of such Secured Hedge Agreements pro rata in accordance with the amounts of such Obligations owed to them on the date of any such distribution);

(iv) fourth, to pay in full all Obligations (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) consisting of unpaid principal amount of the Term Loans and any premium thereon or breakage or termination fees, costs or expenses related thereto and any other Obligations in respect of Secured Hedge Agreements (the amounts so applied to be distributed among the beneficiaries of such Secured Hedge Agreements pro rata in accordance with the amounts of the Obligations owed to them on the date of any such distribution);

(v) fifth, to the payment in full of all other Obligations (the amounts so applied to be distributed among the beneficiaries of such Secured Hedge Agreements pro rata in accordance with the amounts of the Obligations owed to them on the date of any such distribution); and

(vi) sixth, to the Borrower, its successors and assigns, or as a court of competent jurisdiction may otherwise direct or as otherwise required by the ABL Intercreditor Agreement (if any).

(f) Other Rights and Remedies. In addition to all of the rights and remedies contained in this Agreement or in any of the other Loan Documents, Administrative Agent shall have all of the rights and remedies of a secured party under the Uniform Commercial Code or other applicable Law, all of which rights and remedies shall be cumulative and non-exclusive, to the extent permitted by Law. Administrative Agent may, and upon the request of the Required Lenders shall, exercise all post-default rights granted to Administrative Agent and the Lenders under the Loan Documents or applicable Law.

(g) Notice of Sale. Any notice required to be given by the Administrative Agent of a sale, lease, or other disposition of the Collateral or any other intended action by the Administrative Agent, if given ten (10) days prior to such proposed action, shall constitute commercially reasonable and fair notice thereof to the Borrower and each other Loan Party.

ARTICLE 11
THE ADMINISTRATIVE AGENT

11.1 Appointment and Authority. Each of the Lenders hereby irrevocably appoints PNC Bank, National Association to act on its behalf as the Administrative 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 by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Section 11.6 and Section 11.11) are solely for the benefit of the Administrative Agent, the, and neither the Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.

11.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

11.3 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly specified herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Potential Default or Event of Default has occurred and is continuing;

(ii) 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 the Administrative 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 the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative 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 or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly specified 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 the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not 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 12.1 [Modifications; Amendments or Waivers] and 10.2 [Consequences of Event of Default]), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Potential Default or Event of Default unless and until notice describing such Potential Default or Event of Default is given to the Administrative Agent in writing by the Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any 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 specified herein or therein or the occurrence of any Potential Default or Event of Default, (iv) the

validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition specified in Article 7 [Conditions of Lending] or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

11.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. 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.

11.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative 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 Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Term Loan Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

11.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower (so long as no Potential Default or Event of Default has occurred and is continuing), to appoint a successor. If no such successor shall have been so appointed by the Required Lenders (and consented to by the Borrower, if applicable) and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders with the consent of the Borrower (if required as provided above), appoint a successor Administrative Agent meeting the qualifications specified above; provided that in no event shall any such successor Administrative Agent be a

Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties to secure the Obligations, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders (with the Borrower's consent, if applicable) appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article 11 and Section 12.3 [Expense; Indemnity; Damage Waiver] shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

11.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial

lending facility and certain other facilities as set forth herein and (ii) it is engaged in making, acquiring or holding commercial loans, issuing or participating in letters of credit or providing other similar facilities in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans, issuing or participating in letters of credit and providing other facilities as set forth herein and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire or hold commercial loans, issue or participate in letters of credit and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire or hold such commercial loans, issue or participate in letters of credit or to provide such other facilities, is experienced in making, acquiring or holding commercial loans, issuing or participating in letters of credit or providing such other facilities.

11.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

11.9 [Reserved].

11.10 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 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 (but not obligated) by intervention in such proceeding or otherwise:

(a) 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 and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 12.3 [Expenses; Indemnity; Damage Waiver]) allowed in such judicial proceeding; and

(b) 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 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, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent

and its agents and counsel, and any other amounts due the Administrative Agent under Section 12.3 [Expenses; Indemnity; Damage Waiver].

11.11 Collateral, Guaranty and Intercreditor Matters.

(a) Each of the Secured Parties irrevocably authorizes the Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (w) upon the Facility Termination Date, (x) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Loan Documents, (y) Collateral that is or becomes Excluded Property (or any assets no longer required to be Collateral pursuant to the terms hereof or of any other Loan Document). or (z) subject to Section 12.1 [Modifications; Amendment or Waivers], if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted hereunder; and

(iii) to release any Guarantor from its obligations under this Agreement and the Guaranty Agreement if such Person becomes a Non-Guarantor Subsidiary or ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under this Agreement and the Guaranty Agreement pursuant to this Section 11.11.

(b) The Administrative 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 Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 12.8 [Successors and Assigns]) hereby authorizes and directs the Administrative Agent to enter into (x) the Existing ABL Intercreditor Agreement, the Existing Pari Passu Intercreditor Agreement and any other ABL Intercreditor Agreement reasonably acceptable to the Administrative Agent (each, an "Applicable Intercreditor Agreement") and (y) any agreement required in connection with any Permitted Receivables Financing reasonably acceptable to the Administrative Agent (each, a "Receivables Consent Agreement"), in each case, on behalf of such Lender in order to effectuate the transactions permitted by this Agreement and agrees that the Administrative Agent may take such actions on its behalf as is contemplated by the terms of such Applicable Intercreditor Agreement or Receivables Consent Agreement. In addition, PNC or any

such successors shall be authorized, without the consent of any Lender, to execute or to enter into amendments, supplements, joinders, amendments and restatements and notices in connection with any Applicable Intercreditor Agreement or Receivables Consent Agreement, in each case, in order to (x) with respect to any Applicable Intercreditor Agreement, effect the subordination of and to provide for certain additional rights, obligations and limitations in respect of, any Liens required by the terms of this Agreement to be Liens senior to (solely in the case of ABL Priority Collateral), junior to, or pari passu with, the Obligations, that are incurred as permitted by this Agreement, and to establish certain relative rights as between the holders of the Obligations and the holders of the Debt secured by such Liens senior to (solely in the case of ABL Priority Collateral), junior to or pari passu with the Obligations, including as contemplated by Section 9.2 [Liens; Negative Pledge] and (y) with respect to any Receivables Consent Agreement, provide for certain obligations and limitations in connection with the pledge of equity interests of any Securitization Subsidiary under the Pledge Agreement.

11.12 No Reliance on Administrative Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), Anti-Money Laundering Laws or any Anti-Corruption Law, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such other Laws.

11.13 Lender Provided Interest Rate Hedges, Lender Provided Foreign Currency Hedges and Other Lender Provided Financial Service Products. Except as otherwise expressly specified herein, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 10.2(e) [Application of Proceeds], the Guaranty Agreement or any Collateral by virtue of the provisions hereof or of the Guaranty Agreement or any Loan 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 11 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 Lender Provided Interest Rate Hedges, Lender Provided Foreign Currency Hedges and/or Other Lender Provided Financial Service Products 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 Cash Management Bank or Hedge Bank, as the case may be.

11.14 ERISA Matters

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Arrangements with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the

Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

11.15 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, or Secured Party, or any Person who has received funds on behalf of a Lender, or Secured Party (any such Lender, Secured Party or other recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Overnight Bank Funding Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, or Secured Party, or any Person who has received funds on behalf of a Lender, or Secured Party, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 11.15(b).

(c) Each Lender, or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, or Secured Party from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, (i) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender r and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof)

acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 11.15 shall survive the resignation or replacement of the Administrative Agent, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE 12
MISCELLANEOUS

12.1 Modifications, Amendments or Waivers. With the written consent of the Required Lenders, the Administrative Agent, acting on behalf of all the Lenders, and the Borrower, on behalf of the Loan Parties, may from time to time enter into written agreements amending or changing any provision of this Agreement or any other Loan Document or the rights of the Lenders or the Loan Parties hereunder or thereunder, or may grant written waivers or consents hereunder or thereunder. Any such agreement, waiver or consent made with such written consent shall be effective to bind all the Lenders and the Loan Parties; provided, that no such agreement, waiver or consent may be made which will:

(a) Increase of Commitment. Increase the amount of the Term Loan Commitment of any Lender hereunder without the consent of such Lender;

(b) Extension of Payment; Reduction of Principal, Interest or Fees; Modification of Terms of Payment. Whether or not any Loans are outstanding, extend the Term Loan Maturity Date or the scheduled time for payment of principal or interest of any Loan (excluding the due date of any mandatory prepayment of a Loan), or any other fee payable to any Lender, or reduce the principal amount of or the stated rate of interest borne by any Loan (other than as a result of waiving the applicability of any post-default increase in interest rates) or reduce the stated rate of any other fee payable to any Lender, without the consent of each Lender directly

affected thereby (provided that any amendment or modification of defined terms used in the financial covenants of this Agreement shall not constitute a reduction in the stated rate of interest or fees for purposes of this clause (b));

(c) Release of Collateral or Guarantor. Except for sales of assets permitted by Section 9.7 [Dispositions of Assets or Subsidiaries], release all or substantially all of the Collateral or release all or substantially all of the Guarantors from their Obligations under the Guaranty Agreement, in each case without the consent of all Lenders (other than Defaulting Lenders); or

(d) Miscellaneous. Amend Section 5.4 [Pro Rata Treatment of Lenders], Section 11.3 [Exculpatory Provisions], Section 5.5 [Sharing of Payments by Lenders], Section 10.2(e) [Application of Proceeds] or this Section 12.1, alter any provision regarding the pro rata treatment of the Lenders or requiring all Lenders to authorize the taking of any action or reduce any percentage specified in the definition of Required Lenders, in each case without the consent of all of the Lenders;

provided that (i) no agreement, waiver or consent which would modify the interests, rights or obligations of the Administrative Agent, may be made without the written consent of the Administrative Agent, provided, further that, if in connection with any proposed waiver, amendment or modification referred to in Sections 12.1(a) through (d) above, there is a Non-Consenting Lender, then the Borrower shall have the right to replace any such Non-Consenting Lender with one or more replacement Lenders pursuant to Section 5.11 [Replacement of a Lender]. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove 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 (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended to extend the Term Loan Maturity Date with respect to applicable Lenders that agree to such extension with respect to their Term Loans with the written consent of each such approving Lender, the Administrative Agent and the Borrower (and no other Lender) and, in connection therewith, to provide for different rates of interest and fees under the Term Loan Facility with respect to the portion thereof with a Term Loan Maturity Date so extended; provided that in each such case any such proposed extension of the Term Loan Maturity Date shall have been offered to each Lender with Loans or Commitments under the applicable facility proposed to be extended, and if the consents of such Lenders exceed the portion of Commitments and Loans the Borrower wishes to extend, such consents shall be accepted on a *pro rata* basis among the applicable consenting Lenders.

In addition, notwithstanding the foregoing, (a) with the consent of the Borrower, the Administrative Agent may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct or cure any ambiguity, inconsistency or

defect or correct any typographical or ministerial error in any Loan Document (provided that any such amendment, modification or supplement shall not be materially adverse to the interests of the Lenders taken as a whole), and (b) without the consent of any Lender or the Borrower, within a reasonable time after (i) the effective date of any increase or addition to, extension of or decrease from, the Term Loan Commitment, or (ii) any assignment by any Lender of some or all of its Term Loan Commitment, the Administrative Agent shall, and is hereby authorized to, revise Schedule 1.1(B) to reflect such change, whereupon such revised Schedule 1.1(B) shall replace the old Schedule 1.1(B) and become part of this Agreement.

12.2 No Implied Waivers; Cumulative Remedies. No course of dealing and no delay or failure of the Administrative Agent or any Lender in exercising any right, power, remedy or privilege under this Agreement or any other Loan Document shall affect any other or future exercise thereof or operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further exercise thereof or of any other right, power, remedy or privilege. The enumeration of the rights and remedies of the Administrative Agent and the Lenders specified in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No reasonable delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default.

12.3 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), and shall pay all fees and time charges and disbursements for attorneys who may be employees of the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all out-of-pocket expenses incurred by the Administrative Agent, or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, or any Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, and (iii) all reasonable out-of-pocket expenses of the Administrative Agent's regular employees and agents engaged periodically to perform audits of the Loan Parties' books, records and business properties during the continuance of an Event of Default.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the arrangers, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including reasonable and documented fees and expenses of a single firm of counsel (plus, in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel of another firm of counsel for all similarly situated Indemnitees, plus, to the extent reasonably necessary, one local counsel to all similarly affected Indemnitees in each applicable jurisdiction and any special counsel)) in all cases arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any affiliate of any such party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties, (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 12.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Ratable Share at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as

opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in Section 12.3(a) [Costs and Expenses] shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such liability or damages are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(e) Payments. All amounts due under this Section 12.3 shall be payable not later than ten (10) days after demand therefor.

(f) Survival. Each party's obligations under this Section 12.3 shall survive the termination of the Loan Documents and payment of the obligations hereunder.

12.4 Holidays. Whenever payment of a Loan to be made or taken hereunder shall be due on a day which is not a Business Day, such payment shall be due on the next Business Day (except as otherwise set forth herein) and such extension of time shall be included in computing interest and fees, except that the Loans under the Term Loan Facility shall be due on the Business Day preceding the Term Loan Maturity Date if the Term Loan Maturity Date is not a Business Day. Whenever any payment or action to be made or taken hereunder (other than payment of the Loans) shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall not be included in computing interest or fees, if any, in connection with such payment or action.

12.5 Notices; Effectiveness; Electronic Communication

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (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:

(i) if to the Borrower or any other Loan Party, to its address as set forth in Schedule 1.1(B);

(ii) if to the Administrative Agent, to PNC Bank, National Association, to its address as set forth in Schedule 1.1(B);

(iii) if to a Lender, to it at its address (or facsimile number) specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices 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 business day for the recipient). Notices delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. 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 3 [Term Loans] if such Lender 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.

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), 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; provided that, for both clauses (i) and (ii) above, if such notice, email 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 business day for the recipient.

(c) Change of Address, etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to other Lenders by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, 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 Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential

damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender by means of electronic communications pursuant to this Section, including through the Platform.

12.6 Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent then such provisions shall be deemed to be in effect only to the extent not so limited.

12.7 Duration; Survival. All representations and warranties of the Loan Parties contained herein or made in connection herewith shall survive the execution and delivery of this Agreement and the completion of the transactions hereunder, and shall continue in full force and effect until the Facility Termination Date. All covenants and agreements of the Borrower contained herein relating to the payment of principal, interest, premiums, additional compensation or expenses and indemnification, including those specified in the Notes, Article 5 [Payments; Taxes; Yield Maintenance] and Section 12.3 [Expenses; Indemnity; Damage Waiver], shall survive the Facility Termination Date. All other covenants and agreements of the Loan Parties shall continue in full force and effect from and after the Closing Date and until the Facility Termination Date.

12.8 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder (including, in each case, by way of an LLC Division) without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). 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, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(1) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it (in each case with respect to any facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(2) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(2) in any case not described in clause (i)(1) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption Agreement, as of the Trade Date) shall not be less than $1,000,000, in the case of the Term Loan of such assigning Lender, unless the Administrative Agent otherwise consents and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(2) of this Section and, in addition:

(1) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within three (3) Business Days after having received notice thereof; and

(2) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect

of any Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption Agreement. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee of $3,500. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries except, solely with respect to Term Loans, as permitted by paragraph (f) of this Section or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. 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 specified herein, the parties to the assignment shall make such additional payments to the 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 the Borrower and the 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 the Administrative Agent, and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Ratable Share. 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.

(viii) Effectiveness; Release. Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this

Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 4.4 [Rate Unascertainable; Etc.], 5.8 [Increased Costs], and 12.3 [Expenses, Indemnity; Damage Waiver] with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Pittsburgh, Pennsylvania a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the 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 entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.3 [Expenses; Indemnity; Damage Waiver] with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree (other than as is already provided for herein) to any amendment, modification or waiver with respect to Sections 12.1(a) [Increase of Commitment], 12.1(b) [Extension of Payment, Etc.], or 12.1(c) [Release of Collateral or Guarantor] that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.4 [Rate Unascertainable, Etc.], 5.8 [Increased Costs], 5.9 [Taxes] and 5.10 [Indemnity] (subject to the requirements and limitations therein, including the requirements under Section 5.9(g) [Status of

Lenders] (it being understood that the documentation required under Section 5.9(g) [Status of Lenders] shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.11 [Replacement of a Lender] as if it were an assignee under to paragraph (b) of this Section 12.8; and (B) shall not be entitled to receive any greater payment under Sections 5.8 [Increased Costs] or 5.9 [Taxes], with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.11 [Replacement of a Lender] with respect to any Participant. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.2(c) [Set-off] as though it were a Lender; provided that such Participant agrees to be subject to Section 5.5 [Sharing of Payments by Lenders] as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges; Successors and Assigns Generally. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

(g) Arrangers/Bookrunners. Notwithstanding anything to the contrary contained in this Agreement, the name of any arranger and/or bookrunner listed on the cover page of this Agreement may be changed by the Administrative Agent to the name of any Lender or

Lender's broker-dealer Affiliate, upon written request to the Administrative Agent by any such arranger and/or bookrunner and the applicable Lender or Lender's broker-deal Affiliate.

12.9 Confidentiality.

(a) General. Each of the Administrative Agent and the Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; provided that, unless prohibited by applicable law or court order, the disclosing party agrees to make reasonable efforts to provide the Borrower with notice of any such request to the extent practical (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by a governmental agency); (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Term Loan Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Term Loan Facility; (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 of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, "Information" means all information received from the Borrower or any of its Subsidiaries in connection with the transactions contemplated by the Transaction Documents relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same

degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) Sharing Information With Affiliates of the Lenders. Each Loan Party acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and each of the Loan Parties hereby authorizes each Lender to share any information delivered to such Lender by such Loan Party and its Subsidiaries pursuant to this Agreement with any such Subsidiary or Affiliate of the Lender subject to the provisions of Section 12.9(a) [General].

12.10 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement 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, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any prior confidentiality agreements and commitments. Except as provided in Article 7 [Conditions Of Lending], 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 telecopy or e-mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution. The words "execution," "signed," "signature," and words of like import in any Loan Document 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 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.

12.11 CHOICE OF LAW; SUBMISSION TO JURISDICTION; WAIVER OF VENUE; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

(a) Governing Law and Submission to Jurisdiction. This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly specified therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance

with, the Law of the State of New York. The Borrower and each other Loan Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation 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, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Loan Party or its properties in the courts of any jurisdiction.

(b) Waiver of Venue. The Borrower and each other Loan Party 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 (a) of this Section. 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.

(c) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.5 [Notices; Effectiveness; Electronic Communication]. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

(d) WAIVER OF JURY TRIAL. 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.

12.12 Acknowledgement of Mutual Negotiations and Intercreditor Agreements.

(a) This Agreement and the other Loan Documents are the product of mutual negotiations by the parties thereto and their counsel, and no party shall be deemed the draftsperson of this Agreement or any other Loan Document or any provision hereof or thereof or to have provided the same. Accordingly, in the event of any inconsistency or ambiguity of any provision of this Agreement or any other Loan Document, such inconsistency or ambiguity shall not be interpreted against any party because of such party's involvement in the drafting thereof.

(b) Notwithstanding anything to the contrary contained herein, the Administrative Agent and each Lender hereby acknowledges that the Liens and security interests securing the obligations evidenced by the Collateral Documents, the exercise of any right or remedy by such Administrative thereunder or with respect thereto, and certain rights of the parties thereto are subject to the provisions of any Applicable Intercreditor Agreement that has been entered into by the Administrative Agent pursuant to the terms hereof. In the event of any conflict between the terms of any such Applicable Intercreditor Agreement and the Collateral Documents, the terms of such Applicable Intercreditor Agreement shall govern and control.

12.13 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, 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 the applicable Resolution Authority.

12.14 USA PATRIOT Act Notice. 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 Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and

address of Loan Parties and other information that will allow such Lender or Administrative Agent, as applicable, to identify the Loan Parties 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 Act.

12.15 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Secured Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the Laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the Laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the Laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 12.15, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12

C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[REMAINDER OF PAGE INTENTIONALY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed this Agreement as of the day and year first above written.

ATTEST:

ARCH RESOURCES, INC., a Delaware corporation

By: /s/ Matthew C. Giljum
Name: Matthew C. Giljum
Title: Senior Vice President, Chief Financial Officer and Treasuer

GUARANTORS

ACI TERMINAL, LLC, ALLEGHENY LAND LLC, ARCH COAL GROUP, LLC, ARCH COAL OPERATIONS LLC, ARCH COAL SALES COMPANY, INC., ARCH COAL WEST, LLC, ARCH ENERGY RESOURCES, LLC, ARCH LAND LLC, ARCH OF WYOMING, LLC, ARCH RECLAMATION SERVICES LLC, ARCH WESTERN ACQUISITION CORPORATION, ARCH WESTERN ACQUISITION, LLC, ARCH WESTERN BITUMINOUS GROUP, LLC, ARCH WESTERN RESOURCES, LLC, ARK LAND LLC, ARK LAND KH LLC, ARK LAND LT LLC, ARK LAND WR LLC, ASHLAND TERMINAL, INC., BRONCO MINING COMPANY LLC, CATENARY COAL HOLDINGS LLC, COALQUEST DEVELOPMENT LLC, HAWTHORNE COAL COMPANY LLC, HUNTER RIDGE COAL LLC, HUNTER RIDGE HOLDINGS, INC., HUNTER RIDGE LLC, ICG BECKLEY, LLC, ICG EAST KENTUCKY, LLC, ICG EASTERN LAND, LLC, ICG EASTERN, LLC, ICG NATURAL RESOURCES, LLC, ICG TYGART VALLEY, LLC, ICG, LLC, INTERNATIONAL ENERGY GROUP, LLC, JULIANA MINING COMPANY LLC, KING KNOB COAL CO. LLC, MAIDSVILLE LANDING TERMINAL, LLC (formerly known as SIMBA GROUP LLC), MARINE COAL SALES LLC, MEADOW COAL HOLDINGS, LLC, MELROSE COAL COMPANY LLC, MINGO LOGAN COAL LLC, MOUTNAIN COAL COMPANY, L.L.C., MOUNTAIN GEM LAND LLC, MOUNTAIN MINING LLC, MOUNTAINEER LAND LLC, OTTER CREEK COAL, LLC, PATRIOT MINING COMPANY LLC, PRAIRIE HOLDINGS, INC., SHELBY RUN MINING COMPANY, LLC, THUNDER BASIN COAL COMPANY, L.L.C., TRITON COAL COMPANY, LLC, UPHSUR PROEPRTY LLC, VINDEX ENERGY LLC, WESTERN ENERGY RESOURCES LLC, WHITE WOLF ENERGY LLC, WOLF RUN MINING LLC

By:/s/ Matthew C. Giljum
Name: Matthew C. Giljum
Title: Treasurer & Vice President

PNC BANK, NATIONAL ASSOCIATION,
individually as Lender and as Administrative Agent

By: /s/ Kyle T. Helfrich
Name: Kyle T. Helfrich
Title: Senior Vice President

Exhibit 10.8

SIXTH AMENDMENT TO CREDIT AGREEMENT

THIS SIXTH AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is made and entered into on February 8, 2024, by and among **ARCH RESOURCES, INC.**, a Delaware corporation ("Arch"), the direct and indirect subsidiaries of Arch identified on the signature pages hereto as "Borrowers" (together with Arch, collectively, "Borrowers", and each individually a "Borrower"), **REGIONS BANK**, as agent (in its capacity as agent, the "Administrative Agent") for certain financial institutions (collectively, the "Lenders"), and the Lenders.

Recitals:

Borrowers, Administrative Agent and Lenders are parties to a certain Credit Agreement dated April 27, 2017 (as at any time amended, restated, modified or supplemented, the "Credit Agreement"), pursuant to which Lenders have made certain loans and other financial accommodations to Borrowers.

Borrowers, Administrative Agent and Lenders desire to amend the Credit Agreement on the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, for TEN DOLLARS ($10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby severally acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions. Capitalized terms used in this Amendment, unless otherwise defined herein, have the respective meanings ascribed to such terms in the Credit Agreement.

2. Amendments to Credit Agreement. The Credit Agreement is, effective as of the date hereof, hereby amended to (a) delete the stricken text (indicated textually in the same manner as the following example: ~~**stricken text**~~) and to add the double-underlined text (indicated textually in the same manner as the following example: **double-underlined text**) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto and (b) restate Schedule 8.23 hereto, respectively.

3. Ratification and Reaffirmation. Each Borrower hereby ratifies and reaffirms the Obligations, each of the Loan Documents, and all of such Borrower's covenants, duties, indebtedness and liabilities under the Loan Documents.

4. Acknowledgments and Stipulations. Each Borrower acknowledges and stipulates that this Amendment and each other Loan Document to which such Borrower is party constitutes a legal, valid and binding obligation of such Borrower that is enforceable against such Borrower in accordance with the terms hereof or thereof, as applicable, except to the extent that enforceability of any portion hereof or thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance; that all of the Obligations are owing and payable, in each case to the extent provided in the Loan Documents, without defense, offset or counterclaim (and to the extent there exists any such defense, offset or counterclaim on the date hereof, the same is hereby knowingly and voluntarily waived by each Borrower); that the security interests and Liens granted by such Borrower in favor of Administrative Agent are fully perfected first priority security interests and Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute ABL Priority Collateral and second priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral (in each case, subject to any remaining actions that may be required in accordance with Section 9.20 of the Credit

Agreement); that on and as of the opening of business on February 5, 2024, the unpaid principal amount of the Loans totaled $0 and the outstanding Letters of Credit totaled $26,200,060.

5. Representations and Warranties. Each Borrower represents and warrants to Administrative Agent and the Lenders, to induce each to enter into this Amendment, that no Default or Event of Default exists on the date hereof; that the execution, delivery and performance of this Amendment have been duly authorized by all requisite corporate or company action on the part of such Borrower and this Amendment has been duly executed and delivered by such Borrower; and that all of the representations and warranties made by such Borrower in the Credit Agreement are true and correct in all material respects on the effective date hereof (provided that any representation or warranty that is qualified as to "materiality," "Material Adverse Change" or similar language shall be true and correct (after giving effect to such qualification) in all respects on such effective date), except for those representations and warranties that expressly relate to an earlier date, in which case, they shall have been true and correct in all material respects as of such earlier date.

6. Reference to Credit Agreement. Upon the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement," "hereunder," or words of like import shall mean and be a reference to the Credit Agreement, as amended by this Amendment.

7. Loan Document Pursuant to Credit Agreement. This Amendment is a Loan Document executed pursuant to the Credit Agreement and shall be construed, administered and applied in accordance with all of the terms and provisions of the Credit Agreement. A breach of any representation or warranty in this Amendment shall constitute an Event of Default as provided in Section 12.1 of the Credit Agreement.

8. Conditions Precedent. The effectiveness of the amendments contained in Section 2 hereof is subject to the satisfaction of each of the following conditions precedent, in form and substance satisfactory to Administrative Agent, unless satisfaction thereof is specifically waived in writing by Administrative Agent:

(a) Administrative Agent shall have received counterparts of this Amendment, duly executed by each Borrower and each of the Lenders;

(b) Administrative Agent shall have received an omnibus officer's certificate in a form agreed to by Administrative Agent, duly executed by an authorized officer of such Borrower;

(c) Administrative Agent shall have received the Joinder to Intercreditor Agreement, duly executed by the parties thereto;

(d) Administrative Agent shall have received the First Amendment to Intercreditor Agreement, duly executed by the parties thereto;

(e) Administrative Agent shall have received the Intercreditor Agreement Termination Notice, duly executed by the parties thereto;

(f) Administrative Agent shall have received a supplement to the Pledge Agreement, which updates **Schedule A** to the Pledge Agreement as of the date hereof, duly executed by the parties thereto;

(g) Administrative Agent shall have received the Supplemental Trademark Security Agreement, duly executed by the parties thereto;

(h) Administrative Agent shall have received the Supplemental Copyright Security Agreement, duly executed by the parties thereto;

(i) Administrative Agent shall have received true, correct and complete copies of the Term Loan Agreement, the Guaranty Agreement in favor of Term Agent, the Security Agreement in favor of Term Agent and the Pledge Agreement in favor of Term Agent, in each case, together with all exhibits, schedules and attachments thereto and duly executed by the parties thereto;

(j) Administrative Agent shall have received a true, correct and complete copy of the supplement to the Pledge Agreement in favor of Citibank, N.A., duly executed by the parties thereto; and

(k) Administrative Agent shall have received a true, correct and complete copy of that certain Acknowledgement and Release of Liens dated on or about the date hereof by and between Citibank, N.A., as trustee, and Parent, duly executed by the parties thereto.

9. **Post-Closing Covenant.** On or before the date that is thirty (30) days after the date hereof (or such later date as may be agreed to in writing by Administrative Agent in its discretion), Borrowers shall deliver (or cause to be delivered) to Administrative Agent a Control Agreement with respect to account number x9829 maintained at Regions Bank, duly executed by the parties thereto;

10. **Fees and Expenses.** Borrowers jointly and severally agree to pay all out-of-pocket expenses incurred by the Administrative Agent in connection with the preparation, negotiation, execution, delivery and enforcement of this Amendment and the other documents and instruments referred to herein or contemplated hereby, including, but not limited to, the fees and disbursements of Administrative Agent's legal counsel, in each case, to the extent provided in the Credit Agreement.

11. **Governing Law.** THIS AMENDMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES OR OTHER RULE OF LAW WHICH WOULD CAUSE THE APPLICATION OF THE LAW OF ANY JURISDICTION OTHER THAN THE LAW OF THE STATE OF NEW YORK.

12. **No Novation, etc.** Except as otherwise expressly provided in this Amendment, nothing herein shall be deemed to amend, modify any provision of the Credit Agreement or any of the other Loan Documents, each of which shall remain in full force and effect. This Amendment is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction, and the Credit Agreement as herein modified shall continue in full force and effect.

13. **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns as provided in Section 14.1 of the Credit Agreement.

14. **Entire Agreement.** This Amendment constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto. **THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

15. **Miscellaneous.** This Amendment may be executed in any number of counterparts and by different parties to this Amendment on separate counterparts, each of which, when so executed, shall be

deemed an original, but all such counterparts shall constitute one and the same agreement. Any manually executed signature page to this Amendment delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature hereto. Section titles and references used in this Amendment shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreements among the parties hereto.

16. Waiver of Jury Trial. To the fullest extent permitted by applicable law, each party hereby waives the right to trial by jury in any action, suit, counterclaim or proceeding arising out of or related to this Amendment.

17. Release of Claims. In consideration of Administrative Agent's and Lenders' agreement to amend the Credit Agreement as provided herein, each Borrower hereby RELEASES, ACQUITS AND FOREVER DISCHARGES Administrative Agent, each LC Issuer and each Lender, and each of their respective officers, directors, agents, employees, representatives, Affiliates and trustees and any successors and assigns of any of the foregoing (each, a "Releasee", and collectively, the "Releasees"), from any and all liabilities, claims, demands, actions or causes of action of any kind or nature (if there be any), whether absolute or contingent, disputed or undisputed, at law or in equity, or known or unknown, that any Borrower now has or ever had against any of the Releasees arising under or in connection with the Loan Documents, based in whole or in part on facts, whether or not now known, existing on or before the date of this Amendment (collectively, "Claims"). Each Borrower hereby represents and warrants to the Releasees that no Borrower has transferred or assigned to any person or entity of any kind any Claim that such Borrower ever had or claimed to have against any Releasee.

[Remainder of page intentionally left blank; signatures begin on the following page.]

IN WITNESS WHEREOF, the signatories hereto have caused this Amendment to be executed by their respective duly authorized officers as of the day and year first above written.

ARCH RESOURCES, INC.
as "Borrower Agent" and as a "Borrower"

By: /s/ Matthew C. Giljum
Name: **Matthew C. Giljum**
Title: Senior Vice President, Chief Financial Officer, and Treasurer

ACI TERMINAL, LLC
ALLEGHENY LAND LLC
ARCH COAL SALES COMPANY, INC.
ARCH COAL GROUP, LLC
ARCH COAL OPERATIONS LLC
ARCH COAL WEST, LLC
ARCH ENERGY RESOURCES, LLC
ARCH LAND LLC
ARCH OF WYOMING, LLC
ARCH RECLAMATION SERVICES LLC
ARCH WESTERN ACQUISITION CORPORATION
ARCH WESTERN ACQUISITION, LLC
ARCH WESTERN BITUMINOUS GROUP, LLC
ARCH WESTERN RESOURCES, LLC
ARK LAND LLC
ARK LAND KH LLC
ARK LAND LT LLC
ARK LAND WR LLC
ASHLAND TERMINAL, INC.
BRONCO MINING COMPANY LLC
CATENARY COAL HOLDINGS LLC
COALQUEST DEVELOPMENT LLC
HAWTHORNE COAL COMPANY LLC
HUNTER RIDGE COAL LLC
HUNTER RIDGE HOLDINGS, INC.
HUNTER RIDGE LLC
ICG BECKLEY, LLC
ICG EAST KENTUCKY, LLC
ICG EASTERN LAND, LLC
ICG EASTERN, LLC
as "Borrowers"

By: /s/ Matthew C. Giljum
Name: **Matthew C. Giljum**
Title: Treasurer and Vice President

[Signatures continued on following page.]

ICG NATURAL RESOURCES, LLC
ICG TYGART VALLEY, LLC
ICG, LLC
INTERNATIONAL ENERGY GROUP, LLC
JULIANA MINING COMPANY LLC
KING KNOB COAL CO. LLC
MAIDSVILLE LANDING TERMINAL, LLC
MARINE COAL SALES LLC
MEADOW COAL HOLDINGS, LLC
MELROSE COAL COMPANY LLC
MINGO LOGAN COAL LLC
MOUNTAIN COAL COMPANY, L.L.C.
MOUNTAIN GEM LAND LLC
MOUNTAIN MINING LLC
MOUNTAINEER LAND LLC
OTTER CREEK COAL, LLC
PATRIOT MINING COMPANY LLC
PRAIRIE HOLDINGS, INC.
SHELBY RUN MINING COMPANY, LLC
THUNDER BASIN COAL COMPANY, L.L.C.
TRITON COAL COMPANY, LLC
UPSHUR PROPERTY LLC
VINDEX ENERGY LLC
WESTERN ENERGY RESOURCES LLC
WHITE WOLF ENERGY LLC
WOLF RUN MINING LLC
as "Borrowers"

By: /s/ Matthew C. Giljum
Name: **Matthew C. Giljum**
Title: Treasurer and Vice President

[Signatures continued on following page.]

REGIONS BANK
as "Administrative Agent", "LC Issuer," and as the sole "Lender"

By: /s/ Steve McGreevy
Name: **Steve McGreevy**
Title: Managing Director

EXHIBIT A
MARKED VERSION REFLECTING CHANGES
PURSUANT TO THE ~~FIFTH~~SIXTH AMENDMENT TO CREDIT AGREEMENT
ADDED TEXT SHOWN UNDERSCORED
DELETED TEXT SHOWN ~~STRIKETHROUGH~~

CREDIT AGREEMENT[1]

by and among

ARCH RESOURCES, INC.,

formerly known as Arch Coal, Inc.

AND CERTAIN OF ITS SUBSIDIARIES,

JOINTLY AND SEVERALLY, as the "Borrowers"

THE FINANCIAL INSTITUTIONS PARTY HERETO FROM TIME TO TIME, as the "Lenders"

REGIONS BANK, as the "Administrative Agent"

and

REGIONS CAPITAL MARKETS, a division of Regions Bank
as Sole Book Runner and Sole Lead Arranger

April 27, 2017

as amended by the First Amendment on November 19, 2018,
as further amended by the Second Amendment on June 17, 2020,
as further amended by the Third Amendment on September 30, 2020,
as further amended by the Fourth Amendment on May 27, 2021, ~~and~~
as further amended by the Fifth Amendment on August 3, 2022**, and**
as further amended by the Sixth Amendment on February 8, 2024

---

[1] This marked version is marked against the Credit Agreement, dated as of April 27, 2017, conformed to reflect the First Amendment, dated as of November 19, 2018, the Second Amendment, dated June 17, 2020, the Third Amendment on September 30, 2020, ~~and~~ the Fourth Amendment, dated May 27, 2021**, and the Fifth Amendment, dated August 3, 2022**.

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APPENDICES, EXHIBITS AND SCHEDULES

APPENDICES

EXHIBITS

SCHEDULES

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "Agreement") is dated as of April 27, 2017, by and among (A) **ARCH RESOURCES, INC.**, formerly known as Arch Coal, Inc., a Delaware corporation ("Parent"); (B) the Subsidiaries of Parent identified on the signature pages hereto and any other Subsidiaries of Parent that may become Borrowers hereunder pursuant to Section 9.12 (each of such Subsidiaries, together with Parent, jointly and severally, the "Borrowers" and, each, a "Borrower"); (C) the financial institutions from time to time party hereto (each, a "Lender" and, collectively, the "Lenders"); (D) **REGIONS BANK**, an Alabama bank (as further defined below, "Regions Bank"), in its capacities as the Swingline Lender (as defined below) and LC Issuer (as defined below); and (E) Regions Bank, in its capacities as administrative agent and collateral agent for the Lenders, LC Issuer and other Secured Parties (defined below) (Regions Bank, acting in such capacities, and as further defined below, "Administrative Agent" or "Agent").

W I T N E S S E T H:

WHEREAS, Loan Parties have requested that Administrative Agent and the Lenders establish a revolving credit facility in favor of Borrowers and that LC Issuer establish a letter of credit sub-facility for the account of Borrowers, all for the purposes set forth herein; and

WHEREAS, Administrative Agent, the Lenders, and LC Issuer are willing to provide such credit facility and letter of credit sub-facility to Borrowers subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, each Borrower, Administrative Agent, each Lender, and LC Issuer, each intending to be legally bound, hereby covenant and agree as follows:

SECTION 1.
DEFINITIONS; RULES OF CONSTRUCTION

1.1. **Definitions**

. Capitalized terms that are not otherwise defined herein shall have the meanings set forth in this Section 1.1. As used in this Agreement and, as applicable, any other Loan Documents, the following terms shall have the following meanings:

"ABL Priority Collateral" shall have the meaning specified in the Intercreditor Agreement.

"Account Control Period" means (a) any period during which an Event of Default exists; and (b) each other period that commences on the first day on which Administrative Agent receives any Borrowing Base Certificate indicating that Liquidity has fallen below $225,000,000 at any time, and ends on (and includes) the first day thereafter on which Administrative Agent receives a Borrowing Base Certificate indicating that Liquidity has exceeded $225,000,000; provided that it is acknowledged and agreed that no Account Control Period has commenced or is in effect as of the Fourth Amendment Date.

"Active Operating Properties" means all property which is the subject of outstanding Environmental Health and Safety Permits issued to any Loan Party or any Subsidiary of any Loan Party.

"Adjusted Term SOFR" means, for any Interest Period, an interest rate per annum equal to (a) Term SOFR plus (b) the SOFR Adjustment. Notwithstanding anything contained herein to the contrary, if Adjusted Term SOFR as so determined, is ever less than 0.75% (75bps) per annum, then, Adjusted Term SOFR shall be deemed to be 0.75% (75bps) per annum for all purposes of this Agreement and the other

Loan Documents. Each calculation by Administrative Agent of Adjusted Term SOFR shall be conclusive and binding for all purposes, absent manifest error.

"Administrative Agent," "Collateral Agent" or "Agent" means Regions Bank, in its capacity as administrative agent, collateral agent or agent for Lenders, LC Issuer and each other Secured Party, together with its successors and assigns.

"Administrative Agent Indemnitees" means Administrative Agent, its Related Parties and all Administrative Agent Professionals.

"Administrative Agent Professionals" means attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Administrative Agent at any time or from to time in connection with, or pursuant to, the terms of this Agreement or any other Loan Document.

"Administrative Questionnaire" means an administrative questionnaire provided by each Lender to Administrative Agent in connection herewith in a form supplied or approved by Administrative Agent for such purpose.

"Advance Rate (Coal Inventory)" means a percentage equal to 85%.

"Affected Financial Institution" means (i) any EEA Financial Institution, and (ii) any UK Financial Institution.

"Affected Lender" has the meaning set forth in Section 15.1(b).

"Affected Loan" has the meaning set forth in Section 15.1(b).

"Affiliate" as to any Person means any other Person (i) which directly or indirectly controls, is controlled by, or is under common control with such Person, (ii) which beneficially owns or holds 10% or more of any class of the voting or other equity interests of such Person, or (iii) 10% or more of any class of voting interests or other equity interests of which is beneficially owned or held, directly or indirectly by such Person. Control, as used in this definition, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, including the power to elect a majority of the directors or trustees of a corporation or trust, as the case may be.

"Agent Parties" has the meaning set forth in Section 16.1(d).

"Agreement" has the meaning set forth in the preamble hereto.

"Agreement Currency" has the meaning set forth in Section 16.22.

"Aggregate Revolving Obligations" means, at any time of determination, the sum (without duplication) of (a) the outstanding principal amount of all Loans and (b) the outstanding amount of all LC Obligations.

"Allocable Amount" has the meaning given such term in Section 5.7(c)(ii).

"Anti-Corruption Laws" means the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq, the UK Bribery Act of 2010 and all other laws, rules, and regulations of any jurisdiction applicable to any Loan Party or any of its Affiliates from time to time concerning or relating to bribery or corruption.

"Anti-Terrorism Laws" means any laws relating to the prevention of terrorism or money laundering, including the PATRIOT Act and all OFAC rules and regulations, including Executive Order 13224.

"Applicable Margin" means, subject to the terms of this definition, with respect to any Type of Loan and at any time of determination, a percentage rate per annum equal to the percentage rate per annum set forth in the following table, as determined by reference to Liquidity as of the last date of the calendar month preceding each Determination Date (as defined below), as further described below:

Level	Liquidity	Base Rate Loans	Term SOFR Index Loans	Ter SOI Loa
I	Less than $175,000,000	2.50%	3.50%	3.5(

II	Greater than or equal to $175,000,000 but less than $225,000,000	2.00%	3.00%	3.00%
III	Greater than or equal to $225,000,000	1.25%	2.25%	2.25%

The Applicable Margin shall be subject to reduction or increase, as applicable and as set forth in the table above, on a monthly basis on each Determination Date, and any such reduction or increase shall be automatic and without notice to any Person. Without limiting Administrative Agent's or Required Lenders' rights to invoke the Default Rate, if (a) the Borrowing Base Certificate (together with the related calculations setting forth Liquidity) are not received by Administrative Agent on or before the applicable dates required pursuant to Section 9.16(a), as applicable, or (b) an Event of Default occurs and, in either case, Administrative Agent or Required Lenders so elect, then, in each case, from the date such Borrowing Base Certificate was required to be delivered or the date such Event of Default occurred, as applicable, the Applicable Margin shall, at the option of Administrative Agent or the Required Lenders, be at the Level with the highest rates of interest until such time as such Borrowing Base Certificate and related reports are received by Administrative Agent and any Event of Default (whether resulting from a failure to timely deliver such Borrowing Base Certificate or otherwise) is waived in accordance with the terms of this Agreement.

As used herein, "Determination Date" means the first day of the first calendar month after the date on which Borrower Agent provides the Borrowing Base Certificate under Section 9.16(a) for each of its Fiscal Months.

If any Borrowing Base Certificate is shown to be inaccurate (regardless of whether this Agreement or any Commitments are or remain in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin actually applied for such Applicable Period, then (A) Borrowers shall immediately deliver to Administrative Agent a correct Borrowing Base Certificate for the Applicable Period; (B) the Applicable Margin for such Applicable Period shall be determined by reference to such Borrowing Base Certificate; and (C) Borrowers shall promptly pay Administrative Agent, **ON DEMAND**, the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period and any other additional fee or charge which was based, in whole or in part, on the Applicable Margin, which payment shall be promptly applied by Administrative Agent for its own account and the account of Lenders and LC Issuer, as applicable, in accordance with the terms hereof. If any inaccurate Borrowing Base Certificate or other report on which Liquidity is determined would, if corrected, have led to the application of a lower Applicable Margin for any period for which interest has already been paid, none of the Secured Parties shall be required to refund or return any portion of such interest.

"Approved Fund" means any fund that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Article 9 Control" means, with respect to any asset, right, or property with respect to which a security interest therein is perfected by a secured party's having "control" thereof (whether pursuant to the terms of an agreement or through the existence of certain facts and circumstances), that the Administrative Agent or a Lender, as applicable, has "control" of such asset, right, or property in accordance with the terms of Article 9 of the UCC. Without limitation of the foregoing, so long as Regions Bank is the Administrative Agent, Administrative Agent shall be deemed to be have "control" of any Securities Account or Deposit Account maintained with Regions Bank or any Affiliate of Regions Bank, including any maintained by or through Regions Bank or any agents or correspondents acting on behalf of Regions Bank.

"Asset Sale" has the meaning set forth in Section 9.16(f).

"Assignment Agreement" means an assignment agreement entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 14.1(b)) and accepted by the Administrative Agent, in substantially the form of **Exhibit B** or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent from time to time.

"Auto Borrow Agreement" has the meaning specified in Section 4.1(b)(iii).

"Availability" means, at any time of determination, the amount, if any, by which (a) the lesser of (i) the Borrowing Base and (ii) the Commitments exceeds (b) the Aggregate Revolving Obligations.

"Average Cost" means the average cost method of accounting under GAAP as calculated by Borrowers in the ordinary course of business, or such other average cost method of accounting as may be expressly approved by Administrative Agent.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of the applicable Resolution Authority.

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

"Bank Product Agreement" means any agreement between one or more Loan Parties and a Bank Product Provider evidencing the making available of any Bank Product by such Bank Product Provider to such Loan Party.

"Bank Product Obligations" means indebtedness, liabilities and other obligations of any Loan Party to any Bank Product Provider arising under, pursuant to or in connection with Bank Products.

"Bank Product Provider" means any Lender or Affiliate of a Lender that provides a Bank Product. For purposes hereof, the term "Lender" shall be deemed to include the Administrative Agent.

"Bank Product Reserve" means an amount determined from time to time by Administrative Agent in its Permitted Discretion as a reserve for Bank Product Obligations.

"Bank Products" means all bank, banking, financial, and other similar or related products, services, and facilities offered or provided by any Bank Product Provider to any Loan Party, including (a) merchant card services, credit or stored value cards and corporate purchasing cards; (b) cash management, treasury, and related products and services, including depository and checking services, Deposit Accounts (whether operating, money market, investment, collections, payroll, trust, disbursement, or other Deposit Accounts), automated clearinghouse ("ACH") transfers of funds and any other ACH services, remote deposit capture, lockboxes, account reconciliation and information reporting, controlled disbursements, wire and other electronic funds transfers, e-payable, overdraft protection, stop payment services and fraud protection services (all of the products and services described in this clause (b), collectively, "Treasury Services"); and (c) bankers' acceptances, drafts, documentary services, foreign currency exchange services; (d) Swap Agreements; (e) supply chain finance arrangements; and (f) leases and other banking products or services, other than Letters of Credit.

"Bankruptcy Code" means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Section 101 *et seq*.

"Base Rate" means, for any day, the rate per annum equal to the greatest of (a) the Prime Rate in effect on such day; (b) the Federal Funds Rate in effect on such day plus one-half of one percent (1/2%) per annum; and (c) Adjusted Term SOFR for a one-month tenor in effect on such day plus one percent (1%) per annum. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR shall be effective on the effective date of such change in the Prime Rate, Federal Funds Rate or Adjusted Term SOFR, respectively, automatically and without notice to any Person. Notwithstanding anything contained herein to the contrary, if the Base Rate, as so determined, is ever less than 0.75% (75bps) per annum, then, the Base Rate shall be deemed to be 0.75% (75bps) per annum for all purposes of this Agreement and the other Loan Documents.

"Base Rate Loan" means a Loan that bears interest at a rate based on the Base Rate plus the Applicable Margin.

"Benchmark" means, initially, the Term SOFR Reference Rate; or, if any Benchmark Replacement is incorporated into this Agreement pursuant to Section 15.1, then, "Benchmark" means the applicable Benchmark Replacement.

"Benchmark Conforming Changes" means, with respect to the use, administration of or any conventions associated with Term SOFR or any implementation of a Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Term SOFR", the definition of "Adjusted Term SOFR", the definition of "Term SOFR Index," the definition of "Term SOFR Reference Rate," the definition of "SOFR Adjustment," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period," the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters)

that Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such applicable rate and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides in its reasonable discretion that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines in its reasonable discretion that no market practice for the administration of such applicable rate exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"Benchmark Illegality/Impracticability Event" means that the making, maintaining or continuation of the then current Benchmark (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) any successor administrator of the published screen rate for such Benchmark or a Governmental Authority having jurisdiction over Administrative Agent or the administrator of such Benchmark has made a public statement establishing a specific date (whether expressly or by virtue of such public statement) after which an Available Tenor of such Benchmark or the published screen rate for such Benchmark shall or will no longer be representative or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to Administrative Agent, that will continue to provide such representative interest periods of such Benchmark after such specific date, or (iii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the ability of a Lender to make, maintain or continue its Loans at the then-current Benchmark (including, without limitation, because the published screen rate for such Benchmark in any relevant tenor is not available or published on a current basis and such circumstances are unlikely to be temporary) or (iv) the then-current Benchmark (including any related mathematical or other adjustments thereto) will not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining its Loans at the then-current Benchmark. For the avoidance of doubt, a "Benchmark Illegality/Impracticability Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Replacement" means the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document:

(x) the sum of: (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment; and

(y) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and Borrower Agent giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and Borrower Agent giving due consideration to (a) any selection or

recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

"Benchmark Replacement Date" has the meaning specified in Section 15.1(b)(ii).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership of any Loan Party as required by the Beneficial Ownership Regulation, and otherwise to be in form and substance satisfactory to Administrative Agent.

"Beneficial Ownership Regulation" means 31 CFR Section 1010.230.

"Benefit Arrangement" means an "employee benefit plan," within the meaning of Section 3(3) of ERISA, which is neither a Plan nor a Multiemployer Plan and which is maintained, sponsored or contributed to by any of the Loan Parties.

"Black Lung Act" means, collectively, the Black Lung Benefits Revenue Act of 1977, as amended and the Black Lung Benefits Reform Act of 1977, as amended.

"Board of Governors" means the Board of Governors of the Federal Reserve System.

"Bonding Subsidiary" means a Subsidiary of a Borrower the sole purpose of which is to own a leasehold interest in a coal lease where the lessor thereof is a Person who is not an Affiliate of a Borrower (but not to operate any Mining Operations thereon) and to enter into surety or similar arrangements to provide payment assurances to the lessor thereof related to the cost of acquiring such leasehold interest and any bonus bid and royalty payments thereunder, and Bonding Subsidiaries shall mean, collectively, each and every Bonding Subsidiary.

"Borrower" and "Borrowers" have the meanings set forth in the preamble hereto, provided that no Foreign Subsidiary shall be a Borrower.

"Borrower Agent" has the meaning given such term in Section 4.3.

"Borrower Shares" has the meaning set forth in Section 8.2.

"Borrowing" means a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

"Borrowing Base" means, on any date of determination, an amount, calculated in Dollars, equal to:

(a) the Advance Rate (Coal Inventory) of the NOLV Percentage of Eligible Coal Inventory; plus

(b) the lesser of (i) 85% of the NOLV Percentage of Eligible Parts and Supplies Inventory; and (ii) 35% of the amount determined pursuant to clause (a) of this definition; provided that during any Borrowing Base Adjustment Period, the amount of this clause (b) shall be deemed to equal $0; plus

(c) 100% of Eligible Cash; minus

(d) Reserves.

"Borrowing Base Adjustment Period" means the first day on which Administrative Agent receives any Borrowing Base Certificate indicating that Liquidity has fallen below $200,000,000 at any time (an "Initial Adjustment Event"), and all subsequent days until and including the first day thereafter on which Administrative Agent receives a Borrowing Base Certificate indicating that Liquidity has exceeded $200,000,000 for a thirty (30) consecutive day period after such Initial Adjustment Event.

"Borrowing Base Certificate" means a borrowing base certificate substantially in the form of **Exhibit E** or such other form as may be acceptable to Administrative Agent from time to time in its discretion.

"Business Day" means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the States of New York, Georgia, Alabama or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close provided, that with respect to notices and determinations in connection with, and payments of principal and interest on, Term SOFR Loans or Term SOFR Index Loans, such day is also a U.S. Government Securities Business Day.

"Case" or "Cases" means Parent and its subsidiaries' voluntary petitions with the United States Bankruptcy Court for the Eastern District of Missouri for relief under Chapter 11 of the Bankruptcy Code on January 11, 2016.

"Cash Collateralize" means, to pledge and deposit with or deliver to the Administrative Agent, LC Issuer or Swingline Lender, as applicable, as collateral for the LC Obligations or Swingline Loans, as applicable, or obligations of Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent, LC Issuer or Swingline Lender, as applicable, may agree, each in its sole discretion, other credit support, in each case pursuant to documentation in form and substance, and in an amount (but not less than 105% of the obligated amount), in each case, reasonably satisfactory to the Administrative Agent, such LC Issuer and/or Swingline Lender, as applicable, in its or their sole discretion. "Cash Collateral", "Cash Collateralization" and "Cash Collateralizing" shall have meanings correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support including any cash and any interest or other income earned thereon

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, (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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued and (iii) all requests, rules, guidelines or directives issued by a Governmental Authority in connection with a Lender's submission or re-submission of a capital plan under 12 C.F.R. Section 225.8 or a Governmental Authority's assessment thereof, shall, in each case of clauses (i), (ii) or (iii) above, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" has the meaning given such term in Section 12.1(j).

"CIP Regulations" has the meaning set forth in Section 13.15(b).

"Claims" means all liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs, disbursements, and expenses of any kind (including fees, costs, and expenses of attorneys and paralegals, experts, agents, consultants, and advisors, and Extraordinary Expenses (in the case of legal fees, limited to the reasonable and documented fees of a single primary legal counsel to Administrative Agent, plus one local counsel in any relevant jurisdiction, plus any special counsel, plus, in the case of an actual or perceived conflict of interest, where such Indemnitees endeavor to provide the Parent prior notice of such conflict of interest, a single firm of counsel for all similarly affected Indemnitees) at any time (including before or after the Closing Date, after Payment in Full of the Obligations, or resignation or replacement of Administrative Agent) incurred by or asserted against or imposed on any Indemnitee as a result of, or arising from or in connection with, (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions relating thereto; (b) any action taken or omitted to be taken by any Indemnitee in connection with any Loan Documents; (c) the existence or perfection of any Liens, or realization upon any Collateral; (d) exercise of any rights or remedies under any Loan Documents or Law; or (e) failure by any Loan Party to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration, or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

"Closing Date" has the meaning given such term in Section 7.1.

"Coal Act" means the Coal Industry Retiree Health Benefits Act of 1992, as amended.

"Coal Supply Agreement" means with respect to any Borrower or any of their Subsidiaries an agreement or contract in effect on the Closing Date or thereafter entered into for the sale, purchase, exchange, processing or handling of coal with an initial term of more than one year.

"Code" means the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time.

"Collateral" means all of the "Collateral" and "Pledged Collateral" as defined in any Security Document and all other assets that become subject to (or purported to be subject to) the Liens created by the Security Documents from time to time.

"Commitment" means, at any time of determination and with respect to each Lender, such Lender's obligation to make Loans, participate in Swingline Loans and participate in LC Obligations, "Commitments" means, at any time of determination, the aggregate amount of such Commitments of all Lenders. The amount of each Lender's Commitment, if any, is set forth on **Appendix A** or in the applicable Assignment Agreement, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments as of the Closing Date is FORTY MILLION DOLLARS ($40,000,000). The aggregate amount of the Commitments as of November 19, 2018, after giving effect to the Commitment Increase contemplated by the First Amendment to Credit Agreement dated as of such date, is FIFTY MILLION DOLLARS ($50,000,000).

"Commitment Fee Percentage" means the sum of (i)(A) with respect to any calendar month during which the average amount of the Aggregate Revolving Obligations (other than Swingline Loans) on each day during such calendar month exceeded fifty percent (50%) of the aggregate amount of the Commitments on each day during such calendar month, 0.50% (50 bps) per annum and (B) with respect to any other calendar month, 0.75% (75 bps) per annum.

"Commitment Increase" has the meaning given such term in Section 2.1(f).

"Commitment Termination Date" means the earliest to occur of the following: (a) the Stated Commitment Termination Date; (b) the date on which Borrowers terminate the Commitments pursuant to Section 2.1(c); (c) the date on which the Commitments are terminated pursuant to Section 12.2; and (d) the sixtieth (60^{th}) day following maturity, termination or repayment in full of any Permitted Receivables Financing; provided that Administrative Agent may in its discretion require Borrowers to cash collateralize the Obligations in such amounts as Administrative Agent may determine in its discretion on and after the thirtieth (30^{th}) day following such maturity, termination or repayment in full described in this clause (d).

"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.

"Communications" has the meaning set forth in Section 16.1(d).

"Compliance Certificate" a certificate of Borrower Agent signed by a Senior Officer, substantially in the form of **Exhibit F**: (i) stating that no Default or Event of Default then exists or, if a Default or Event of Default exists, the nature and duration thereof and Loan Parties' intention with respect thereto, (ii) containing a list of each Significant Subsidiary and each Non-Loan Party Subsidiary (and whether such Subsidiary is a Bonding Subsidiary, an Immaterial Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary), other than those set forth on **Schedule 8.2** and (iii) confirming that each Significant Subsidiary has joined the Loan Documents in accordance with the requirements of Section 9.12.

"Concentration Account" means a Deposit Account established or maintained by a Loan Party at Regions Bank, which Deposit Account shall be utilized solely for purposes of receiving payments made by a Securitization Subsidiary in respect of a sale of Receivables Assets to such Securitization Subsidiary pursuant to a Permitted Receivables Financing (including each payment made pursuant to the Receivables Purchase Documents), and over which Administrative Agent shall have Article 9 Control and, at any time during the continuance of an Account Control Period, exclusive control to withdraw or otherwise direct the disposition of funds on deposit therein..

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Net Income" means**, as of any date of determination, the** consolidated net income (or loss) of the Parent and its Subsidiaries**~~, excluding~~ on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude** (without duplication): (a) the effect of non-cash compensation expenses related to common stock and other equity securities issued to employees **during such period**, (b) extraordinary or non-recurring gains and losses **during such period**, (c) gains or losses on discontinued operations or disposal of discontinued operations or costs and expenses associated with the closure of any mines (including any reclamation or disposal obligations) **~~and~~during such period,** (d) equity earnings or losses of Affiliates (other than earnings or losses of the Parent or any Subsidiary of the Parent**~~)~~. (but subject to the immediately succeeding clause (e) in the case of Subsidiaries)), (e) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its organizational documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that any Borrower's equity in any net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income, and (f) any income (or loss) for such period of any Person if such Person is not a Subsidiary, except that any Borrower's equity in the net income of any such Person for such period shall be included in Consolidated Net Income up to the aggregate amount of cash actually**

distributed by such Person during such period to a Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to a Borrower as described in clause (e) of this proviso).

"Consolidated Net Tangible Assets" means, as of any particular time, the total of all the assets appearing on the most recent consolidated balance sheet prepared in accordance with GAAP of the Parent and its Subsidiaries as of the end of the last Fiscal Quarter for which financial information is available (less applicable reserves and other properly deductible items) after deducting from such amount (a) all current liabilities, including current maturities of long-term debt and current maturities of obligations under capital leases (other than any portion thereof maturing after, or renewable or extendable at the option of the relevant Borrower or the relevant Subsidiary beyond, twelve months from the date of determination) and (b) the total of the net book values of all assets of the Parent and its Subsidiaries properly classified as intangible assets under GAAP (including goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangible assets).

"Contamination" means the presence or Release or threat of Release of Regulated Substances in, on, under or emanating to or from the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party, which pursuant to Environmental Health and Safety Laws requires notification or reporting to a Governmental Authority, or which pursuant to Environmental Health and Safety Laws requires performance of a Remedial Action or which otherwise constitutes a violation of Environmental Health and Safety Laws.

"Contractual Obligation" means as to any Person, any provisions 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" (and any correlative terms, including "common control," "controlling" and "controlled by") means the power to direct or control, or have a controlling influence over, the management or policies of a Person or any Property, whether by ownership, the voting of Equity Interests, by contract or otherwise.

"Control Agreement" shall mean, with respect to any Deposit Account, Securities Account, Commodity Account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to Administrative Agent, among Administrative Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant Article 9 Control over such account (and all assets on deposit therein or credited thereto) to Administrative Agent, for the benefit of the Secured Parties.

"Convertible Indebtedness" means Indebtedness of Parent permitted to be incurred under the terms of this Agreement that is either (a) convertible into common stock of Parent (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) and/or any combination thereof or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of Parent and/or cash (in an amount determined by reference to the price of such common stock).

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

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Administrative Agent in accordance with the conventions for this

rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans; provided, that if Administrative Agent decides that any such convention is not administratively feasible for Administrative Agent, then Administrative Agent may establish another convention in its reasonable discretion

"Debt" means for any Person as of any date of determination the sum, without duplication, of any and all indebtedness, obligations or liabilities of such Person for or in respect of: (i) all indebtedness for borrowed money (including, without limitation, all subordinated indebtedness), (ii) all amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (iii) all indebtedness in respect of any other transaction (including production payments (excluding royalties), installment purchase agreements, forward sale or purchase agreements, capitalized leases, conditional sales agreements, deferred purchase price of property or services and indebtedness secured by a Lien on property owned or being purchased by such Person, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements, (iv) reimbursement obligations (contingent or otherwise) under any letter of credit, (v) all indebtedness and other obligations of each Securitization Subsidiary in respect of any Permitted Receivables Financing, (vi) all payments such Person would have to make in the event of an early termination, on the date such Debt is being terminated, in respect of outstanding Swap Agreements, (vii) all obligations of such Person in respect of Disqualified Equity Interests or (viii) the amount of all indebtedness (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) in respect of all Guaranties by such Person (the "Guarantying Person") of Debt described in clauses (i) through (vii) above of other Persons (each such other Person being a "Primary Loan Party" and the obligations of a Primary Loan Party which are subject to a Guaranty by a Guarantying Person being "Primary Obligations") (it being understood that if the Primary Obligations of the Primary Loan Party do not constitute Debt, then the Guaranty by the Guarantying Person of the Primary Obligations of the Primary Loan Party shall not constitute Debt). It is expressly agreed that obligations in respect of any current trade liabilities (which are incurred in the ordinary course of business and which are not represented by a promissory note or other evidence of indebtedness) and current intercompany liabilities (but not any refinancings, extensions, renewals or replacements thereof) incurred in the ordinary course of business shall not be deemed "Debt" for purposes hereof. For purposes of determining the Debt outstanding at any time under any Permitted Receivables Financing, the amount of such outstanding Debt shall equal the sum of (i) either (x) the drawn amount of commitments that has been invested in receivables under the Existing Receivables Financing (or any similarly structured Permitted Receivables Financing) at such time or (y) the principal amount of loans under an alternatively structured Permitted Receivables Financing at such time, plus (ii) the sum of the undrawn amounts of letters of credit issued thereunder at such time

"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.

"Default" means any event or condition which with notice or passage of time, or both, would constitute an Event of Default.

"Default Rate" means for any Obligation (including, to the extent permitted by Law, interest not paid when due), 2.0% per annum plus the interest rate otherwise applicable thereto or, to the extent that there is no applicable rate thereto and subject to Section 3.1(h), the Base Rate plus the highest Applicable Margin for Base Rate Loans plus 2.0% per annum.

"Defaulting Lender" means, subject to Section 4.2(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days after the date such Loans were required to be

funded hereunder unless such Lender notifies Administrative Agent and Borrower Agent in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, LC Issuer, Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days after the date when due, (b) has notified Borrower Agent, Administrative Agent, LC Issuer or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower Agent, to confirm in writing to Administrative Agent and Borrower Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) has become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority 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) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 4.2(b)) upon delivery of written notice of such determination to Borrower Agent, each LC Issuer, each Swingline Lender and each Lender.

"Designated Non-Cash Consideration" means the fair market value (as reasonably determined by Borrowers in good faith) of non-cash consideration received by any Borrower or any of their Subsidiaries in connection with a Disposition that is so designated as "Designated Non-Cash Consideration."

"Designated Parts and Supplies" shall have the meaning specified in the definition of "Inventory".

"Dispose" or "Disposition" shall have the meaning specified in Section 10.4.

"Disqualified Equity Interests" means any equity interests which, by their terms (or by the terms of any security into which they are convertible or for which they are exchangeable), or upon the happening of any event, (a) mature (excluding any maturity as the result of an optional redemption by the issuer thereof) or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are redeemable at the option of the holder thereof, in whole or in part, or require the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the date that is ninety-one (91) days after the Stated Commitment Termination Date (determined as of the date of issuance thereof), or (b) are convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) cash, (ii) debt securities or (iii) any equity interests referred to in (a) above, in each case at any time prior to the date that is ninety-one (91) days after the Stated Commitment Termination Date (determined as of the date of issuance thereof). Notwithstanding the foregoing, any equity interests that would constitute

Disqualified Equity Interests solely because holders of the equity interests have the right to require the issuer of such equity interests to repurchase such equity interests upon the occurrence of a change of control or an asset sale will not constitute Disqualified Equity Interests if the terms of such equity interests provide that the issuer may not repurchase or redeem any such equity interests pursuant to such provisions unless such repurchase or redemption is permitted under the terms of this Agreement.

"Division" in reference to any Person that is not a natural Person, means the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable Law with respect to any corporation, limited liability company, partnership or other entity. The word "Divide," when capitalized, shall have a correlative meaning.

"Dollars" and the symbol "$" shall mean lawful money of the United States of America.

"EBITDA" for any period of determination means with respect to the Parent and its consolidated Subsidiaries for such period of determination~~;~~: (a) Consolidated Net Income, plus (b) the sum of the following, without duplication and to the extent deducted in determining Consolidated Net Income: (i) interest expense (net of interest income), (ii) income tax expense, (iii) depreciation, depletion, amortization (including, without limitation, amortization of intangibles, deferred financing fees, and any amortization included in pension or other employee benefit expenses) and all other non-cash items reducing Consolidated Net Income (including, without limitation, write-downs and impairment of property, plant, equipment and intangibles, other long-lived assets, the impact of purchase accounting and asset retirement obligations accretion expenses, but excluding any such non-cash charge that represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), (iv) non-cash debt extinguishment costs, (v) non-cash impairment charges or asset write-offs and non-cash charges, including non-cash charges due to cumulative effects of changes in accounting principles (but excluding any such non-cash charge that represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period)~~,~~ **and** (vi~~) any costs and expenses incurred in connection with the Cases and the consummation of the Plan of Reorganization and the consummation of the transactions contemplated thereby for such period, (vii) any charges arising from Fresh Start Reporting adjustments that do not impact the cash flows of the Borrowers and their Subsidiaries and (viii~~) costs and expenses, including fees, incurred directly in connection with the consummation of the transactions contemplated under the Loan Documents, plus (c) cash dividends or distributions received from Affiliates (other than received from any Borrower or any Subsidiary of a Borrower) to the extent not included in determining Consolidated Net Income, minus (d) the sum of the following, without duplication and to the extent included in determining Consolidated Net Income, (i) non-cash debt extinguishment gains~~,~~ **and** (ii) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in a prior period under this Agreement), including non-cash gains due to cumulative effects of changes in accounting principles and income tax benefits~~ and (iii) any gains arising from Fresh Start Reporting adjustments that do not impact the cash flows of the Borrowers and their Subsidiaries~~. All items included in the definition of EBITDA shall be determined in each case for the applicable Person for the period of determination on a consolidated basis in accordance with GAAP.

~~**EBITDA for the Borrowers and their Subsidiaries shall be deemed to be (i) $(6,170,000) for the Fiscal Quarter ended March 31, 2016, (ii) $(7,752,000) for the Fiscal Quarter ended June 30, 2016, (iii) $90,039,000 for the Fiscal Quarter ended September 30, 2016 and (iv) $95,559,000 for the Fiscal Quarter ended December 31, 2016, as each such amount may be adjusted on a pro forma basis.**~~

For purposes of determining the Total Net Leverage Ratio under this Agreement, in the event that any Borrower or any Subsidiary of any Borrower:

A. acquires in a Permitted Acquisition or any other acquisition or Investment permitted hereunder with an aggregate fair market value (as reasonably determined by such Borrower in good faith) in excess of $3,000,000 (the "Acquired Person") during any period of determination, then EBITDA of the Borrowers and their Subsidiaries shall be increased for such period of determination by the EBITDA of the Acquired Person, subject to the following:

(1) the EBITDA of the Acquired Person shall be based upon financial statements reasonably acceptable to the Administrative Agent (the "Acquired Person's EBITDA"); and

(2) the Permitted Acquisition of the Acquired Person shall be deemed to have occurred on the first day of the period of determination with the Acquired Person's EBITDA for periods prior to the actual date of the consummation of such acquisition based upon the Acquired Person financial statements and in an amount and calculated in a manner reasonably acceptable to the Administrative Agent and with Acquired Person's EBITDA for periods on or after the date of consummation of such Permitted Acquisition based upon the actual operating results of the Acquired Person after giving effect to such Permitted Acquisition; or

B. Disposes of any assets with an aggregate fair market value (as reasonably determined by the Borrowers in good faith) in excess of $3,000,000 pursuant to Section 10.4 of this Agreement, then EBITDA of the Borrowers and their Subsidiaries shall, with respect to such dispossessed assets, shall be increased or decreased, as applicable, for such period of determination by the EBITDA attributable to such dispossessed assets, subject to the following:

(1) the EBITDA attributable to such assets shall be based upon financial statements reasonably acceptable to the Administrative Agent (the "Dispossessed Business EBITDA"); and

(2) the Disposition of such assets shall be deemed to have occurred on the first day of the period in which such Disposition occurred and calculated in a manner reasonably acceptable to the Administrative Agent and with the applicable Dispossessed Business EBITDA based upon the actual operating results of such dispossessed business.

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

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

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

"Eligible Assignee" means any Person that meets the requirements to be an assignee of a Lender under Section 14.1, subject to any consents and representations, if any, as may be required therein.

"Eligible Cash" means cash of Borrowers on deposit from time to time in a Deposit Account maintained at Regions Bank over which Administrative Agent has (a) first priority Article 9 Control, and (b) exclusive control to withdraw or otherwise direct the disposition of funds on deposit therein.

"Eligible Coal Inventory" means Inventory of the Borrowers consisting of above-ground mined coal, but excluding therefrom, without duplication, any Inventory:

(a) which constitutes work-in-process;

(b) which is not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent other than Liens arising by operation of law (including Permitted Liens described in clause (c) of the definition of "Permitted Liens" that arise by operation of law), in each case as long as Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(c) as to which any of the covenants, representations, and warranties in this Agreement or the other Loan Documents respecting Inventory shall be untrue, misleading, or in default; provided, however, that this clause (c) shall not (i) be deemed a waiver by the Required Lenders of any Default or Event of Default which occurs under this Agreement or any other Loan Document as a result of any such representation, warranty, or covenant being untrue or misleading, or in default or (ii) limit the ability of Administrative Agent to institute Reserves in connection therewith to the extent provided in this Agreement;

(d) which is on Consignment (i.e., where such Borrower is the consignee) from any seller, vendor, or supplier or subject to any agreement whereby the seller, vendor, or supplier has retained any title to such Inventory or the right to repurchase such Inventory;

(e) which is on Consignment (i.e., where such Borrower is the consignor) to any other Person;

(f) which (in each case, as determined by Administrative Agent) (i) is not new; (ii) is not in good and saleable condition; (iii) is damaged, defective, unserviceable, or otherwise unmerchantable; (iv) constitutes returned or repossessed Goods; (v) constitutes obsolete or slow-moving Goods; (vi) as applicable, fails to meet standards of any Governmental Authority or Law regarding the storage, use, or sale of such Inventory, or (vii) has been acquired from a Sanctioned Person or Sanctioned Country;

(g) which is subject to any negotiable Document;

(h) which is subject to any License with any Third Party which limits or restricts or is reasonably likely to limit or restrict any Borrower or Administrative Agent's right to sell or otherwise dispose of such Inventory (unless such Third Party has entered into a Third Party Agreement) or which constitute or are alleged to constitute infringing Goods or which have or are alleged to have been manufactured or sold in a manner which violates the Intellectual Property rights of any Person;

(i) which is not located in the continental United States at an Active Operating Property or other Permitted Location, unless it is in-transit Inventory that constitutes Eligible Coal Inventory in accordance with clause (k) below;

(j) which is located at a Permitted Location not owned and controlled by such Borrower or another Loan Party, unless (i) Administrative Agent has received from the Person owning or in control of such Permitted Location a Third Party Agreement or (ii) Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(k) which constitutes in-transit Inventory, unless (i) it is in-transit Inventory that is in transit in the continental United States with a railway that has provided a Third Party Agreement to Administrative Agent and such railway has provided the railcars used to transport such in-transit Inventory or (ii) Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(l) with respect to which Administrative Agent has not received all documentation required pursuant to Section 9.20 relating to such Inventory; or

(m) which Administrative Agent, in its Permitted Discretion, deems not to be Eligible Coal Inventory.

For purposes of calculating the Borrowing Base, the value of Eligible Coal Inventory shall be determined on the basis of the lower of Average Cost and market value.

"Eligible Inventory" mean Eligible Coal Inventory and Eligible Parts and Supplies Inventory.

"Eligible Parts and Supplies Inventory" means Inventory of the Borrowers consisting of parts and supplies used in the mining of coal or in other related mining activities, but excluding therefrom, without duplication, any Inventory:

(a) which constitutes work-in-process or which does not constitute finished goods;

(b) which is not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent other than Liens arising by operation of law (including Permitted Liens described in clause (c) of the definition of "Permitted Liens" that arise by operation of law), in each case as long as Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(c) as to which any of the covenants, representations, and warranties in this Agreement or the other Loan Documents respecting Inventory shall be untrue, misleading, or in default; provided, however, that this clause (c) shall not (i) be deemed a waiver by the Required Lenders of any Default or Event of Default which occurs under this Agreement or any other Loan Document as a result of any such representation, warranty, or covenant being untrue or misleading, or in default or (ii) limit the ability of Administrative Agent to institute Reserves in connection therewith to the extent provided in this Agreement;

(d) which is on Consignment (i.e., where such Borrower is the consignee) from any seller, vendor, or supplier or subject to any agreement whereby the seller, vendor, or supplier has retained any title to such Inventory or the right to repurchase such Inventory;

(e) which is on Consignment (i.e., where such Borrower is the consignor) to any other Person;

(f) which (in each case, as determined by Administrative Agent) (i) is damaged, defective, unserviceable, or otherwise unmerchantable; (ii) constitutes returned or repossessed Goods; (iii) constitutes obsolete Goods; (iv) as applicable, fails to meet standards of any Governmental Authority or Law regarding the storage, use, or sale of such Inventory, or (v) has been acquired from a Sanctioned Person or Sanctioned Country;

(g) which is subject to any negotiable Document;

(h) which is subject to any License with any Third Party which limits or restricts or is reasonably likely to limit or restrict any Borrower or Administrative Agent's right to sell or otherwise dispose of such Inventory (unless such Third Party has entered into a Third Party Agreement) or which constitute or are alleged to constitute infringing Goods or which have or are alleged to have been manufactured or sold in a manner which violates the Intellectual Property rights of any Person;

(i) which is not located in the continental United States at an Active Operating Property or other Permitted Location, unless it is in-transit Inventory that constitutes Eligible Parts and Supplies Inventory in accordance with clause (k) below;

(j) which is located at a Permitted Location not owned and controlled by such Borrower or another Loan Party, unless (i) Administrative Agent has received from the Person owning or in control of such Permitted Location a Third Party Agreement or (ii) Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(k) which constitutes in-transit Inventory, unless it is in transit in the continental United States between locations owned or leased by one or more Loan Parties;

(l) which constitutes fuel; or

(m) which Administrative Agent, in its Permitted Discretion, deems not to be Eligible Parts and Supplies Inventory.

For purposes of calculating the Borrowing Base, the value of Eligible Parts and Supplies Inventory shall be determined on the basis of Average Cost.

"Enforcement Action" means any action to collect any Obligations or enforce any Loan Document or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise).

"Environmental Health and Safety Claim" means any administrative, regulatory or judicial action, suit, claim, written notice of non-compliance or violation, written notice of investigation, written notice of liability or potential liability, or proceeding relating in any way to any Environmental Health and Safety Laws, any Environmental Health and Safety Permit, any Regulated Substances, any Contamination, or the performance of any Remedial Action.

"Environmental Health and Safety Laws" means, collectively, any federal, state, local or foreign statute, Law (including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f300j, the Federal Air Pollution Control Act, 42 U.S.C. § 7401 et seq., the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 to 136y, the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq. the Mine Safety and Health Act, 30 U.S.C. §§ 801 et seq., the Surface Mining Control and Reclamation Act 30 U.S.C. §§ 1201 et seq., the Atomic Energy Act, 42 U.S.C. § 2011 et seq., the National Historic Preservation Act, 16 U.S.C. § 470 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Wild and Scenic Rivers Act, 16 U.S.C. §§ 12711278, each as amended, or any equivalent state or local statute, and any amendments thereto), code, consent decree, settlement agreement, directive or any binding judicial or agency interpretation, policy or guidance, in each case regulating: (a) pollution or pollution control; (b) Contamination or Remedial Actions; (c) protection of human health from exposure

to Regulated Substances; (d) protection of natural resources or the environment, including endangered or threatened species or Environmentally Sensitive Areas; (e) employee health safety in the workplace and the protection of employees from exposure to Regulated Substances in the workplace (but excluding workers compensation and wage and hour laws); and (f) the presence, use, management, generation, manufacture, processing, extraction, mining, treatment, recycling, refining, reclamation, labeling, transport, storage, collection, distribution, disposal or Release or threat of Release of Regulated Substances.

"Environmental Health and Safety Orders" means all decrees, orders, directives, judgments, opinions, rulings writs, injunctions, settlement agreements or consent orders issued by or entered into with a Governmental Authority relating or pertaining to Contamination, Environmental Health and Safety Laws, Environmental Health and Safety Permits, Regulated Substances or Remedial Actions.

"Environmental Health and Safety Permit" means any applicable Permit required under any of the Environmental Health and Safety Laws.

"Environmentally Sensitive Area" means (a) any wetland as defined by applicable Environmental Health and Safety Laws; (b) any area designated as a coastal zone pursuant to applicable Environmental Health and Safety Laws; (c) any area of historic or archeological significance or scenic area as defined or designated by applicable Environmental Health and Safety Laws; (d) habitats of endangered species or threatened species as designated by applicable Environmental Health and Safety Laws; (e) a floodplain or other flood hazard area as defined pursuant to any applicable Environmental Health and Safety Laws; (f) streams, rivers or other water bodies or springs classified, or designated or as otherwise protected by applicable Environmental Health and Safety Laws as a fishery, as having exceptional or high quality or value or as having recreational use; (g) any area classified, designated or protected by applicable Environmental Health and Safety Laws as unsuitable for mining; and (h) any man-made or naturally occurring surface feature classified, designated or protected by applicable Environmental Health and Safety Laws from disturbance, the effects of blasting, subsidence and mining operations.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

"Erroneous Payment Subrogation Rights" has the meaning given to such term in Section 13.10(d).

"ERISA Group" means, at any time, the Loan Parties and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control or treated as a single employer under Section 414(b), (c), (m) or (o) of the Code with any of the Loan Parties.

"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.

"Event of Default" has the meaning given such term in Section 12.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Accounts" means (a) any Deposit Account that is used solely for payment of payroll, bonuses, other compensation and related expenses, in each case, for employees or former employees, (b) escrow accounts to the extent the use of such escrowed funds is permitted under this Agreement and the amount on deposit therein in connection with any letter of intent is in respect of a purchase that would reasonably be expected to result in a Permitted Acquisition or other permitted Investment, (c) fiduciary or trust accounts, (d) zero-balance accounts, so long as the balance in such account is zero at the end of each

Business Day, (e) any other Deposit Accounts with an aggregate daily balance as at the end of each Business Day of less than $3,000,000 in the aggregate for all such Deposit Accounts and (f) assets subject to Liens permitted under clause (l) of the definition of "Permitted Liens".

"Excluded Property" means (a) those assets, including, without limitation any undeveloped land, which (i) are existing on the Closing Date and listed on **Schedule 1.1(A)** or (ii) in the reasonable discretion of Administrative Agent, the taking of Liens thereupon is impractical, prohibited by Law or commercially unreasonable, (b) assets subject to certificates of title, (c) the assets of any Non-Loan Party Subsidiary, (d) voting equity interests in any Foreign Subsidiary in excess of 65% of all outstanding voting equity interests in such Foreign Subsidiary, (e) the assets with respect to which any pledge or security interests thereof would be (i) prohibited by Law or (ii) in the case of equity interests of non-wholly owned Subsidiaries or Permitted Joint Ventures, prohibited by the Organizational Documents of such non-wholly owned Subsidiaries or Permitted Joint Ventures, except to the extent such prohibition is ineffective or rendered unenforceable under applicable Law (including the UCC) (provided that, for the avoidance of doubt, the equity interests in Knight Hawk Holdings, LLC shall constitute Excluded Property so long as (1) it is not a wholly-owned Subsidiary of Parent, (2) the prohibition on pledge of such interests remains in effect pursuant to the operating agreements with respect thereto, (3) its equity owner is a JV Holding Company and (4) such JV Holding Company is a Guarantor and the equity interests in such JV Holding Company constitute Collateral), (f) assets subject to Liens permitted under clause (i)(A) of the definition of "Permitted Liens", but only to the extent described as an exclusion to collateral in the UCC financing statement filed by, or on behalf of, Administrative Agent, as secured party, against the applicable Loan Party, (g) Excluded Accounts, provided that, for the avoidance of doubt, any Proceeds of Collateral held from time to time in any such Excluded Account shall not cease to be Collateral solely because such Proceeds are held in an Excluded Account, (h) any owned Real Estate ~~acquired after the Closing Date with a fair market value not exceeding $3,000,000~~**so long as such Real Estate is not subject to any Liens other than Permitted Liens**, (i) any Real Estate lease ~~entered into after the Closing Date with a Loan Party as lessee, and with the lessor being a Person that is not a Loan Party or Affiliate thereof, with annual minimum royalties, rents or any similar payment obligations, not exceeding $3,000,000,~~**so long as such Real Estate is not subject to any Liens other than Permitted Liens,** (j) any contract or lease agreement (including, for the avoidance of doubt, any lease agreement evidencing any leasehold interest referred to in the proviso to Section 9.9, to the extent the applicable Loan Party could not obtain the required third party consent after using commercially reasonable efforts to obtain the same) if the grant of a security interest in such contract or lease agreement is prohibited by the terms of such contract or lease agreement or would require the consent of another party thereto or would give another party thereto any rights of termination or acceleration, except to the extent that (x) the term in such contract or lease providing for such prohibition or right of termination or acceleration is ineffective or rendered unenforceable under applicable Law (including Sections 9-406 through 9 409 of the UCC) or principles of equity or (y) any consent or waiver has been obtained that would permit Administrative Agent's security interest or Lien to attach notwithstanding the prohibition or restriction on the pledge of or security interest in such contract or lease agreement, (k) any property which is subject to a Lien permitted under clause (g) or (j) of the definition of Permitted Liens (in the case of clause (g), excluding any Inventory), in each case where the governing documents prohibit the applicable Loan Party from granting any other Liens in such property or to the extent the grant of a security interest therein would violate or invalidate such documents or would create a termination right in favor of any other party thereto (other than to the extent that any such prohibition would be rendered ineffective pursuant to Sections 9-406 through 9-409 of the UCC or any other applicable Law or principles of equity and other than to the extent all necessary consents to the creation, attachment and perfection of Administrative Agent's Liens thereon have been obtained), and, in any event, immediately upon the ineffectiveness, lapse or termination of such terms that prohibit such Loan Party from granting any other Liens in such property or the obtainment of such consents to the creation, attachment and perfection of Administrative Agent's Liens thereon, such property shall cease to constitute Excluded Property, (l) any intent-to-use trademark applications prior to the filing, and acceptance by the United States

Patent and Trademark Office, of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark registrations under applicable federal law and (m) (A) any account, instrument, chattel paper, or other obligation or property of any kind due from, owed by, or belonging to, a Sanctioned Person or Sanctioned Country or (B) any lease under which the lessee is a Sanctioned Person or Sanctioned Country; provided that "Excluded Property" (1) shall not include any and all Proceeds, products, substitutions and replacements of Excluded Property specified in clauses (a) through (l) of this definition to the extent such Proceeds, products, substitutions and replacements do not themselves constitute Excluded Property under clauses (a) through (l) of this definition and (2) shall not include any Proceeds of Excluded Property specified in clause (m).

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of any guaranty of such Loan Party of, or the grant under a Loan Document by such Loan Party of a Lien to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 5.7 hereof and any and all guaranties of such Loan Party's Swap Obligations by other Loan Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such guaranty or Lien becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrowers under Section 15.4) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 15.3, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 15.3(g) and (d) any Taxes imposed under FATCA.

"Existing Receivables Financing" means the receivables financing pursuant to the following agreements, each dated as of October 5, 2016, as amended on the Closing Date and in each case as the same may be further amended, restated, supplemented or otherwise modified from time to time: (a) the Second Amended and Restated Purchase and Sale Agreement by and among Arch Coal Sales Company, Inc., certain of the Parent's Subsidiaries as the Originators (as defined therein) thereunder and the Parent, (b) the Second Amended and Restated Sale and Contribution Agreement by and among Parent and Arch Receivable Company, LLC, (c) the Third Amended and Restated Receivables Purchase Agreement by and among Arch Receivable Company, LLC, Arch Coal Sales Company, Inc., certain financial institutions from time to time parties thereto, as LC Participants (as defined therein), certain financial institutions from time to time parties thereto, as conduit purchasers, related committed purchasers, and purchaser agents and PNC Bank, National Association, as Administrator (as defined therein) on behalf of the Purchasers (as defined therein) and as LC Bank (as defined therein), (d) the Third Amended and Restated Performance Guaranty,

dated as of October 5, 2016, between Parent and PNC Bank, National Association, as Administrator (as defined therein), (e) the Amended and Restated Originator Performance Guaranty, dated as of October 5, 2016, among certain of the Parent's Subsidiaries as the Originators (as defined therein) and PNC Bank, National Association, as Administrator (as defined therein) and (f) other related agreements and documents.

"Extraordinary Expenses" means all out-of-pocket costs, expenses, or advances (or, in the case of field examinations, the standard charges of the Administrative Agent's internal field examination group) that Administrative Agent may incur during an Event of Default or during the pendency of an Insolvency Proceeding of a Loan Party (including such costs, expenses or advances that are directly invoiced to the Borrowers in lieu of payment by the Administrative Agent), including those relating to (a) any audit, inspection, field examination, repossession, storage, repair, appraisal, insurance, manufacture, preparation, or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Loan Party, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority, or avoidability of Administrative Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit, or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Administrative Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges, or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any amendment, restatement, supplement, modification, waiver, workout, restructuring, or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses, and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees (excluding all costs of internal counsel), appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, turnaround and financial consultants and experts' fees, environmental study fees and remedial response costs, wages and salaries paid to employees of any Loan Party or independent contractors in liquidating any Collateral, and travel expenses.

"FATCA" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements in respect thereof (and any legislation, regulations or other official guidance pursuant to, or in respect of, such intergovernmental agreements).

"FDPA" means the Flood Disaster Protection Act of 1973, as amended, including all requirements imposed relative thereto by the National Flood Insurance Program.

"Federal Funds Rate" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1%)) 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 of New York on the Business Day next succeeding such day; provided, (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 charged to Regions Bank or any other Lender selected by the Administrative Agent on such day on such transactions as determined by the Administrative Agent. Notwithstanding anything contained herein to the contrary, if the Federal Funds Rate, as so determined, is ever less than 0.75% (75 bps) per annum, then, the Federal Funds Rate shall be deemed to be 0.75% (75 bps) per annum.

"Fee Letter" means any fee letter agreement among Administrative Agent and Borrowers.

"Fifth Amendment Date" means August 3, 2022.

"Financial Covenant" means the financial covenant set forth in Section 11.

"Fiscal Year," "Fiscal Quarter," and "Fiscal Month" mean the Parent's fiscal years, fiscal quarters, and fiscal months, as applicable.

"Flood Laws" shall mean all applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other Laws related thereto, including without limitation the FDPA.

"FLSA" means the Fair Labor Standards Act of 1938.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than the laws of the United States or any state or district thereof.

"Foreign Subsidiaries" means, for any Person, each Subsidiary of such Person that is (a) a "controlled foreign corporation" (a "CFC") within the meaning of Section 957 of the Code, (b) a Subsidiary of a CFC or (c) a Subsidiary substantially all of the assets of which constitute equity interests (or equity interests and indebtedness) of CFCs or of Subsidiaries described in this clause (c).

"Fourth Amendment Date" means May 27, 2021.

~~**"Fresh Start Reporting" means the preparation of consolidated financial statements of Parent in accordance with American Institute of Certified Public Accountants Statement of Position (90-7), which reflects the consummation of the transactions contemplated by the Plan of Reorganization.**~~

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to LC Issuer, such Defaulting Lender's Pro Rata Share of outstanding LC Obligations with respect to Letters of Credit issued by LC Issuer other than LC 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, and (b) with respect to Swingline Lender, such Defaulting Lender's Pro Rata Share of outstanding Swingline Loans made by Swingline Lender other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders.

"GAAP" means generally accepted accounting principles as are in effect from time to time, subject to the provisions of Section 1.2, and applied on a consistent basis both as to classification of items and amounts.

"Governmental Authority" means any federal, state, municipal, foreign, or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory, taxing or administrative powers or functions for or pertaining to any government or court, in each case whether associated with the United States, a state, district or territory thereof, or a foreign entity or government.

"Guarantor Payment" has the meaning given such term in Section 5.7(c)(ii).

"Guarantors" means each of the Significant Subsidiaries of the Borrowers that are party to a Guaranty on the Closing Date or, after the Closing Date, delivers a Joinder Agreement and a Guaranty in accordance with Section 9.12, provided that no Foreign Subsidiary shall guarantee payment or performance of any Obligations.

"Guaranty" means each guaranty agreement executed by a Guarantor in favor of Administrative Agent.

"Historical Statements" has the meaning given such term in Section 8.7(a).

"Immaterial Subsidiaries" means, as of any date, any Subsidiary that is not a Loan Party (a) whose assets, as of the last day of the Fiscal Quarter of the Parent then most recently ended for which financial statements have been provided to the Administrative Agent under Section 9.16(b) or 9.16(c), had an aggregate book value of less than $3,000,000, and (b) whose assets, when taken together with the assets of all other Immaterial Subsidiaries, had an aggregate book value of less than $3,000,000 as of the last day of the Fiscal Quarter of the Parent then most recently ended for which financial statements have been provided to the Administrative Agent under Section 9.16(b) or 9.16(c).

"Incremental Term Debt" has the meaning given to such term in the definition of "Incremental Term Debt Cap".

"Incremental Term Debt Cap" means, as determined with respect to any Term Loan Obligations to be incurred pursuant to Section 10.1(l)(ii) and/or Incremental Term Notes to be incurred (such Debt, collectively, "Incremental Term Debt"), an amount equal to the sum of (a) $150,000,000 and (b) (i) if such Incremental Term Debt is (or is intended to be) secured by the Collateral on a *pari passu* basis with the Liens securing the Term Loan Obligations (or, in connection with a Permitted Refinancing, by the Collateral on the same basis as the Term Loan Obligations immediately prior to giving effect to such Permitted Refinancing), an additional amount if, after giving effect to the incurrence of such Incremental Term Debt and any permitted and concurrent use of proceeds thereof and all other appropriate pro forma adjustments, the Secured Net Leverage Ratio is equal to or less than 1.75 to 1.00 on a pro forma basis and (ii) if such Incremental Term Debt is secured by the Collateral on a junior-lien basis to the Term Loan Obligations or unsecured, an additional amount if, after giving effect to the incurrence of such Incremental Term Debt and any permitted and concurrent use of proceeds thereof and all other appropriate pro forma adjustments, the Total Net Leverage Ratio is equal to or less than 3.00:1.00 on a pro forma basis.

"Incremental Term Notes" has the meaning given such term in Section 10.1(c).

"Incremental Secured Term Notes" means any Incremental Term Notes incurred under Section 10.1(c)(B) or (C).

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitees" means Administrative Agent Indemnitees, Lender Indemnitees, LC Issuer Indemnitees, and Regions Bank Indemnitees, and for each of them, all Related Parties.

"Information" means all information received from the Loan Parties or any of their Subsidiaries relating to the Loan Parties or any of such Subsidiaries or any of their respective businesses, other than any

such information that is available to Administrative Agent or any Secured Party on a non-confidential basis prior to disclosure by the Loan Parties or any of their Subsidiaries.

"Insolvency Proceeding" means, with respect to any Person, (a) a case, action or proceeding with respect to such Person (i) before any court or any other Governmental Authority under any bankruptcy, insolvency, reorganization or other similar Law now or hereafter in effect, or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Loan Party or otherwise relating to the liquidation, dissolution, winding-up or relief of such Person, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of such Person's creditors generally or any substantial portion of its creditors, undertaken under any Law.

"Intellectual Property" means all intellectual and similar property of a Person including (a) inventions, designs, patents, patent applications, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software, and databases; (b) all embodiments or fixations thereof and all related documentation, applications, registrations, and franchises; (c) all licenses or other rights to use any of the foregoing; and (d) all books and records relating to the foregoing.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of April 27, 2017, among Regions Bank, as Initial ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Initial Term Loan Agent (as defined therein), **as amended and supplemented by that certain Additional Joinder Agreement, dated July 2, 2020, pursuant to which Citibank, N.A. as Trustee became an additional Term Debt Agent (as defined therein), as further amended by the termination letter, dated the Sixth Amendment Date, pursuant to which the Initial Term Loan Agent (as defined therein) acknowledged and agreed that it is no longer party to such Intercreditor Agreement, as further amended and supplemented by that certain Additional Joinder Agreement, dated the Sixth Amendment Date, pursuant to which Term Agent became an additional Term Debt Agent (as defined therein), as further amended and supplemented after the Sixth Amendment Date pursuant to which any additional Term Debt Agent (as defined therein) becomes a party thereto, and acknowledged by the Parent and/or the Loan Parties, as applicable, as the same may be further** *amended, restated, supplemented or otherwise modified from time to time.*

"Interest Payment Date" means with respect to (a) any Base Rate Loan, any Term SOFR Index Loan and any Swingline Loan, (i) the first day of each calendar month, commencing on the first such date to occur after the Closing Date and (ii) the Commitment Termination Date; and (b) any Term SOFR Loan, (i) the last day of the Interest Period applicable to such Loan and (ii) the Commitment Termination Date.

"Interest Period" means, in connection with a Term SOFR Loan, an interest period of one (1) or three (3) months, as selected by Borrower Agent in the applicable Notice of Borrowing or Notice of Conversion/Continuation, (a) initially, commencing on the funding date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) of this definition, end on the last Business Day of a calendar month; (iii) no Interest Period with respect to any portion of the Loans shall extend beyond the Commitment Termination Date.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

~~*"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of April 27, 2017, among Regions Bank, as Initial ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Initial Term Loan Agent (as defined therein),* **and following the execution of an Additional Joinder Agreement (as defined therein), each Additional Pari Passu Debt Agent (as defined therein), and acknowledged by the Loan Parties, as the same may be** *amended, restated, supplemented or otherwise modified from time to time.*~~

"Inventory" means all "inventory" (as defined in the UCC), all As-Extracted Collateral, and all coal, coal products and other minerals that have been extracted from real property, whether or not constituting "inventory" or "as-extracted collateral" under the UCC and, in any event, includes all parts and supplies that either (a) have a per unit cost of less than $10,000 or (b) are of a type that would be put into use or consumed during a period of eighteen (18) months of the normal operations of the Borrowers' business (clauses (a) and (b), "Designated Parts and Supplies"); provided that "Inventory" shall not include (x) software related to machinery or other equipment (other than Designated Parts and Supplies) or (y) parts or supplies that at any time of determination are incorporated or installed in, or attached or affixed to, or made part of, any machinery or other equipment (other than Designated Parts and Supplies), including, without limitation, all tangible embodiments of Intellectual Property and software that is embedded in and is part of such machinery or other equipment (other than Designated Parts and Supplies).

"Inventory Reserve" means an amount determined from time to time by Administrative Agent in its Permitted Discretion as a reserve for changes in the merchantability of any Eligible Inventory in the ordinary course of business or such other factors that may negatively impact the value of Eligible Inventory, including changes in salability, obsolescence, seasonality, theft, shrinkage, imbalance, changes in composition or mix, markdowns, vendor chargebacks, damage, or, if such Inventory consists of Goods, the price of which is ascertainable from, published by, or quoted by one or more recognized exchanges, any decrease in any such exchange's price therefor.

"Investment" means collectively all of the following with respect to any Person: (a) investments or contributions by any of the Loan Parties or their Subsidiaries in or to the capital of such Person, (b) loans by any of the Loan Parties or their Subsidiaries to such Person, (c) any Guaranty by any Loan Party or any Subsidiary of any Loan Party directly or indirectly of the Debt or of the other obligations of such Person, (d) other payments by any of the Loan Parties or their Subsidiaries to such Person (except in connection with transactions for the sale of goods or services for fair value), or (e) credit enhancements of any Loan Party to or for the benefit of such Person. If the nature of an Investment is tangible property, then the amount of such Investment shall be determined by valuing such property at fair value in accordance with the past practice of the Loan Parties, and such fair values shall be reasonably satisfactory to the Administrative Agent. For the purposes of calculating the outstanding aggregate amount of such Investments, the aggregate amount shall be reduced by the aggregate amount of any quantifiable rebate, dividend, return, or other financial benefit received by such Loan Party with respect to such Investments for the period from the Closing Date through and including the date of determination.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

"Joinder Agreement" means a joinder agreement in the form of **Exhibit G** or such other form as may be acceptable to Administrative Agent from time to time pursuant to Section 9.12, delivered by a Significant Subsidiary that is becoming a Borrower or Guarantor.

"Judgment Currency" has the meaning set forth in Section 16.22.

"JV Holding Company" means any Guarantor, (a) the sole asset of which is the equity interests of a single non-wholly owned Subsidiary or Permitted Joint Venture owned directly or indirectly by a Borrower and (b) who does not have any material indebtedness, liabilities or obligations, other than tax liabilities and the Obligations.

"Labor Contracts" means all collective bargaining or other collective labor agreements among any Loan Party or Subsidiary of any Loan Party and any union or other representative of its employees.

"Law" means any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, ruling, order, executive order, injunction, writ, decree, bond, judgment, authorization or approval of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Authority, foreign or domestic, including, without limitation, all Anti-Corruption Laws, Anti-Terrorism Laws, the Beneficial Ownership Regulation, the Code, the Commodity Exchange Act, all Debtor Relief Laws, any Bail-In Legislation, all Environmental Health and Safety Laws, ERISA, the Exchange Act, FATCA, the Flood Laws, the FLSA, and the UCC.

"LC Application" means an application by Borrower Agent to LC Issuer for issuance of a Letter of Credit, in form and substance satisfactory to LC Issuer and Administrative Agent.

"LC Conditions" means each of the following conditions precedent with respect to the issuance of a Letter of Credit: (a) each of the conditions precedent to the issuance of such Letter of Credit set forth in Section 7.2 (and, solely in the case of Letters of Credit issued on the Closing Date, Section 7.1) shall have been satisfied; (b) LC Issuer shall have received an LC Request, an LC Application, and such other instruments, documents, or agreements as LC Issuer customarily requires for the issuance of letters of credit of similar purpose and amount, in each case, at least two (2) Business Days before the requested date of issuance of such Letter of Credit (or such shorter period as LC Issuer may permit in writing in its discretion); (c) after giving effect to the issuance of such Letter of Credit, the LC Obligations shall not exceed the LC Sublimit and no Overadvance shall exist; (d) the expiration date of such Letter of Credit shall be (i) in the case of a standby Letter of Credit, no more than three hundred sixty-five (365) days from issuance; (ii) in the case of a documentary Letter of Credit, no more than one hundred twenty (120) days from issuance; and (iii) at least twenty (20) days before the Stated Commitment Termination Date; (e) the date on which such Letter of Credit is to be issued shall be at least thirty (30) days before the Stated Commitment Termination Date; (f) such Letter of Credit and payments thereunder shall be denominated in Dollars; (g) the form of such Letter of Credit shall be acceptable to each of Administrative Agent and LC Issuer in their respective discretion and the purpose of such Letter of Credit shall be permitted by Section 2.4(a)(iii); and (h) in the event that any Lender is at such time a Defaulting Lender, LC Issuer has entered into arrangements reasonably satisfactory to LC Issuer (in its discretion) with Borrowers or such Defaulting Lender to eliminate LC Issuer's Fronting Exposure with respect to such Lender (after giving effect to Section 4.2(a)(iv) and any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of LC Obligations in a manner reasonably satisfactory to Administrative Agent in its discretion.

"LC Documents" means all documents, instruments, certificates and agreements (including LC Requests and LC Applications) delivered by any Borrower, Borrower Agent or any other Person to LC

Issuer or Administrative Agent in connection with the issuance, amendment, extension or renewal of, or payment under, any Letter of Credit.

"LC Issuer" means any of Regions Bank or an Affiliate of Regions Bank, together with its successors and permitted assigns acting in such capacity.

"LC Issuer Indemnitees" means LC Issuer and its Related Partiess.

"LC Obligations" means, at any time, the sum of (a) the maximum amount available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein, plus (b) the aggregate amount of all drawings under Letters of Credit that have not been reimbursed by the Borrowers in accordance herewith and with the LC Documents. For all purposes of this Agreement, (i) amounts available to be drawn under Letters of Credit will be calculated as provided in Section 2.4(a)(v), and (ii) if a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"LC Request" means each request for issuance of a Letter of Credit provided by Borrower Agent to Administrative Agent and LC Issuer, in form and substance satisfactory to Administrative Agent and LC Issuer.

"LC Sublimit" means $50,000,000, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof.

"LCA Election" has the meaning set forth in Section 1.5(a).

"LCA Test Date" has the meaning set forth in Section 1.5(a).

"Lender Indemnitees" means the Lenders and each of their respective Related Parties.

"Lenders" has the meaning given such term in the preamble to this Agreement and, in any event, includes Swingline Lender in its capacity as a provider of Swingline Loans and any other Person who hereafter becomes a "Lender" pursuant to an Assignment Agreement. The initial Lenders are identified on the signature pages hereto and are set forth on **Appendix A**.

"Lending Office" means, with respect to any Lender, the office designated by such Lender as its "Lending Office" on **Appendix B** hereto at the time it becomes party to this Agreement or thereafter by notice to Administrative Agent and Borrower Agent.

"Letter of Credit" means any standby or documentary letter of credit issued by LC Issuer for the account of a Borrower.

"License" means any license or agreement under which a Loan Party is authorized to use Intellectual Property in connection with (a) any manufacture, marketing, distribution, or disposition of Collateral, (b) the provision of any service or (c) any other use of property or conduct of its business.

"Lien" means any mortgage, deed of trust, pledge, lien, security interest, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security and any filed financing statement or other notice of any

of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing), but, for the avoidance of doubt, shall not include any operating lease.

"Limited Condition Acquisition" means any Permitted Acquisition or other Investment permitted hereunder which a Borrower or one or more Subsidiaries has contractually committed to consummate, the terms of which do not condition such Borrower's or such Subsidiary's, as applicable, obligation to close such Permitted Acquisition or other Investment on the availability of third-party financing.

"Liquidity" means, as of any date of determination, the sum of, without duplication, (a) unrestricted cash or Permitted Investments as of such date of the Parent and its Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) that are not Foreign Subsidiaries (for the avoidance of doubt, cash and Permitted Investments on deposit from time to time in an account over which the Administrative Agent has first priority Article 9 Control shall be included in this clause (a)), (b) withdrawable funds from brokerage accounts of Borrowers as of such date, (c) Availability as of such date, and (d) any unused commitments that are available to be drawn as of such date by the Parent pursuant to the terms of any Permitted Receivables Financing. For the avoidance of doubt, any Cash Collateral provided to the Administrative Agent pursuant to this Agreement shall not be included in "Liquidity."

"LLC Interests" has the meaning set forth in Section 8.2.

"Loan" means a loan made pursuant to Section 2.1, and any Swingline Loan, Overadvance Loan or Protective Advance.

"Loan Documents" means this Agreement, the Fee Letter, each Note, the Security Agreement, each other Security Document, LC Document, Third Party Agreement, Perfection Certificate, any Auto Borrow Agreement, any subordination agreement in respect of any subordinated Debt, the Intercreditor Agreement, any other intercreditor agreement, any Borrowing Base Certificate, Compliance Certificate, and other documents, instruments, agreements, certificates, and schedules executed or delivered pursuant to or in connection herewith or any other Loan Document, or the transactions contemplated herein, whether now existing or hereafter arising (but, in any case, specifically excluding any Bank Product Agreement unless, by its express terms, they are deemed to be "Loan Documents" hereunder), together with all exhibits, schedules, annexes, addenda, and other attachments thereto, in each case therewith as the same may be supplemented, amended, restated, replaced or otherwise modified from time to time in accordance herewith or therewith, and "Loan Document" shall mean any of the Loan Documents.

"Loan Parties" means the Borrowers and the Guarantors.

"Loss" means, with respect to any property, (a) the loss, theft, damage, or destruction thereof or other casualty with respect thereto or (b) the condemnation or taking by eminent domain thereof by any Governmental Authority.

"Material Adverse Change" means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Agreement or any other material Loan Document, (b) is or could reasonably be expected to be materially adverse to the business, properties, assets, financial condition, or results of operations of Borrowers and their Subsidiaries taken as a whole, (c) impairs materially or would reasonably be expected to impair materially the ability of the Loan Parties taken as a whole to pay the Obligations when due under the Loan Documents, (d) impairs materially or would reasonably be expected to impair materially the ability of Agent or any Lender, to the extent permitted, to enforce their legal remedies pursuant to this Agreement or any other Loan Document, or (e) impairs materially or would reasonably be expected to impair materially the value of any material portion of the ABL Priority Collateral, the validity or priority of Administrative

Agent's Liens on any material portion of the ABL Priority Collateral, or the ability of Administrative Agent or any Lender to realize upon any material portion of the ABL Priority Collateral.

"Material Contract" means, collectively, all contracts, agreements or other instruments described in Regulation S-K, Item 601(b)(10) promulgated pursuant to the Exchange Act, which the Parent is required to file as an exhibit to any annual, quarterly or other report required to be filed by the Parent under the Exchange Act.

"Material Subsidiary" means any Subsidiary of Parent which at any time (a) has gross revenues equal to or in excess of five percent (5%) of the gross revenues of Parent and its Subsidiaries on a consolidated basis, or (b) has total assets equal to or in excess of five percent (5%) of the total assets of Parent and its Subsidiaries, in either case, as determined and consolidated in accordance with GAAP.

"Measurement Period" means, at any date of determination, the most recently completed four (4) fiscal quarters of Parent for which financial statements have been delivered pursuant to Section 9.16.

"Mining Laws" means any and all applicable federal, state, local and foreign statutes, laws, regulations, guidance, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions or common law causes of action relating to mining operations and activities, or oil, natural gas, minerals, and other hydrocarbons and their constituents production operations and activities. Mining Laws shall include but not be limited to, the Mineral Lands Leasing Act of 1920, the Federal Coal Leasing Amendments Act, the Surface Mining Control and Reclamation Act, all other land reclamation and use statutes and regulations relating to coal mining, the Federal Coal Mine Health and Safety Act, the Black Lung Act and the Coal Act, the Mine Safety and Health Act and the Occupational Safety and Health Act, each as amended, and their state and local counterparts or equivalents.

"Mining Operations" means (a) the removal of coal and other minerals from the natural deposits or from waste or stock piles by any surface or underground mining methods; (b) operations or activities conducted underground or on the surface associated with or incident to the preparation, development, operation, maintenance, opening and reopening of an underground or surface mine storage or stockpiling of mined materials, backfilling, sealing and other closure procedures related to a mine or the movement, assembly, disassembly or staging of any mining equipment; (c) milling; (d) coal preparation, coal processing or testing; (e) coal refuse disposal, coal fines disposal or the operation and maintenance of impoundments; (f) the operation of any mine drainage system; (vii) reclamation activities and operations; or (g) the operation of coal terminals, river or rail load-outs or any other transportation facilities.

"Mining Title" means fee simple title to surface and/or coal or an undivided interest in fee simple title thereto or a leasehold interest in all or an undivided interest in surface and/or coal together with no less than those real property, easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, process and transport coal in the manner presently operated.

"Moody's" means Moody's Investors Service, Inc. and its successors.

"Mortgage" means each mortgage, deed of trust, or deed to secure debt pursuant to which a Loan Party grants to Administrative Agent Liens upon the Real Estate owned by such Loan Party as security for the Obligations.

"Multiemployer Plan" means any employee benefit plan which is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and to which any Borrower or any member of the ERISA

Group is then making or accruing an obligation to make contributions or, within the preceding five Plan years, has made or had an obligation to make such contributions and to which it continues to have unsatisfied liability.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Parent or any member of the ERISA Group) at least two of whom are not under common control, as such a Plan is described in Sections 4063 and 4064 of ERISA.

"Net Cash Proceeds" means proceeds received by any Borrower or any Subsidiary (other than a Bonding Subsidiary or Securitization Subsidiary) after the Closing Date in cash from (a) any sale of property, net of (i) the direct out-of-pocket cash costs, fees and expenses paid or required to be paid in connection therewith (including all reasonable fees, legal fees, brokerage fees, commissions, costs and other expenses in connection therewith), (ii) taxes paid or reasonably estimated to be payable as a result thereof and (iii) any amount required to be paid or prepaid on Debt (other than the Obligations and Debt owing to any Loan Party) secured by the property subject thereto (A) pursuant to a Permitted Lien with priority over Administrative Agent's Lien in such property, or (B) to the extent that such property constitutes Equipment (that, for the avoidance of doubt, does not constitute Inventory) or does not constitute Collateral, pursuant to any Permitted Lien; and (b) any sale or issuance of equity interests or incurrence of Debt, in each case net of brokers', advisors' and investment banking fees and other customary outofpocket underwriting discounts, commissions and other customary out-of-pocket cash costs, fees and expenses, in each case incurred in connection with such transaction; provided that amounts provided as a reserve, in accordance with GAAP, against any liability under any indemnification obligations or purchase price adjustment associated with any of the foregoing shall not constitute Net Cash Proceeds except to the extent and at the time any such amounts are released from such reserve.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (a) any cash payments or proceeds received by any Borrower or any Subsidiary (other than a Bonding Subsidiary or Securitization Subsidiary) (i) under any casualty insurance policy in respect of a covered loss thereunder or (ii) as a result of the taking of any assets of any Borrower or any such Subsidiary by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (b) (i) any actual and reasonable costs incurred by any Borrower or any such Subsidiary in connection with the adjustment or settlement of any claims of any Borrower or such Subsidiary in respect thereof, and (ii) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (a)(ii) of this definition, including income taxes payable as a result of any gain recognized in connection therewith.

"NOLV" means, as to any Eligible Inventory, the expected dollar amount to be realized at an orderly sale of such Eligible Inventory, net of all operating expenses, commissions and other liquidation expenses, as set forth in the most recent Qualified Appraisal of such Eligible Inventory accepted by the Administrative Agent.

"NOLV Percentage" means (a) with respect to Eligible Coal Inventory, the NOLV thereof (expressed as a percentage of the lesser of the Average Cost and the market value of such Eligible Coal Inventory) and (b) with respect to Eligible Parts and Supplies Inventory, the NOLV thereof (expressed as a percentage of the Average Cost of such Eligible Parts and Supplies Inventory), in each case, as set forth in the most recent Qualified Appraisal of such Eligible Inventory accepted by the Administrative Agent.

"Non-Consenting Lender" means, with respect to any consent, amendment, or waiver under Section 16.2(a) (including any forbearance of Administrative Agent's or any Lender's rights and remedies), any Lender whose consent to such consent, waiver, or amendment (or forbearance) was required but which, for any reason, failed to provide such consent.

"Non-Loan Party Subsidiary" means any Subsidiary of a Borrower that is a Bonding Subsidiary, an Immaterial Subsidiary, a Securitization Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Notes" means each Revolving Note, the Swingline Note and any other promissory note executed by Borrowers, or any of them, to evidence any Obligations, as amended, restated, supplemented, or otherwise modified from time to time.

"Notice of Borrowing" means a Notice of Borrowing in the form of **Exhibit C** or such other form acceptable to Administrative Agent from time to time.

"Notice of Conversion/Continuation" means a notice substantially in the form of **Exhibit D** or in such other form acceptable to Administrative Agent from time to time.

"Obligations" means all obligations, indebtedness and other liabilities of every nature of each Loan Party from time to time owed to the Administrative Agent (including any former Administrative Agent), any LC Issuer, any Lender (including former Lenders in their capacity as such), and any Bank Product Provider under any Loan Document or Bank Product Agreement (including Swap Obligations, subject to the proviso set forth below), together with all renewals, extensions, modifications or refinancings of any of the foregoing, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification, or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, joint or several, and specifically including, but without limitation, all (a) principal of and premium, if any, on the Loans; (b) LC Obligations and other obligations of the Loan Parties with respect to Letters of Credit; (c) interest, expenses, fees, and other sums payable by the Loan Parties under this Agreement or the other Loan Documents (including any interest on pre-petition Obligations accruing after the commencement of any Insolvency Proceeding by or against any Loan Party, whether or not allowable in such Insolvency Proceeding); and (d) obligations of the Loan Parties under any indemnity for Claims in accordance with the Loan Documents; provided, however, that the term "Obligations" shall exclude (i) any Excluded Swap Obligations, and (ii) any Swap Obligations owing to the Term Agent or any Term Lender.

"OFAC" means The Office of Foreign Assets Control of the United States Department of the Treasury or any successor thereto.

"Organizational Documents" means, with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 15.4).

"Overadvance" means, at any time of determination, the amount, if any, by which the Aggregate Revolving Obligations at such time exceed the Borrowing Base at such time (including any such amount arising as a result of the commencement of a Borrowing Base Adjustment Period.

"Overadvance Loan" means a Base Rate Loan or, subject to Section 3.1(h), a Term SOFR Index Loan, made when an Overadvance exists or is caused by the funding thereof.

"Parent" has the meaning set forth in the preamble hereto.

"Participant" has the meaning given such term in Section 14.1(d).

"Participant Register" has the meaning given such term in Section 14.1(d).

"Partnership Interests" has the meaning set forth in Section 8.2.

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Payment Item" means each check, draft, or other item of payment payable to a Loan Party, including those constituting Proceeds of any Collateral.

"Payment in Full" and "Paid in Full" means, with respect to any Obligations, (a) the full and indefeasible cash payment thereof, including any interest, fees, and other charges and charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding), other than Obligations in respect of any Bank Product Agreements and other contingent obligations as to which no claim has been asserted; (b) if such Obligations are LC Obligations, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Administrative Agent in its discretion, in the amount of required Cash Collateral); and (c) termination of the Commitments.

"Payment Recipient" has the meaning set forth in Section 8.2.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Perfection Certificate" shall mean the Perfection Certificate delivered by Parent to Administrative Agent on the Closing Date and each other Perfection Certificate substantially in the form thereof delivered to Administrative Agent as provided herein; provided that only locations in which any Loan Party maintains tangible personal property with an aggregate book value in excess of $2,500,000 shall be required to be scheduled in Section 3(a) of any such other Perfection Certificate delivered after the Closing Date.

"Permit" means any and all permits, approvals, licenses, registrations, consents, notifications, identification numbers, bonds, waivers or exemptions and any other regulatory authorization, in each case, from a Governmental Authority having jurisdiction over the applicable activity.

"Permitted Acquisition" shall have the meaning assigned to such term in Section 10.3(b).

"Permitted Bond Hedge Transaction" means any call or capped call option (or substantively equivalent derivative transaction) on Parent's common stock purchased by Parent in connection with the issuance of any Convertible Indebtedness and not for speculative purposes; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by Parent from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by Parent from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable business judgment (from the perspective of a secured, asset-based lender extending credit of similar amounts and types to similar businesses).

"Permitted Investments" means:

(a) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed or insured by the United States government or any agency thereof;

(b) certificates of deposit and time deposits with maturities of 18 months or less from the date of acquisition and overnight bank deposits of any Lender or of any commercial bank having capital and surplus in excess of $500,000,000;

(c) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition with respect to securities issued or fully guaranteed or insured by the United States government;

(d) commercial paper of a domestic issuer rated at least A2 by Standard & Poor's or P2 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of Standard & Poor's and Moody's cease publishing ratings of investments;

(e) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by Standard & Poor's or A by Moody's;

(f) securities with maturities of 18 months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition;

(g) corporate obligations such as notes, bonds, loan participation certificates, master notes, and variable rate demand notes rated at least A by Standard & Poor's or A2 by Moody's;

(h) asset backed and mortgage backed securities and collateralized mortgage obligations rated AAA by Standard & Poor's or Aaa by Moody's;

(i) money market auction rate preferred securities and auction rate notes with auctions scheduled no less frequently than every 49 days;

(j) shares of money market mutual or similar funds which invest principally in assets satisfying the requirements of clauses (a) through (i) of this definition; and

(k) in the case of a Person that is a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

"Permitted Joint Venture" means any Person (a) with respect to which the ownership of equity interests thereof by any Borrower or any Subsidiary of a Borrower is accounted for in accordance with the "equity method" in accordance with GAAP; (b) engaged in a line of business permitted by Section 10.7; and (c) with respect to which the equity interests thereof were acquired by a Borrower or a Subsidiary of a Borrower in an arm's-length transaction.

"Permitted Liens" means:

(a) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable or that are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established in accordance with GAAP;

(b) pledges or deposits made in the ordinary course of business to secure payment of reclamation liabilities, worker's compensation, or to participate in any fund in connection with worker's compensation, unemployment insurance, oldage pensions or other social security programs (including pledges or deposits to secure letters of credit issued to assure payment of such obligations, provided that such letters of credit are not prohibited by Section 10.1);

(c) Liens of mechanics, materialmen, warehousemen, carriers, or other like Liens, securing obligations incurred in the ordinary course of business that are not yet due and payable and Liens of landlords incurred in the ordinary course of business securing obligations to pay lease or royalty payments that are not yet due and payable or in default beyond all applicable notice and cure periods;

(d) good-faith pledges or deposits made in the ordinary course of business to secure performance of bids (including bonus bids), tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amount due thereunder or other amounts as may be customary, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business (including pledges or deposits to secure letters of credit issued to assure payment of such obligations, provided that such letters of credit are not prohibited by Section 10.1);

(e) encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property, none of which materially impairs the use of such property or the value thereof, and none of which is violated in any material respect by existing or proposed structures or land use;

(f) Liens created on the Collateral under the Loan Documents in favor of Administrative Agent;

(g) Liens on property leased by any Loan Party or Subsidiary of a Loan Party under capital leases (as the nature of such lease is determined in accordance with GAAP) securing obligations of such Loan Party or Subsidiary to the lessor under such leases and Purchase Money Security Interests on assets (other than Inventory) purchased by any Loan Party or Subsidiary of a Loan Party, provided that such Liens shall not extend to any assets that are not the subject of such leases or Purchase Money Security Interests; provided, further, that the aggregate amount for Borrowers and their Subsidiaries of all loans, capital lease obligations and deferred payments secured as permitted by this clause (g) shall not at any time outstanding exceed the greater of $150,000,000 and 8.25% of Consolidated Net Tangible Assets;

(h) the following, (A) if the validity or amount thereof is being contested in good faith by appropriate and lawful proceedings diligently conducted so long as levy and execution thereon have been stayed and continue to be stayed or (B) if a final judgment is entered and such judgment is discharged within thirty (30) days of entry, and in either case they do not affect the Collateral or, in the aggregate, materially impair the ability of any Loan Party to perform its Obligations hereunder or under the other Loan Documents:

(i) claims or Liens for taxes, assessments or charges due and payable and subject to interest or penalty, provided that the applicable Loan Party maintains such reserves or other appropriate provisions as shall be required by GAAP and pays all such taxes, assessments or charges forthwith upon the commencement of proceedings to foreclose any such Lien;

(ii) claims, Liens or encumbrances upon, and defects of title to, real or personal property other than the Collateral, including any attachment of personal property or Real Estate or other legal process prior to adjudication of a dispute on the merits;

(iii) claims or Liens of mechanics, materialmen, warehousemen, carriers, or other statutory nonconsensual Liens;

(i) (A) Liens securing obligations in respect of a Permitted Receivables Financing, so long as the Liens created pursuant to such Permitted Receivables Financing are limited to Receivables Assets and the assets of the applicable Securitization Subsidiary (and as further provided in clause (l) of "Permitted Liens" below with respect to letters of credit issued pursuant to a Permitted Receivables Financing), or (B) Liens securing the Term Loan Obligations (provided that, to the extent the Term Loan Obligations constitute Debt, the Liens securing such Debt shall only be permitted under this clause (i) to the extent such Debt is permitted to be incurred under Section 10.1(l)) so long as the Liens securing such Term Loan Obligations are limited to assets constituting Collateral, owned Real Estate, Real Estate leases and other assets of Borrowers and their Subsidiaries that Borrowers elect to include in the Collateral securing the Obligations, notwithstanding the definition of Excluded Property set forth herein), to the extent such Liens granted pursuant to or in respect of such Term Loan Obligations are subject to the Intercreditor Agreement;

(j) Liens assumed in connection with (but not incurred in contemplation of) a Permitted Acquisition or any other permitted Investment, provided that (i) such Liens existed at the time such property or assets were acquired or such entity became a Subsidiary and were not created in anticipation thereof, (ii) such Liens do not extend to any other property or assets of such Person (other than the proceeds of the property or assets initially subject to such Lien) or of any Borrower or any Subsidiary and (iii) the amount of Debt secured thereby is not increased and is not prohibited by Section 10.1;

(k) Liens relating to the pledge of the equity interests of a Bonding Subsidiary in favor of the provider of the surety bonds which provide payment assurances to the lessor of the leasehold interest leased by such Bonding Subsidiary related to the cost of such Bonding Subsidiary of acquiring such leasehold interest and any bonus bid and royalty payments to the lessor thereunder;

(l) the pledge of cash and Permitted Investments, and Deposit Accounts and Securities Accounts containing solely such cash and Permitted Investments, securing ~~a Permitted Secured Letter of Credit Facility or~~ letters of credit issued pursuant to a Permitted Receivables Financing, to the extent the amount of such cash or value of Permitted Investments does not exceed 115% of the undrawn face amount of all letters of credit issued under such Permitted ~~Secured Letter of Credit Facility or Permitted~~ Receivables Financing;

(m) Liens securing ~~Incremental Term Notes,~~ Debt described in Section 3 of Schedule 10.1, ~~Refinancing~~**Incremental Secured** Term Notes or any Permitted Refinancing of the foregoing; provided that (i) as long as any Term Loan Obligations are outstanding, such Liens rank junior or *pari passu* with the Liens securing the Term Loan Obligations, (ii) the rights of the holders of the ~~Incremental Term Notes,~~ Debt described in Section 3 of Schedule 10.1, ~~Refinancing~~**Incremental Secured** Term Notes or such Permitted Refinancing are subject to the terms of the Intercreditor Agreement or another intercreditor agreement, as applicable, in a form reasonably acceptable to the Administrative Agent and (iii) such Liens are limited to assets constituting Collateral, owned Real Estate, Real Estate leases and other assets of the Borrowers and their Subsidiaries that the Borrowers elect to include in the Collateral securing the Obligations, notwithstanding the definition of Excluded Property set forth herein;

(n) Liens securing Debt (including any Permitted Refinancing thereof) or other obligations up to $25,000,000 in the aggregate at any time outstanding; provided that any Lien described in this clause (n) that encumbers ABL Priority Collateral shall be subject to an intercreditor agreement reasonably acceptable to Administrative Agent;

(o) statutory and common law banker's Liens and rights of setoff on bank deposits;

(p) any Lien existing on the Fifth Amendment Date and described on **Schedule 1.1(B)**;

(q) any Lien arising out of the Permitted Refinancing of any Debt secured by any Lien that is permitted by Section 10.1(f);

(r) Liens arising out of final judgments, awards, or orders not otherwise constituting an Event of Default;

(s) option agreements and rights of first refusal granted with respect to assets that are permitted to be disposed of pursuant to the terms of Section 10.3 or Section 10.4 of this Agreement;

(t) Liens securing Debt of Non-Loan Party Subsidiaries permitted pursuant to Section 10.1(r), in an aggregate amount not to exceed $10,000,000 at any time;

(u) precautionary filings under the Uniform Commercial Code by a lessor with respect to personal property leased to such Person under an operating lease;

(v) any leases of assets permitted by Section 10.4;

(w) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and

(x) Liens resulting from the deposit of funds or evidences of Debt in trust for the purpose of decreasing or legally defeasing Debt of the Loan Parties permitted hereby so long as such decrease or defeasance is not prohibited hereunder.

"Permitted Location" means (a) any location described in Section 3 of the most recent Perfection Certificate delivered to Administrative Agent, and (b) any other location of which Borrower Agent has provided at least 30 days' written notice to Administrative Agent, and Administrative Agent shall have consented in writing before such location's being a "Permitted Location".

"Permitted Receivables Financing" means a transaction or series of transactions pursuant to which a Securitization Subsidiary purchases Receivables Assets or interests therein from Parent or any Subsidiary

of Parent and finances such Receivables Assets or interests therein through the issuance of Debt or equity interests or through the sale of such Receivables Assets or interests therein; provided that (a) the board of directors of Parent shall have approved such transaction, (b) no portion of the Debt of a Securitization Subsidiary is guaranteed by or is recourse to any Borrower or any of their other Subsidiaries (other than recourse for customary representations, warranties, covenants, indemnities and other customary matters none of which shall relate to the collectability of such Receivables Assets), and (c) neither any Borrower nor any of their other Subsidiaries has any obligation to maintain or preserve such Securitization Subsidiary's financial condition. The Existing Receivables Financing, as in effect on the Closing Date, is a Permitted Receivables Financing.

"Permitted Refinancing" means, with respect to any Debt, commitments to make loans or advances, existing letters of credit, commitments in respect of letters of credit, or unreimbursed amounts with respect to letters of credit, any refinancing, refunding, renewal, replacement or extension thereof, provided, that (i) such refinancing, refunding, renewal, replacement or extension permitted under the foregoing shall (A) not have any obligors and/or guarantors other than the obligors and/or guarantors on such Debt being extended, renewed, replaced, refunded or refinanced, (B) not be secured by any assets other than the assets (if any) securing the Debt being extended, renewed, replaced, refunded or refinanced, (C) be at least as subordinate to the Obligations as the Debt being extended, renewed, replaced, refunded or refinanced (and unsecured if the Debt being extended, renewed, replaced, refunded or refinanced is unsecured), (D) not exceed in a principal amount the Debt being renewed, extended, replaced, refunded or refinanced plus any Permitted Refinancing Increase in respect of such modification, refinancing, refunding, renewal, replacement or extension, and (E) in the case of a Permitted Refinancing of the Debt incurred under the Term Loan Agreement, such Permitted Refinancing is subject to the Intercreditor Agreement or another intercreditor agreement, as applicable, in a form reasonably acceptable to the Administrative Agent, ~~and~~ (ii) except with respect to a Permitted Refinancing of Debt in respect of any capital lease (as determined in accordance with GAAP) or Debt of Borrowers and their Subsidiaries secured by Purchase Money Security Interests, the Weighted Average Life to Maturity thereof is greater than or equal to, and the final maturity thereof is not earlier than, that of the Debt being refinanced, refunded, renewed, replaced or extended~~.~~ **and (iii) in the case of a Permitted Refinancing of the Debt incurred under the Term Loan Agreement, (A) the final stated maturity of such Debt shall not be sooner than the latest maturity date of the Debt which is being refinanced, refunded, renewed, replaced or extended, (B) such Debt is not subject to any mandatory prepayment, repurchase or redemption provisions (other than pursuant to customary asset sale (other than ABL Priority Collateral), event of loss (other than ABL Priority Collateral), excess cash flow (on terms materially consistent with the excess cash flow prepayment terms set forth in the Credit Agreement dated March 7, 2017 among Parent, the lenders party thereto and Credit Suisse AG, Cayman Islands Branch or such other terms reasonably acceptable to the Administrative Agent) or change of control prepayment provisions and customary acceleration right after an event of default), in each case, to the extent permitted under Section 10.9 and (C) no Default or Event of Default shall have occurred or be continuing at the time of occurrence of such Debt or would result therefrom.**

"Permitted Refinancing Increase" means, with respect to the refinancing, refunding, renewal, replacement or extension of any Debt, commitments to make loans or advances, existing letters of credit, commitments in respect of letters of credit, or unreimbursed amounts with respect to letters of credit, an amount equal to (a) any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal, replacement or extension, (b) any unpaid accrued interest and fees on the Debt commitments in make loans or advances, existing letters of credit, commitments in respect of letters of credit, unreimbursed amounts with respect to letters of credit, and letter of credit borrowings being refinanced, refunded, renewed, replaced or extended, and (c) any existing unutilized commitments to make loans or advances, existing letters of credit, unutilized commitments in

respect of letters of credit, or unreimbursed amounts with respect to letters of credit in connection with the Debt being refinanced, refunded, renewed, replaced or extended.

~~**"Permitted Secured Letter of Credit Facility" shall have the meaning assigned to such term in Section 10.1(g).**~~

"Permitted Warrant Transaction" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on Parent's common stock sold by Parent substantially concurrently with any purchase by Parent of a related Permitted Bond Hedge Transaction and not entered into for speculative purposes.

"Person" means any individual, corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof, or any other entity

"Plan" means at any time an employee pension benefit plan (including a Multiple Employer Plan but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (i) is sponsored or maintained by any member of the ERISA Group for employees of any member of the ERISA Group, or (ii) has at any time within the preceding five years been maintained by or to which contributions have been made by any entity which was at such time a member of the ERISA Group for employees of any entity which was at such time a member of the ERISA Group.

"Plan of Reorganization" means the chapter 11 plan of reorganization of Parent and certain of its subsidiaries substantially in the form of the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code ECF No. 1334, Appendix A filed in the main Case of the jointly administered Chapter 11 debtors, Case No. 16-40120 on September 13, 2016, as amended, supplemented or otherwise modified from time to time.

"Platform" has the meaning set forth in Section 16.1(d).

"Pledge Agreement" means the Pledge Agreement, dated as of the Closing Date, made among Loan Parties and Administrative Agent.

"Prime Rate" means the per annum rate that Administrative Agent, acting in its individual capacity as a bank, publicly announces from time to time to be its prime lending rate, as in effect from time to time. Administrative Agent's prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to its customers. Notwithstanding anything contained herein to the contrary, if the Prime Rate, as so determined, is ever less than 0.75% (75 bps) per annum, then, the Prime Rate shall be deemed to be 0.75% (75 bps) per annum.

"Principal Office" means, for Administrative Agent, the Swingline Lender and LC Issuer, such Person's "Principal Office" as set forth on **Appendix B**, or such other office as it may from time to time designate in writing to Borrower Agent and each Lender.

"Pro Rata" means, with respect to any Lender, a percentage (carried out to the ninth decimal place) determined (a) while Commitments are outstanding, by dividing the amount of such Lender's Commitment by the Commitments and (b) at any other time, by dividing the aggregate outstanding principal amount of such Lender's Loans and LC Obligations by the aggregate outstanding principal amount of all Loans and LC Obligations. The initial Pro Rata shares of the Lenders are set forth on **Appendix A**.

"Pro Rata Share" means, with respect to any amount and in reference to any Lender, the portion of such amount allocable to such Lender on a Pro Rata basis.

"Prohibited Transaction" means any prohibited transaction as defined in Section 4975 of the Code or Section 406 of ERISA for which neither an individual nor a class exemption has been issued by the United States Department of Labor.

"Projections" means, for any fiscal period, projections of the Parent's and its Subsidiaries' consolidated and consolidating balance sheets, results of operations and cash flow for such period, all of which shall be in a form reasonably satisfactory to Administrative Agent.

"Protective Advances" has the meaning given such term in Section 2.1(e).

"Purchase Money Security Interest" means Liens upon tangible personal property securing loans to any Loan Party or Subsidiary of a Loan Party or deferred payments by such Loan Party or Subsidiary for the purchase of such tangible personal property.

"Qualified Appraisal" means, with respect to any property, an appraisal of such property conducted in a manner and with such scope and using such methods as are acceptable to Administrative Agent by an appraiser selected by, or acceptable to, Administrative Agent in its Permitted Discretion.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Loan Party that, at the time its guaranty (or grant of Lien, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding $10,000,000 or such other Loan Party as constitutes an "eligible contract participant" under the Commodity Exchange Act and which may cause another Person to qualify as an "eligible contract participant" with respect to such Swap Obligation at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Real Estate" means all right, title, and interest (whether as owner, lessor, or lessee) in any property which constitutes real property and all improvements thereon or thereto; provided that "Real Estate" shall not include (i) Excluded Property, (ii) any asset that shall have been released, pursuant to Section 13.2 from the Liens created in connection with this Agreement, or (iii) any "building", "structure" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Laws).

"Receivables Assets" means accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Parent or any Subsidiary of the Parent.

"Receivables Purchase Agreement" means that certain Third Amended and Restated Receivables Purchase Agreement dated October 5, 2016, among Arch Receivable Company, LLC, Arch Coal Sales Company, Inc., PNC Bank, National Association, and the other parties thereto, as amended on the Closing Date.

"Receivables Purchase Documents" means the Transaction Documents (as defined in the Receivables Purchase Agreement).

"Recipient" means (a) Administrative Agent, (b) any Lender and (c) LC Issuer, as applicable.

"Reference Time" means, with respect to any setting of the then-current Benchmark, the time determined by Administrative Agent in its reasonable discretion.

"Reclamation Laws" means all Laws relating to mining reclamation or reclamation liabilities including the Surface Mining Control and Reclamation Act of 1977, as amended, and its state and local counterparts or equivalents, including those applicable in West Virginia and Wyoming.

~~"Refinancing Term Notes" has the meaning given such term in Section 10.1(d).~~

"Regions Bank" means Regions Bank, an Alabama bank and its successors and assigns.

"Regions Bank Indemnitees" means Regions Bank and its Related Parties.

"Register" has the meaning given such term in Section 14.1(c).

"Regulated Substances" means, any substance, material or waste, regardless of its form or nature, defined, listed or regulated under Environmental Health and Safety Laws as a "hazardous substance", "pollutant", "pollution", "contaminant", "hazardous or toxic substance", "extremely hazardous substance", "toxic chemical", "toxic substance", "toxic waste", "hazardous waste", "special handling waste", "industrial waste", "residual waste", "solid waste", or "regulated substance" or any other material, substance or waste, regardless of its form or nature, which is regulated by the Environmental Health and Safety Laws due to its radioactive, ignitable, corrosive, reactive, explosive, toxic, carcinogenic or infectious properties or nature, including, without limitation, coal refuse, run-of-mine coal, acid mine drainage, petroleum and petroleum products (including crude oil and any fractions thereof), natural gas, coalbed methane gas, synthetic gas and any mixtures thereof, asbestos, urea formaldehyde, polychlorinated biphenyls, mercury and radioactive substances.

"Regulation U" means Regulation U, T or X as promulgated by the Board of Governors of the Federal Reserve System, as amended from time to time.

"Reimbursement Date" has the meaning given such term in Section 2.4(b).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, attorneys, accountants, consultants, advisors and representatives of such Person and of such Person's Affiliates.

"Release" means anything defined as a "release" under CERCLA or RCRA (in each case as defined in the definition of Environmental Health and Safety Laws).

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto**.**

"Remedial Action" means any investigation, identification, preliminary assessment, characterization, delineation, feasibility study, cleanup, corrective action, removal, remediation, risk assessment, fate and transport analysis, in-situ treatment, the treatment of discharges or seeps, containment, operation and maintenance or management in-place, control, abatement or other response actions to Regulated Substances and any closure or post-closure measures, or reclamation activities associated therewith.

"Removal Effective Date" has the meaning set forth in Section 13.7.

"Rent and Charges Reserve" means, without duplication, an amount reasonably determined from time to time by Administrative Agent in its Permitted Discretion as a reserve for (a) rent, transportation costs, fees, charges, and other amounts owing by a Borrower to any Third Party (including any railway), except to the extent that such Third Party has executed and delivered a Third Party Agreement providing that payment of such rent, transportation costs, fees, charges, and other amounts is not required in order for Administrative Agent to exercise its rights under such Third Party Agreement, and (b) without duplication of amounts reserved under clause (a), the amount of all accrued but unpaid or past due rent, transportation costs, fees, charges, or other amounts owing by a Borrower to Third Parties.

"Report" has the meaning given such term in Section 13.2(c).

"Reportable Event" means a reportable event described in Section 4043 of ERISA and regulations thereunder with respect to a Plan or a Multiemployer Plan (other than any such event as to which the thirty-day notice period is waived) provided that, in the case of any such reportable event with respect to a Multiemployer Plan, such event shall only be deemed a Reportable Event for purposes of this Agreement if the Parent has knowledge of such event.

"Required Lenders" means, subject to Section 4.2, at least two (2) Lenders (unless there is only one (1) Lender, in which case, such Lender) having (a) Commitments in excess of 50% of the aggregate Commitments or (b) if the Commitments have terminated, Aggregate Revolving Obligations in excess of 50% of all outstanding Aggregate Revolving Obligations; provided, however, that the Commitments and Aggregate Revolving Obligations held by a Defaulting Lender shall be disregarded for purposes of determining Required Lenders.

"Reserves" means the sum of (without duplication) (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) reserves for Royalties, to the extent that such Royalties are unpaid; (e) the aggregate amount of liabilities secured by Liens upon any ABL Priority Collateral which constitutes Eligible Inventory which are senior to Administrative Agent's Liens (but the imposition of any such reserve shall not waive a Default or an Event of Default arising therefrom); (f) reserves for price adjustments and damages, to the extent such reserve relates to Inventory included in Eligible Inventory, including returns, discounts, claims (including quality adjustments), credits, and allowances of any nature; (g) reserves for special order goods and deferred shipment sales, to the extent such reserve relates to Inventory included in Eligible Inventory; (h) reserves to reflect events, conditions, contingencies, or risks which, as determined by Administrative Agent in its Permitted Discretion, adversely affect, or would have a reasonable likelihood of adversely affecting the ABL Priority Collateral (taken as a whole), its value (taken as a whole), or the amount that might be received by Administrative Agent from the sale or other disposition or realization upon such ABL Priority Collateral (taken as a whole); (i) to the extent not addressed through the permitted application of eligibility criteria, reserves to reflect testing variances or shrinkage identified as part of Administrative Agent's periodic field examinations or to adjust the value of any Inventory based on the results of, or failure to obtain, a Qualified Appraisal; and (j) such other reserves that Administrative Agent may establish from time to time for such purposes as Administrative Agent shall deem necessary in its Permitted Discretion. Except to the extent otherwise qualified (either in this definition or any related definition used in this definition) or otherwise expressly provided in this Agreement (including, without limitation, Section 4.7), Administrative Agent may implement Reserves and establish the amounts thereof (from time to time) in its Permitted Discretion. Administrative Agent may establish Reserves as a percentage of any applicable amount or as an amount of money.

"Restricted Payment" shall have the meaning assigned to such term in Section 10.8.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Revolving Credit Exposure" on any date, means, for each Lender, the aggregate amount (without duplication) of such Lender's outstanding Loans and its participation in (a) Swingline Loans (or in the case of Swingline Lender, its Swingline Loans (net of any participations therein by other Lenders) and (b) outstanding LC Obligations on such date.

"Revolving Note" means a promissory note executed by Borrowers in favor of a Lender in the form of **Exhibit A-1**, which note shall be in the amount of such Lender's Commitment and shall evidence the Loans made by such Lender.

"Royalties" means all royalties, fees, expense reimbursement and other amounts payable by a Loan Party under a License or with respect to Mining Title to any property.

"Sale and Leaseback Transaction" has the meaning set forth in Section 10.12.

"Sanctioned Country" means (a) a country, territory or a government of a country or territory, (b) an agency of the government of a country or territory, or (c) an organization directly or indirectly owned or Controlled by a country, territory or its government, in each case that is subject to country-wide or region-wide Sanctions (as of the date of this Agreement, Cuba, Iran, North Korea, Syria, Crimea region of Ukraine, so-called Donetsk People's Republic, and so-called Lubansk People's Republic).

"Sanctioned Person" means (a) a Person named on the list of "Specially Designated Nationals" or any other Sanctions related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or Controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state, (e) Her Majesty's Treasury of the United Kingdom or (f) any other relevant sanctions authority.

"SEC" shall mean the Securities and Exchange Commission or any governmental agencies substituted therefor.

"Secured Net Leverage Ratio" means as of any date of determination, the ratio of the amounts under the following clauses (a) and (b):

(a) (i) the aggregate amount of Debt (determined in accordance with GAAP) (other than (x) Debt of the type described in clause (iii) of the definition thereof constituting payments made or to be made to the U.S. Federal Bureau of Land Management with respect to the acquisition of any U.S. federal coal lease by any Loan Party or Subsidiary of any Loan Party which payments are either deferred purchase price payments or bonus bid payments related to any such lease and (y) Debt of the type described in clause (iv) of the definition thereof except to the extent of any unreimbursed drawing thereunder) of Parent and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) that is secured by any assets of Parent or any of its Subsidiaries as of the date of the financial statements most recently delivered by Parent pursuant to Section 9.1(b) or Section 9.1(c) less (ii) the aggregate amount of Unrestricted Cash as of such date (but excluding any such Unrestricted Cash that constitute proceeds of any Debt for which this Secured Net Leverage Ratio was required to be tested), to

(b) the sum of EBITDA of Parent and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) for the period of four consecutive fiscal quarters ending as of the date of such financial statements.

It is expressly agreed that, for purposes of determining the Secured Net Leverage Ratio, the difference between actual funded indebtedness and the fair market value of funded indebtedness recorded as required by the Statement of the Financial Accounting Standards Board No. 141 (as in effect on the Closing Date) will be excluded from indebtedness in the determination of Debt.

"Secured Party" means Administrative Agent, each LC Issuer, each Lender, and each Bank Product Provider; and "Secured Parties" means all of such Persons.

"Secured Party Designation Notice" means a notice in the form of **Exhibit H** (or other writing in form and substance satisfactory to the Administrative Agent) from a Bank Product Provider to the Administrative Agent to the effect that such Bank Product Provider holds Bank Product Obligations entitled to be secured by the Collateral, (i) describing and setting forth (a) the maximum amount thereof to be secured by the Collateral (which such Bank Product Provider may increase or decrease in respect of such Bank Product by subsequent Secured Party Designation Notice), and (b) the methodology to be used in calculating such amount and (ii) agreeing to be bound by Section 13.13.

"Securitization Subsidiary" means a Subsidiary of Parent (all of the outstanding equity interests of which, other than de minimis preferred stock and director's qualifying shares, if any, are owned, directly or indirectly, by Parent) that is established for the limited purpose of acquiring and financing Receivables Assets and interests therein of Parent or any Subsidiary of Parent and engaging in activities ancillary thereto.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, made between Loan Parties and Administrative Agent.

"Security Documents" means the Security Agreement, together with all other security agreements and notices of security interests in Intellectual Property filed or to be filed with any applicable filing office or registry, Control Agreements, any pledge agreement and all other documents, instruments, and agreements now or hereafter executed or delivered by a Loan Party to any Secured Party for purposes of securing (or intending to secure), or perfecting (or intending to perfect) Liens securing, any Obligations.

"Senior Officer" means, with respect to any Loan Party or Subsidiary, each of the chief executive officer, president, chief financial officer, treasurer and any vice president of the such Loan Party or Subsidiary and, as to any document delivered on the Closing Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of such Loan Party or Subsidiary.

"Setoff Parties" has the meaning set forth in Section 16.6.

"Settlement Report" means a report delivered by Administrative Agent to the Lenders summarizing the Loans and participations in LC Obligations outstanding as of a given settlement date, allocated among the Lenders on a Pro Rata basis.

"Significant Subsidiary" means individually any Subsidiary of the Parent other than the Non-Loan Party Subsidiaries, and Significant Subsidiaries shall mean collectively all Subsidiaries of the Parent other than the Non-Loan Party Subsidiaries.

"Sixth Amendment Date" means February /__/, 2024

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding U.S. Government Securities Business Day; provided if the published rate is subsequently corrected and provided by the SOFR Administrator or on the SOFR Administrator's Website within the longer of one hour of the time when such rate is first published and the republication cut-off time for SOFR, if any, as specified by the SOFR Administrator in the SOFR benchmark methodology then the secured overnight financing rate for such Business Day will be subject to those corrections.

"SOFR Adjustment" means 0.1% (10 bps).

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Loan Party" means any Loan Party that is, at the time on which the guaranty (or grant of Lien, as applicable) becomes effective with respect to a Swap Obligation, a corporation, partnership, proprietorship, organization, trust or other entity that would not be an "eligible contract participant" under the Commodity Exchange Act at such time but for the effect of Section 5.7(f).

"Standard & Poor's" means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc. and any successor thereto.

"Stated Commitment Termination Date" means August 3, 2025.

"Subsidiary" means, with respect to any person (herein referred to as the "parent"), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, controlled or held by the parent or one or more subsidiaries of the parent, or (b) whose accounts are consolidated with the accounts of the parent or one or more subsidiaries of the parent in such parent's or subsidiary's SEC filings. Unless the context otherwise requires, Subsidiary shall mean a Subsidiary of a Borrower.

"Subsidiary Shares" has the meaning set forth in Section 8.2.

"Swap 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, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any "International Foreign Exchange Master Agreement", or any other master agreement (any such agreement or documentation, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligation" means with respect to any Loan Party, 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.

"Swingline Loan" means any Borrowing of Base Rate Loans or Term SOFR Index Loans funded with Swingline Lender's funds pursuant to Section 2.3, until such Borrowing is settled among Lenders pursuant to Section 2.3(c).

"Swingline Lender" means Regions Bank, together with its successors and assigns.

"Swingline Note" means a promissory note executed by Borrowers in favor of Swingline Lender in the form of **Exhibit A-2**, which note shall be in the maximum amount of Swingline Loans which Swingline Lender has agreed to make to Borrowers pursuant to Section 2.3(a) and shall evidence Swingline Loans made by Swingline Lender.

"Swingline Rate" means the Base Rate or Term SOFR Index plus the Applicable Margin applicable to Base Rate Loans or Term SOFR Index Loans (or with respect to any Swingline Loan advanced pursuant to an Auto Borrow Agreement, such other rate as separately agreed in writing between Borrowers and Swingline Lender).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, (including backup withholding), assessments, fees, or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Agent" means ~~Credit Suisse AG, Cayman Islands Branch~~**PNC Bank, National Association**, in its capacity as administrative agent and collateral agent under the Term Loan Agreement, and its successors and assigns.

"Term Lenders" means the financial institutions from time to time party to the Term Loan Agreement as lenders.

"Term Loan Agreement" means that certain Credit Agreement dated as of ~~March 7~~**February / / **, ~~2017~~**2024**, among Parent, Term Agent and the other parties thereto, as amended, restated, supplemented or otherwise modified**, or as refinanced or replaced with any other term loan agreement pursuant to a**

Permitted Refinancing, in each case from time to time to the extent not prohibited by the Intercreditor Agreement.

"Term Loan Documents" means the Loan Documents (as defined in the Term Loan Agreement).

"Term Loan Obligations" means **(a)** all of the Obligations (as defined in the Term Loan Agreement as in effect on the ~~Closing~~**Sixth Amendment** Date or as amended in a manner that does not expand the scope thereof)~~.~~ **and (b) all other Obligations (to be defined in a customary manner (with the scope thereof not materially expanded from the scope of the definition of "Obligations" in the Term Loan Agreement as in effect on the Sixth Amendment Date) in connection with any Permitted Refinancing of the Debt pursuant to the Term Loan Agreement or in connection with any Incremental Term Debt incurred under Section 10.1(l)).**

"Term Loan Priority Collateral" shall have the meaning specified in the Intercreditor Agreement.

"Term SOFR" means, for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator, subject to Section 15.1.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Index" means, for any Term SOFR Index Loan and at any time of determination, a per annum rate equal to Adjusted Term SOFR for an Interest Period of one month at such time. Term SOFR Index shall be determined daily by Administrative Agent on each U.S. Government Securities Business Day and shall be increased or decreased, as applicable, automatically and without notice to any Person on the date of each such determination. Each calculation by Administrative Agent of Term SOFR Index shall be conclusive and binding for all purposes, absent manifest error.

"Term SOFR Index Loan" means a Loan that bears interest at a rate based on Term SOFR Index; provided, if any Benchmark Replacement incorporated is incorporated into this Agreement pursuant to Section 15.1, then, "Term SOFR Index Loan" means a Loan that bears interest at a rate based on the then-current Benchmark following the applicable Benchmark Replacement.

"Term SOFR Loan" means a Loan (other than a Term SOFR Index Loan) that bears interest at a rate based on Adjusted Term SOFR (other than pursuant to clause (c) of the definition of "Base Rate"); provided, if any Benchmark Replacement incorporated is incorporated into this Agreement pursuant to Section 15.1, then, "Term SOFR Loan" means a Loan that bears interest at a rate based on the then-current Benchmark following the applicable Benchmark Replacement.

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Third Amendment Effective Date" means September 30, 2020.

"Third Party" means any lessor, mortgagee, mechanic or repairman, warehouse operator or warehouseman, processor, packager, consignee, shipper, customs broker, freight forwarder, bailee, or other third party which may have possession of any Inventory or As-Extracted Collateral or lienholders' enforcement rights against any Inventory or As-Extracted Collateral.

"Third Party Agreement" means an agreement in form and substance reasonably satisfactory to Administrative Agent pursuant to which a Third Party, as applicable (a) waives or subordinates in favor of Administrative Agent any Liens such Third Party may have in and to any ABL Priority Collateral; (b) grants Administrative Agent access to ABL Priority Collateral which may be located on such Third Party's premises or in the custody, care, or possession of such Third Party for purposes of allowing Administrative Agent to inspect, remove or repossess, sell, store, or otherwise exercise its rights under this Agreement or any other Loan Document with respect to such ABL Priority Collateral; or (c) with respect to Third Parties other than landlords, agrees upon request to deliver the ABL Priority Collateral to Administrative Agent or in accordance with the Administrative Agent's instructions, in each case, upon payment of applicable fees and charges.

"Total Net Leverage Ratio" means, as of any date of determination, the ratio of the amounts under the following clauses (a) and (b):

(a) (i) the aggregate amount of Debt (determined in accordance with GAAP) (other than (x) Debt of the type described in clause (c) of the definition thereof constituting payments made or to be made to the U.S. Federal Bureau of Land Management with respect to the acquisition of any U.S. Federal coal lease by any Loan Party or Subsidiary of any Loan Party which payments are either deferred purchase price payments or bonus bid payments related to any such lease and (y) Debt of the type described in clause (d) of the definition thereof except to the extent of any unreimbursed drawings thereunder) of the Parent and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) as of the date of the financial statements most recently delivered by the Parent pursuant to Section 9.16(b) or Section 9.16(c) less (ii) the aggregate amount of Unrestricted Cash as of such date (but excluding any such Unrestricted Cash that constitute proceeds of any Debt for which this Total Net Leverage Ratio was required to be tested), to

(b) the sum of EBITDA of the Parent and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) for the period of four consecutive Fiscal Quarters ending as of the date of such financial statements.

It is expressly agreed that, for purposes of determining the Total Net Leverage Ratio, the difference between actual funded indebtedness and the fair market value of funded indebtedness recorded as required by the Statement of the Financial Accounting Standards Board No. 141 (as in effect on the Closing Date) will be excluded from indebtedness in the determination of Debt.

"Transferee" means any actual or potential Eligible Assignee or Participant.

"Treasury Services" has the meaning given such term in the definition of "Bank Products."

"Type" means any type of a Loan that has the same interest option and, in the case of Term SOFR Loans, the same Interest Period.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the perfection of security interests created by the applicable Security Documents.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, that includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" or "U.S." means the United States of America.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Unrestricted Cash" means, for purposes of calculating the Total Net Leverage Ratio, the aggregate amount of cash and Permitted Investments held in accounts on the consolidated balance sheet of Borrowers and their Subsidiaries not to exceed $300,000,000 in the aggregate, to the extent that the use of such cash for application to payment of the Obligations or other Debt is not prohibited by law or any contract or other agreement and such cash is and Permitted Investments are free and clear of all Liens (other than Liens in favor of Administrative Agent, the Term Agent or any other agent or representative with respect to permitted secured Debt that is subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent) and Liens permitted pursuant to clause (o) of the definition of Permitted Liens.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code, or any person treated as a United States person for purposes of the Code.

"U.S. Tax Compliance Certificate" has the meaning set forth in Section 15.3(g)(ii)(B)(iii).

"Voidable Transfer" has the meaning set forth in Section 16.24.

"Weighted Average Life to Maturity" means, when applied to any Debt on any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

"Withdrawal Liability" means any liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are

described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2. **Accounting Terms**

. Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Parent and its Subsidiaries delivered to Administrative Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if the Parent's and its Subsidiaries' certified public accountants concur in such change; provided, however, that, despite the adoption of any such change, Borrower Agent shall (a) in addition to delivery of financial statements pursuant to Section 9.16(b) or (c), and on each date such financial statements are required to be delivered, furnish the adjustments and reconciliations necessary to enable Borrowers and Administrative Agent to determine compliance with the Financial Covenant, which shall be determined in accordance with GAAP but without giving effect to such change, and (b) the Borrowing Base shall continue to be calculated without giving effect to such change (if the effect of such change would be to increase the amount of Availability derived from Eligible Inventory; provided, further, that Borrower Agent shall not be required to deliver such adjustments and reconciliations and may apply such change in the calculation of the Borrowing Base and its related terms if (i) the change is disclosed to Administrative Agent and (ii) Section 11, the definition of "Borrowing Base" and any terms used therein or bearing on the amount of Availability derived therefrom, as applicable, and any other section of this Agreement or any other Loan Document which is affected thereby are amended in a manner satisfactory to Administrative Agent and Required Lenders to take into account the effects of the change). Any of the foregoing to the contrary notwithstanding, all financial statements delivered hereunder shall be prepared, and the Financial Covenant shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

1.3. **Uniform Commercial Code**

. Any term used in this Agreement or in any other Loan Document or in any financing statement filed in connection herewith which is defined in the UCC and not otherwise defined in this Agreement or in any other Loan Document shall have the meaning given such term in the UCC, including "Account," "Account Debtor," "As-Extracted Collateral," "Chattel Paper," "Commercial Tort Claim," "Commodity Account," "Consignment," "Deposit Account," "Document," "Electronic Chattel Paper," "Equipment," "Farm Products," "Fixtures," "General Intangibles," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right," "Payment Intangible," "Proceeds," "Securities Account" and "Supporting Obligation."

1.4. **Rules of Construction**

. Unless the context of this Agreement otherwise clearly requires, the following rules of construction shall apply to this Agreement and each of the other Loan Documents: (i) references to the plural include the singular, the plural, the part and the whole and the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; (ii) the words "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document as a whole and not any particular provision thereof; (iii) article, section, subsection, clause, schedule and exhibit references are to this Agreement or such other Loan Document, as the case may be, unless otherwise specified; (iv) reference to any Person includes such Person's successors and assigns, and in the case of a Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of functions thereof; (v) reference to any agreement,

including this Agreement and any other Loan Document together with the schedules and exhibits hereto or thereto, document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated, but only to the extent that such amendment, modification, replacement, substitution or restatement is not prohibited by this Agreement or any applicable intercreditor agreement; (vi) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including"; (vii) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (viii) section headings herein and in each other Loan Document are included for convenience and shall not affect the interpretation of this Agreement or such Loan Document, (ix) unless otherwise specified, all references herein and in any other Loan Document to time of day shall mean and refer to the time of day in Atlanta, Georgia, (x) all references herein and in any other Loan Document to statutes and related regulations shall include all related rules and implementing regulations and any amendments of same and any successor statutes, rules and regulations, and (xi) all references herein and in any other Loan Document to the "discretion" (rather than Permitted Discretion) of Administrative Agent or Lenders shall mean the sole and absolute discretion of Administrative Agent or Lenders, as applicable. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Administrative Agent (and not necessarily calculated in accordance with GAAP). No provision of any Loan Documents shall be construed or interpreted to the disadvantage of any party hereto by reason of such party's having, or being deemed to have, drafted, structured, or dictated such provision. Any Loan Document signed by a Senior Officer acting in such capacity on behalf of a Loan Party or Borrower Agent shall be conclusively presumed to have been authorized by all necessary action on the part of such Loan Party or Borrower Agent party thereto and such Senior Officer shall be conclusively presumed to have acted on behalf of such party. A Default or an Event of Default shall be deemed "to continue," be "continuing," "exist," or be "in existence" at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing in accordance with this Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement.

1.5. **Limited Condition Acquisitions**.

(a) In connection with any action being taken primarily in connection with a Limited Condition Acquisition, for purposes of testing availability under baskets set forth in this Agreement or any other Loan Document (including baskets measured as a percentage of consolidated total assets, if any), in each case, at the option of the Parent (the Parent's election to exercise such option in connection with any Limited Condition Acquisition, an "LCA Election"), the date of determination of whether any such action is permitted hereunder may be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "LCA Test Date"), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive Fiscal Quarters ending prior to the LCA Test Date for which consolidated financial statements of the Parent are available, the Parent would have been permitted to take such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Parent has made an LCA Election and any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in consolidated total assets of the Parent or the Person subject to such Limited Condition Acquisition, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken. If the Parent has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket utilization

with respect to the incurrence of Debt or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Parent, or the prepayment, redemption, purchase, defeasance or other satisfaction of Debt on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be tested by calculating the utilization of such ratio or basket on a pro forma basis (A) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have been consummated and (B) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have not been consummated.

(b) In connection with any action being taken primarily in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement or any other Loan Document which requires that no Default or Event of Default, as applicable, has occurred, is continuing or would result from any such action, as applicable, such condition may, at the option of the Parent, be deemed satisfied, so long as no Default or Event of Default, as applicable, exists on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Parent has exercised its option under this Section 1.5, and any such Default or Event of Default occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such Default or Event of Default shall be deemed to not have occurred or be continuing solely for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

(c) In connection with any action being taken in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement or any other Loan Document which requires compliance with any representations and warranties set forth herein, such condition may, at the option of the Parent, be deemed satisfied, so long as the Parent is in compliance with such representations and warranties on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Parent has exercised its option under this Section 1.5, and any such breach of a representation or warranty occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such breach shall be deemed to not have occurred for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

1.6. **Reserved**.

1.7. **Initial Ratio Calculations**

. To the extent that any provision of this Agreement requires or tests compliance with (or with respect to) the Total Net Leverage Ratio prior to the initial date upon which the financial statements required by Section 9.16(b) or 9.16(c), as the case may be, are required to be delivered, such ratio shall be calculated as of the period of four consecutive Fiscal Quarters ending December 31, 2016.

SECTION 2.
THE CREDIT FACILITIES

2.1. **Commitment**.

(a) Loans. Subject to the terms and conditions of this Agreement, each Lender agrees, severally (and not jointly) on a Pro Rata basis up to its Commitment, to make Loans to Borrowers from

time to time on any Business Day through the Commitment Termination Date; provided, however, that at any time that the Borrowing Base includes any Eligible Cash (as set forth on the most recent Borrowing Base Certificate delivered by Borrowers to Administrative Agent), no Lender shall be obligated to make any Loans to Borrowers and, subject to all conditions set forth herein, the only extensions of credit required to be provided hereunder shall be in the form of Letters of Credit issued by LC Issuer. Subject to the terms and conditions of this Agreement, the Loans may be repaid and reborrowed. No Lender shall have any obligation to honor any request for a Loan if doing so would cause (i) such Lender's Pro Rata Share of the Aggregate Revolving Obligations to exceed such Lender's Commitment or (ii) the Aggregate Revolving Obligations would exceed the lesser of (A) the Borrowing Base and (B) the Commitments.

(b) Revolving Notes. Borrowers shall execute and deliver a Revolving Note to each Lender.

(c) Termination and Voluntary Reductions of Commitments. The Commitments shall terminate on the Commitment Termination Date. Borrowers may terminate or from time to time reduce the Commitments by giving not less than 10 Business Days' prior written notice to Administrative Agent. Any request from Borrowers for the reduction of the Commitments must specify the amount of the requested reduction. Each reduction shall be in a minimum amount of $5,000,000 or any greater integral increment of $1,000,000. Borrowers may not reduce the Commitments to an amount less than $20,000,000, except in connection with the termination of the Commitments. All reductions of the Commitments shall be applied on a Pro Rata basis. Except to the extent otherwise agreed in writing by Administrative Agent and the Required Lenders, any request from Borrowers for the termination or reduction of the Commitments shall be irrevocable; provided that, subject to the Borrowers' obligations under Section 15.1(c), Borrowers may condition any prepayment notice on the occurrence of any contemplated Change of Control, Permitted Acquisition, Disposition or refinancing, and may rescind such prepayment notice if such contemplated Change of Control, Permitted Acquisition, Disposition or refinancing shall not be consummated or shall otherwise be delayed.

(d) Over Line; Overadvances.

Any amount by which the Aggregate Revolving Obligations exceed the Commitments shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swingline Loans; second, to the payment of all other Loans that are Base Rate Loans or Term SOFR Index Loans; third, to the payment of any other Loans that are Term SOFR Loans; and, fourth, to Cash Collateralize any LC Obligations; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents. In no event shall Administrative Agent be required to honor any request for a Loan when the Aggregate Revolving Obligations exceed the Commitments or if, after giving effect to the making of such Loan, the Aggregate Revolving Obligations would exceed the Commitments.

Any Overadvance shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swingline Loans; second, to the payment of all other Loans that are Base Rate Loans or Term SOFR Index Loans; third to the payment of any Loans that are Term SOFR Loans; and, fourth, to Cash Collateralize any LC Obligations then outstanding; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents;

Unless otherwise directed in writing by the Required Lenders, Administrative Agent may require Lenders to honor requests by Borrowers for Overadvance Loans (in which event, and notwithstanding anything to the contrary set forth in this Agreement, Lenders shall continue to make Loans up to their Pro Rata Share of the Commitments) and to forbear from requiring Borrowers to cure an Overadvance, if (1) the Overadvance does not continue for a period of more

than thirty (30) consecutive days, following which no Overadvance exists for at least thirty (30) consecutive days before another Overadvance exists, (2) the amount of the Aggregate Revolving Obligations outstanding at any time does not exceed the aggregate of the Commitments at such time, (3) the Revolving Credit Exposure of any individual Lender at any time does not exceed such individual Lender's Commitment, and (4) the Overadvance does not exceed ten percent (10%) of the aggregate amount of the Commitments. In no event shall any Borrower or any other Loan Party be deemed to be a beneficiary of this Section 2.1(d) or authorized to enforce any of the provisions of this Section 2.1(d).

Neither the funding of any Overadvance Loan nor the continued existence of an Overadvance shall constitute any waiver by Administrative Agent or any Lender of any Event of Default which may exist at the time any Overadvance Loan is made or which is caused thereby. Each Lender's obligations under this Section 2.1(d) are absolute, unconditional, and irrevocable and are not subject to any counterclaim, right of setoff, charge back, discount, defense, qualification, or exception, and each Lender shall perform such obligations, as applicable, regardless of whether the Commitments have terminated, an Overadvance exists or any condition precedent to the making of Loans has not been satisfied.

All Overadvance Loans shall be made as Base Rate Loans, or subject to Section 3.1(h), Term SOFR Index Loans.

(e) Protective Advances. From time to time, Administrative Agent may, in its discretion, make one or more Base Rate Loans or, subject to Section 3.1(h), Term SOFR Index Loans to preserve, protect, or defend any Collateral or to increase or improve the likelihood of collecting or obtaining repayment of any Obligations (in each case, if Administrative Agent determines in its discretion that doing so is necessary or desirable) (a "Protective Advance"). Administrative Agent may make a Protective Advance without regard to Availability or the satisfaction of any condition precedent to the making of Loans, unless (A) the Required Lenders have, in writing, revoked Administrative Agent's authority to do so or (B) Administrative Agent has actual knowledge that, after giving effect thereto, the aggregate outstanding principal amount of all Loans made as Protective Advances (i) would exceed $8,000,000 or (ii) would cause the amount of the Aggregate Revolving Obligations outstanding to exceed the aggregate of the Commitments at such time or any individual Lender's Revolving Credit Exposure to exceed such individual Lender's Commitment at such time. If the terms of the foregoing clauses (A) and (B) are not applicable, Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. Each Lender shall participate on a Pro Rata basis in each Protective Advance. The provisions of this Section 2.1(e) are solely for the benefit of Administrative Agent and the Lenders, and none of the Loan Parties may rely on this Section 2.1(e) or have any standing to enforce its terms.

(f) Increases to Commitments. The Commitments may be increased up to an aggregate amount of $10,000,000 (the "Commitment Increase"), provided that: (a) Borrowers shall have given to Administrative Agent at least twenty (20) days' notice of their intention to effect a Commitment Increase and the desired amount of such Commitment Increase; (b) such increase does not increase the amount of the Commitment of any Lender without the written consent of such Lender, in such Lender's discretion; (c) to the extent requested by any Lender, Borrowers execute a new Revolving Note with respect to such Lender reflecting the increase in such Lender's Commitment and any additional documents, instruments or agreements Administrative Agent reasonably deems necessary or desirable in connection therewith (including, without limitation, secretary's certificates and authorizing resolutions); (d) as of the date of such Commitment Increase, both before and immediately after giving effect thereto, no Default or Event of Default shall exist and each of the conditions set forth in Section 7.2 (excluding Section 7.2(d) unless a Letter of Credit has been requested) shall be satisfied; and (e) any such Commitment Increase shall be in a minimum amount of at least $5,000,000 (or such lesser amount which shall be approved by Administrative

Agent) and in integral multiples of $1,000,000 in excess thereof, and no more than two (2) Commitment Increases shall be permitted in total. A Commitment Increase may be effected by one or more of the current Lenders by increasing their Commitment or one or more new lenders that are consented to by Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) solely to the extent the Administrative Agent's consent would be required for an assignment to such Person pursuant to Section 14.1(b)(iii) and constitute an Eligible Assignee joining this Agreement and providing a Commitment. After any Commitment Increase, all of the terms and conditions of the Loan Documents shall apply to the increased amount of the Commitments (including (i) being on a pari passu basis in terms of the Collateral, right of payment and guarantees with the other Loans, (ii) having the same maturity date as the other Commitments, and (iii) having the same Applicable Margin as the other Loans); provided that Borrowers agree to pay to Administrative Agent, Lenders increasing their respective Commitments and new Lenders such arrangement, commitment and other fees and expenses to be agreed between Borrowers and Administrative Agent in connection with such Commitment Increase. Each Lender hereby acknowledges and agrees that the aggregate Commitments may be increased pursuant to this Section 2.1(f) regardless of whether such Lender approves such increase or increases its Commitment hereunder, and Administrative Agent, Borrowers and any Lender increasing or providing a new Commitment may enter into an amendment to this Agreement to give effect to such Commitment Increase and matters incidental thereto without further consent of any other Lender. Administrative Agent shall have no liability to any Borrower or any other Loan Party or to Lenders in connection with any syndication of any Commitment Increase.

2.2. **Reserved**.

2.3. **Swingline Loans; Settlement**.

(a) Making of Swingline Loans. Swingline Lender may (but shall not be obligated to) fund any requested Loan with a Swingline Loan, but only if (i) no Default or Event of Default then exists; (ii) Swingline Lender believes in good faith that all conditions under Section 7.2 to the making of such Swingline Loan have been satisfied or waived by the Required Lenders; (iii) such Loan is not specifically required to be made by all Lenders hereunder; (iv) after giving effect to such Swingline Loan, the aggregate principal amount of all Swingline Loans would not exceed Ten Million Dollars ($10,000,000); and (v) when a Defaulting Lender exists, unless the Swingline Lender has entered into arrangements satisfactory to it and the Borrowers to eliminate the Swingline Lender's risk with respect to the Defaulting Lender's participation in such Swingline Loan, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swingline Loans in a manner satisfactory to the Swingline Lender and the Administrative Agent.

(b) Swingline Note. Each Swingline Loan shall constitute a Loan for all purposes, except that payments thereon shall be made to Swingline Lender for its own account. The obligation of Borrowers to repay Swingline Loans shall be evidenced by the records of Swingline Lender. Promptly upon Swingline Lender's request, Borrowers shall execute and deliver to Swingline Lender a promissory note (in form and substance reasonably satisfactory to Swingline Lender) to evidence the Swingline Loans (such promissory note, as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Swingline Note").

(c) Settlement. To facilitate administration of the Loans, Swingline Lender and the other Lenders agree that settlement among them with respect to Swingline Loans shall take place weekly on such weekly settlement date as the Administrative Agent may elect, from time to time. On each settlement date, settlement shall be made with each Lender in accordance with the Settlement Report delivered by Swingline Lender to the other Lenders. Between settlement dates, Administrative Agent may apply payments on Loans to Swingline Loans, regardless of any designation by Borrowers or any provision herein to the

contrary. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any Swingline Loan may not be settled as provided herein, then each Lender shall be deemed to have purchased from Swingline Lender a participation in each unpaid Swingline Loan in an amount equal to its Pro Rata Share thereof and shall transfer the amount of such participation to Swingline Lender in immediately available funds within one Business Day after Swingline Lender's request therefor. Each Lender's obligations under this Section 2.3(c) are absolute, unconditional, and irrevocable and are not subject to any counterclaim, setoff, defense, qualification, or exception, and each Lender shall perform such obligations, as applicable, regardless of whether the Commitments have terminated, an Overadvance exists, or any condition precedent to the making of Loans has not been satisfied. The provisions of this Section 2.3(c) are solely for the benefit of Swingline Lender and the other Lenders, and none of the Loan Parties may rely on this Section 2.3(c) or have any standing to enforce its terms.

2.4. **Letter of Credit Facility**.

(a) Issuance of Letters of Credit. LC Issuer agrees to issue Letters of Credit from time to time for Borrowers' account on the terms set forth in this Agreement and any Agreement for Irrevocable Standby Letter of Credit to which any Borrower and LC Issuer are parties, including the following:

LC Issuer shall have no obligation to issue any Letter of Credit unless each of the LC Conditions has been satisfied (as determined by LC Issuer and Administrative Agent).

If LC Issuer receives written notice from Administrative Agent or a Lender at least five (5) Business Days before issuance of a Letter of Credit that any LC Condition has not been satisfied, LC Issuer shall have no obligation to issue the requested Letter of Credit (or any other Letter of Credit) until such notice is withdrawn in writing by Administrative Agent or such Lender or until the Required Lenders have waived the applicable LC Condition in accordance with this Agreement. Before receipt of any such notice, LC Issuer shall not be deemed to have knowledge of any failure to satisfy any LC Condition.

Borrowers may request and employ Letters of Credit for the account of any Borrower or any of their Subsidiaries; provided, however, that LC Issuer shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds from which would be made available to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or Sanctioned Country, or in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority shall by its terms purport to retrain or enjoin the LC Issuer from issuing letters of credit generally or such Letter of Credit particularly, or any applicable Law relating to LC Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over LC Issuer shall prohibit, or request that LC Issuer refrain from the issuance of letters of credit generally or any such Letter of Credit particularly or shall impose on LC Issuer with respect to any such Letter of Credit any restriction, reserve or capital requirement (for which LC Issuer is not otherwise compensated hereunder) not in effect on the Closing Date or shall impose on LC Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date which LC Issuer deems material to it, including, in each case, but without limitation, from any Change in Law, or (iii) if the issuance of any such Letter of Credit would violate one or more policies of LC Issuer applicable to letters of credit generally. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that the applicable Borrower or Borrowers need not deliver a new LC Application unless requested to do so by LC Issuer. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of a Borrower, Borrowers shall be obligated to reimburse LC Issuer hereunder for any and all drawings under such Letter of Credit. Borrowers

hereby acknowledge that the issuance of Letters of Credit for the account of any Subsidiaries of Borrowers shall inure to the benefit of Borrowers, and that Borrowers' business will derive substantial benefits from the businesses of such Subsidiaries.

In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, LC Issuer shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation, or communication in whatever form believed by LC Issuer, in good faith, to be genuine and correct and to have been signed, sent, or made by a proper Person. LC Issuer may consult with and employ legal counsel, accountants, and other experts, including Administrative Agent Professionals (at Borrowers' expense) to advise it concerning its obligations, rights, and remedies with respect to the issuance and administration of Letters of Credit and LC Documents and shall be entitled to act (or refuse to act) upon, and shall be fully protected in any action taken (or refused to be taken) in good faith reliance upon, any advice given by such Persons. LC Issuer may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time (after giving effect to any permanent reduction in the stated amount of such Letter of Credit pursuant to the terms of such Letter of Credit); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any LC Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Unless otherwise expressly agreed by the LC Issuer and Borrower Agent when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each Letter of Credit and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

In the event of any conflict between the terms of this Agreement and the terms of any LC Document, the terms of this Agreement shall control, unless otherwise agreed by Administrative Agent and LC Issuer.

Without limitation of the foregoing provisions, in the event that any Lender is at such time a Defaulting Lender, the LC Issuer shall have no obligation to issue any Letter of Credit unless LC Issuer has entered into arrangements satisfactory to LC Issuer (in its sole discretion) with the Borrowers or such Defaulting Lender to eliminate such LC Issuer's Fronting Exposure with respect to such Defaulting Lender (after giving effect to any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of the LC Obligations in a manner satisfactory to LC Issuer and Administrative Agent.

(b) Reimbursement; Participations.

On the date LC Issuer honors any draw under a Letter of Credit (each such date, a "Reimbursement Date"), Borrowers shall reimburse LC Issuer the amount paid by LC Issuer on account of such draw, together with interest from the Reimbursement Date until paid by Borrowers (at the interest rate for Base Rate Loans or, subject to Section 3.1(h), Term SOFR Index Loans).

The obligation of Borrowers to reimburse LC Issuer for any draw made under a Letter of Credit is absolute, unconditional, and irrevocable, and Borrowers shall make such reimbursement without regard to any lack of validity or enforceability of such Letter of Credit or the existence of any claim, setoff, defense, or other right Borrowers may have at any time against the beneficiary of such Letter of Credit. On each Reimbursement Date, Borrowers shall be deemed to have requested a Borrowing of Base Rate Loans or, subject to Section 3.1(h), Term SOFR Index Loans in an amount necessary to pay the amounts due to LC Issuer on such date (regardless of whether Borrower Agent submits a Notice of Borrowing therefor), and each Lender shall fund its Pro Rata Share of such Borrowing, without right of setoff, counterclaim, discount, charge back or other defense and regardless of whether the Commitments have terminated, an Overadvance exists or any condition precedent to the making of Loans has not been satisfied.

Upon the issuance of a Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased from LC Issuer, without recourse or warranty, an undivided interest and participation in all LC Obligations relating to such Letter of Credit in an amount equal to such Lender's Pro Rata Share thereof. If LC Issuer honors any draw under a Letter of Credit and Borrowers do not reimburse the amount thereof on the Reimbursement Date, Administrative Agent (at LC Issuer's request) shall promptly notify Lenders, and each Lender shall promptly (within one Business Day) unconditionally pay to Administrative Agent, for the benefit of LC Issuer, such Lender's Pro Rata Share of such draw at the Principal Office of Administrative Agent. Upon request by a Lender that has made or is making any such payment, LC Issuer shall furnish such Lender with copies of any Letters of Credit and LC Documents in its possession at such time.

The obligations of each Lender to make payments to Administrative Agent for the account of LC Issuer in connection with LC Issuer's honoring any draw under a Letter of Credit are absolute, unconditional, and irrevocable and are not subject to any counterclaim, right of setoff, defense, discount, charge back, qualification, or exception, and such Lender shall perform such obligations, as applicable, (A) irrespective of any lack of validity or unenforceability of any Loan Documents; (B) regardless of whether the Commitments have been terminated, an Overadvance exists, any condition precedent to the making of any Loan has not been satisfied; (C) regardless of whether any draft, certificate, or other document presented under a Letter of Credit is determined to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; and (D) regardless of the existence of any setoff or defense that any Loan Party may have with respect to any Obligations. LC Issuer assumes no responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. LC Issuer makes no representation, warranty, or guaranty, express or implied, with respect to the Collateral, LC Documents, or any Loan Party. LC Issuer is not responsible for (A) any recitals, statements, information, representations, or warranties contained in, or for the execution, validity, genuineness, effectiveness, or enforceability of, any LC Documents; (B) the validity, genuineness, enforceability, collectibility, value, or sufficiency of any Collateral or the perfection of any Lien therein; or (C) the assets, liabilities, financial condition, results of operations, business, creditworthiness, or legal status of any Loan Party.

No LC Issuer Indemnitee shall be liable to Administrative Agent, any Lender, or any other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment. LC Issuer shall have no liability to any Lender if LC Issuer refrains from taking any action, or refuses to take any action, under any Letter of Credit or LC Documents until it receives written instructions from the Required Lenders.

(c) Cash Collateral. If any LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (i) that an Event of Default exists; (ii) after the Commitment Termination Date; or (iii) within twenty (20) Business Days before the Stated Commitment Termination Date, then Borrowers shall, at LC Issuer's or Administrative Agent's request, Cash Collateralize the stated amount of all outstanding Letters of Credit and pay to LC Issuer the amount of all other LC Obligations which are then outstanding. If Borrowers fail to provide Cash Collateral as required herein, Lenders may (and, upon written request of Administrative Agent, shall) advance, as Loans, the amount of the Cash Collateral required (regardless of whether the Commitments have terminated, an Overadvance exists, or any condition precedent to the making of any Loan has not been satisfied). Without limitation of the foregoing, at any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or LC Issuer (with a copy to the Administrative Agent) the Borrowers shall Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure after first giving effect to any Cash Collateral provided by the Defaulting Lender.

SECTION 3.
INTEREST, FEES AND CHARGES

3.1. **Interest**.

(a) Interest Rates. The Obligations shall bear interest (i) with respect to Base Rate Loans, at the Base Rate plus the Applicable Margin; (ii) with respect to Term SOFR Loans, at the Adjusted Term SOFR for the applicable Interest Period plus the Applicable Margin; (iii) with respect to the Term SOFR Index Loans, at the Term SOFR Index Rate plus the Applicable Margin; and (iv) with respect to Swingline Loans, at the Swingline Rate (unless and until converted to a Loan pursuant to the terms of Section 2.3), and (iv) with respect to any other Obligations that are then due and payable (including, to the extent permitted by law, interest not paid when due), at the Base Rate plus the Applicable Margin for Base Rate Loans or, subject to Section 3.1(h), the Term SOFR Index Rate plus the Applicable Margin for Term SOFR Index Loans, unless and except to the extent that another interest rate is prescribed therefor in the Loan Documents evidencing such Obligations; provided, however, that the Obligations shall bear interest at the Default Rate (whether before or after any judgment) (A) at all times during the existence of any Loan Party's Insolvency Proceeding and (B) if so elected by Administrative Agent or the Required Lenders, at any time during the existence of any Event of Default. Each Borrower acknowledges that the cost and expense to Administrative Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Administrative Agent and Lenders therefor.

(b) Accrual of Interest. 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 or Term SOFR Index Loan being converted from a Term SOFR Loan, the date of conversion of such Term SOFR Loan to such Base Rate Loan or Term SOFR Index 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 or Term SOFR Index Loan being converted to a Term SOFR Loan, the date of conversion of such Base Rate Loan or Term SOFR Index Loan to such Term SOFR 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 (1) day's interest shall be paid on that Loan.

(c) Payment Dates. Interest accrued on the Loans shall be due and payable (i) in arrears, on each Interest Payment Date, (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid, and (iii) at maturity. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **ON DEMAND**. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents or, if no payment due date is provided therein, then, **ON DEMAND**.

(d) Interest Rate Determination and Disclosure. As soon as practicable after 10:00 a.m. 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 each Term SOFR Loan for which an interest rate is then being determined for the applicable Interest Period, and shall promptly give notice thereof in writing to Borrower Agent and each Lender, in each case, to the extent that each requests same.

(e) Certain Provisions Regarding Term SOFR Index Loans and Term SOFR Loans.

Borrowers may, on any Business Day, subject to delivery of a Notice of Conversion/Continuation (which notice may be transmitted by electronic mail subject to the limitations set forth in Section 16.1(d)) and the terms of Section 3.1(h), elect to (A) convert all or any portion of any Base Rate Loans or Term SOFR Index Loans to Term SOFR Loans; (B) convert all or any portion of any Term SOFR Loans to Base Rate Loans or Term SOFR Index Loans; or (C) convert Term SOFR Index Loans to Base Rate Loans; or (D) at the end of its Interest Period, continue any Term SOFR Loan as a Term SOFR Loan; provided, however, that Administrative Agent may impose further limits on the amounts of any partial conversions or continuations from time to time, and, provided, further, that, during any Default or Event of Default, Administrative Agent may (and, at the direction of the Required Lenders, shall) declare that no Loan may be made as, converted into, or continued as, a Term SOFR Loan or Term SOFR Index Loans.

Whenever Borrowers desire to convert any Loan to a Term SOFR Loan or continue any Loan as a Term SOFR Loan, Borrower Agent shall give Administrative Agent a Notice of Conversion/Continuation (which notice may be transmitted by electronic mail subject to the limitations set forth in Section 16.1(b)) no later than 11:00 a.m. at least three (3) U.S. Government Securities Business Days before the requested date of such conversion or continuation. Promptly after receiving any such notice, Administrative Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the date of such conversion or continuation (which date shall be a Business Day), and the duration of the Interest Period (which, if not specified, shall be deemed to be one (1) month). If, upon the expiration of any Interest Period of any Term SOFR Loan, Borrowers shall have failed to deliver a Notice of Conversion/Continuation or a request with respect to such Term SOFR Loan, Borrowers shall be deemed to have elected to convert such Term SOFR Loan into a Base Rate Loan or, to the extent provided in Section 3.1(h), a Term SOFR Index Loan.

(f) Interest Periods. In connection with the making, conversion, or continuation of any Term SOFR Loan, Borrowers shall select an interest period (an "Interest Period") therefor, which Interest Period shall be one (1) or three (3) months; provided, however that:

each Interest Period shall commence on the date the Loan is made or continued as, or converted into, a Term SOFR Loan, and shall expire on the numerically corresponding day in the final calendar month;

if any Interest Period commences on a day for which there is no corresponding day in the final calendar month or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month and, if any Interest Period would expire on a day that is not a Business Day, the Interest Period shall expire on the next Business Day; and

no Interest Period shall extend beyond the Stated Commitment Termination Date.

(g) Number and Amount of Term SOFR Loans; Determination of Rate. Each Borrowing of Term SOFR Loans when made shall be in a minimum amount of $1,000,000 or any greater integral multiple of $500,000. No more than four (4) Borrowings of Term SOFR Loans may be outstanding at any time, and all Term SOFR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose.

(h) Additional Provisions Relating to Term SOFR Index Loans. Notwithstanding anything herein that may be construed to the contrary, but subject to subsections (a) and (b) of Section 15.1, all Swingline Loans shall constitute Term SOFR Index Loans and, at any time that Regions Bank is the sole Lender hereunder, all Loans shall be made or otherwise bear interest as Term SOFR Index Loans. Upon there being more than one Lender, all Term SOFR Index Loans (other than Swingline Loans) shall convert, automatically and without notice to any Person, into Base Rate Loans (unless Lenders otherwise consent in writing or Borrowers convert such Term SOFR Index Loans to Term SOFR Loans in accordance with the other terms hereof).

3.2. **Fees**.

(a) Upfront Fees. On the Closing Date, Borrowers shall pay to Administrative Agent, for the account of the Lenders, the upfront fees as set forth in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(b) Commitment Fee. On the first day of each calendar month following the Closing Date and on the Commitment Termination Date, Borrowers shall pay to Administrative Agent, in arrears and for the account of the Lenders, a commitment fee in an amount equal to the Commitment Fee Percentage applicable with respect to the immediately preceding calendar month times the average amount by which the Commitments exceeded the Aggregate Revolving Obligations (other than Swingline Loans) on each day during the immediately preceding calendar month; provided that (1) no commitment fee shall accrue on the Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) any commitment fee accrued with respect to the Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrowers so long as such Lender shall be a Defaulting Lender.

(c) LC Fees. On the first day of each calendar month following the date that any Letter of Credit is issued (or renewed or extended), Borrowers shall pay (i) to Administrative Agent, in arrears and for the account of the Lenders a letter of credit fee in an amount equal to (A) a rate per annum equal to the Applicable Margin in effect for Loans made as Term SOFR Loans plus, at all times when the Default Rate with respect to Loans is in effect, 2.00% per annum, times (B) the initial face amount of such Letter of Credit, times (C) the initial stated duration of such Letter of Credit (provided that no letter of credit fee shall accrue in favor of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and except as otherwise provided in Section 4.2(a)(iii), any letter of credit fee accrued in favor of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrowers so long as such Lender shall be a Defaulting Lender), and (ii) directly to each LC Issuer for its own account a fronting fee (A) with respect to each commercial Letter of Credit or any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrowers and the LC Issuer, computed on the amount of such commercial Letter of Credit or the amount of such increase, as applicable, and payable upon the issuance of such commercial Letter of Credit or effectiveness of such amendment, as applicable, and (C) with respect to each standby Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and payable monthly in arrears on the first day of each calendar month following the date that any Letter of Credit is issued (or renewed or extended), on its expiration date and thereafter on demand. In

addition, the Borrowers shall pay directly to the LC Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the LC Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable. All of the foregoing fees shall be fully earned upon issuance of the Letter of Credit, or any amendment thereto, as applicable, and none of such fees shall be refundable, in whole or in part, regardless of any cancellation, termination, or draw upon the Letter of Credit.

(d) Administrative Agent Fees. Borrowers shall pay to Administrative Agent, for its own account, the fees payable to Administrative Agent which are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(e) Other Fees. Borrowers shall pay to each applicable Person the fees payable to such Person which are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(f) Calculation and Distribution of Interest, Fees, Charges, and Other Amounts. Unless otherwise specifically provided herein or in any other Loan Document, interest, fees, charges and other amounts which are calculated on a per annum basis shall be calculated as follows: (i) for interest determined by reference to the Base Rate, a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be, and (ii) for all other such computations of interest, fees, charges and other amounts, a year of three hundred sixty (360) days, in each case for the actual number of days elapsed in the period during which it accrues. Each determination by Administrative Agent of any interest, fees, charges or interest rate hereunder or under any other Loan Document shall be final, conclusive, and binding for all purposes, absent manifest error. All fees payable under this Section 3.2 are not, and shall not be deemed to be, interest or any other charge for the use, forbearance, or detention of money. A certificate as to amounts payable by Borrowers under Sections 15 and 16.4, timely submitted to Borrower Agent by Administrative Agent or the affected Lender, as applicable, shall be final, conclusive, and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the applicable Person within ten (10) days following receipt of such certificate. All fees shall be fully earned when due and shall not be subject to rebate, refund, or proration, in whole or in part. All fees paid to Administrative Agent for the account of the Lenders, LC Issuer, or any other Person shall be paid by Administrative Agent to such Persons promptly upon its receipt thereof and, with respect to fees payable for the account of the Lenders, in accordance with each such Lender's Pro Rata Share thereof.

3.3. **Maximum Interest**

. Any term or provision in this Agreement or in any other Loan Document to the contrary notwithstanding, 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 Administrative Agent, LC Issuer or any Lender shall receive interest in an amount that exceeds the maximum rate, then such excess shall be applied, first, to the principal of the Obligations second, if Administrative Agent or the Required Lenders so elect, to Cash Collateralize all LC Obligations, and then to Borrowers or such other Person lawfully entitled thereto. In determining whether the interest contracted for or charged or received by Administrative Agent, LC Issuer, 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 4.
LOAN ADMINISTRATION

4.1. **Manner of Borrowing and Funding Loans**.

(a) Notice of Borrowing. Borrowers may request new Loans (including Swingline Loans), by delivering to Administrative Agent at its Lending Office a Notice of Borrowing (which notice may be transmitted by electronic mail subject to the limitations set forth in Section 16.1(d)). If the requested Loan is to be a Base Rate Loan or a Term SOFR Index Loan, then, such Notice of Borrowing must be received by Administrative Agent at or before 11:00 a.m. (or in the case of Swingline Loans, such later time as the Swingline Lender may agree) on the Business Day on which Borrowers desire such Loan to be made. If the requested Loan is to be a Term SOFR Loan, then such Notice of Borrowing must be received by Administrative Agent at or before 11:00 a.m. on the third U.S. Government Securities Business Day preceding the date on which Borrowers desire such Loan to be made. Any Notice of Borrowing received by Administrative Agent after 11:00 a.m. on a Business Day (or, as applicable, U.S. Government Securities Business Day) shall be deemed to have been received on the immediately following Business Day. Each Notice of Borrowing for a Loan shall specify (i) the amount of the Borrowing; (ii) the requested funding date (which must be a Business Day or, as applicable, a U.S. Government Securities Business Day); (iii) whether the Borrowing is requested to be made as a Swingline Loan, (iv) whether the Borrowing is requested to be made as a Base Rate Loan, Term SOFR Index Loan, or Term SOFR Loan and (v) in the case of a Term SOFR Loan, the duration of the applicable Interest Period. If Borrowers do not specify an Interest Period with respect to any Notice of Borrowing for a Term SOFR Loan, then, the Interest Period for such Loan shall be deemed to be one (1) month.

(b) Deemed Requests for Funding. Each Notice of Borrowing for a Loan received by Administrative Agent shall be irrevocable.

The becoming due of any Obligations shall be deemed to be a request for Base Rate Loans or, to subject to Section 3.1(h), a Term SOFR Index Loan, on the due date therefor in the amount of such Obligations, and, upon the making of such Loan, Administrative Agent shall apply the proceeds thereof in direct payment of such Obligations.

If Borrowers have established a controlled disbursement Deposit Account with Administrative Agent (or any of its Affiliates), then the presentation for payment of any check or other item of payment drawn on such Deposit Account at a time when there are insufficient funds on deposit therein to pay the same shall be deemed to be a request for Base Rate Loans or, to subject to Section 3.1(h), a Term SOFR Index Loan, on the date of such presentation in the amount of the checks and such other Payment Items presented for payment. The proceeds of such Loans may be disbursed directly to the controlled disbursement Deposit Account or other appropriate Deposit Account.

In order to facilitate the borrowing of Swingline Loans, the Borrowers and the Swingline Lender may mutually agree in their sole discretion to, and are hereby authorized to, enter into an auto borrow agreement in form and substance satisfactory to the Borrowers, the Swingline Lender and the Administrative Agent (the "Auto Borrow Agreement") providing for the automatic advance by the Swingline Lender of Swingline Loans under the conditions set forth in the Auto Borrow Agreement, subject to the conditions set forth therein and herein. At any time an Auto Borrow Agreement is in effect, advances under the Auto Borrow Agreement shall be deemed Swingline Loans for all purposes hereof, except that Borrowings of Swingline Loans under the Auto Borrow Agreement shall be made in accordance with the Auto Borrow Agreement. For purposes of determining the total amount Loans outstanding at any time during which an Auto Borrow

Agreement is in effect, the outstanding amount of all Swingline Loans shall be deemed to be the sum of the outstanding amount thereof at such time plus the maximum amount available to be borrowed under such Auto Borrow Agreement at such time.

(c) Fundings by Lenders. Except for Borrowings that Swingline Lender elects to make as Swingline Loans, Administrative Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon on the requested funding date for Base Rate Loans and Term SOFR Index Loans or by 3:00 p.m. at least Three (3) U.S. Government Securities Business Days before any requested funding of Term SOFR Loans. Each Lender shall fund to Administrative Agent such Lender's Pro Rata Share of each requested Borrowing at the Principal Office of Administrative Agent to the account specified by Administrative Agent in immediately available funds no later than 2:00 p.m. on the requested funding date, unless Administrative Agent's notice is received after the times provided above, in which case each Lender shall fund its Pro Rata Share by 11:00 a.m. on the next Business Day or, as applicable, U.S. Government Securities Business Day. Subject to its receipt of such amounts from Lenders, Administrative Agent shall disburse the proceeds of the Loans in the lawful manner directed by Borrower Agent. Unless Administrative Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its Pro Rata Share of a Borrowing, Administrative Agent may assume that such Lender has deposited or promptly will deposit its Pro Rata Share with Administrative Agent, and Administrative Agent may disburse a corresponding amount to Borrowers. If all or a portion of a Lender's Pro Rata Share of any Borrowing is not in fact received by Administrative Agent, then Borrowers agree to repay to Administrative Agent **ON DEMAND** the amount of any deficiency, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

4.2. **Defaulting Lender**

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(a) 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:

Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 16.2(a).

Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts (other than fees which any Defaulting Lender is not entitled to receive pursuant to Section 4.2(a)(iii)) received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, as a scheduled payment or by prepayment, at maturity, pursuant to Section 12.2 or otherwise, and including any amounts made available to Administrative Agent by that Defaulting Lender pursuant to Section 16.6), 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 that Defaulting Lender to Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to LC Issuer or the Swingline Lender hereunder; third, to Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 4.6; fourth, as Borrower Agent may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that 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 Agent to be held in a non-interest bearing Deposit Account and released in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize LC Issuer'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 4.6;

sixth, to the payment of any amounts owing to the Lenders, LC Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, LC Issuer or the Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrowers, or any of them, as a result of any judgment of a court of competent jurisdiction obtained by such Borrower or Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, if (x) such payment is a payment of the principal amount of any Loans or LC Obligations in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or LC Obligations were made at a time when the conditions set forth in Section 7.2 were satisfied or waived, such payment shall be applied solely to the pay the Loans of, and LC Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Obligations and Swingline Loans are held by the Lenders Pro Rata in accordance with their Commitments without giving effect to Section 4.2(a)(iv). 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 4.2(a)(ii) shall be deemed paid to (and the underlying obligations satisfied to the extent of such payment) and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

Certain Fees.

(A) Such Defaulting Lender shall not be entitled to receive any commitment fee, any fees with respect to Letters of Credit (except as provided in clause (B) below) or any other fees hereunder for any period during which that Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive fees with respect to Letters of Credit for any period during which that Lender is a Defaulting Lender only to the 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 4.6.

(C) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrowers 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 LC Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to LC Issuer or Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to LC Issuer's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Obligations and Swingline Loans 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) the conditions set forth in Section 7.2 are satisfied at the time of such reallocation (and, unless Borrowers shall have otherwise notified Administrative Agent at such time, Borrowers shall be

deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause such Lender's Revolving Credit Exposure at such time to exceed such Non-Defaulting Lender's Commitment. 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.

Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize LC Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.4.

(b) Defaulting Lender Cure. If Borrower Agent, Administrative Agent, Swingline Lender and LC Issuer 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 Loans 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 and Swingline Loans to be held Pro Rata by the Lenders in accordance with the Commitments (without giving effect to Section 4.2(a)(iv), 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 Borrowers 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's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) LC Issuer shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

4.3. **Borrower Agent**

. Each Loan Party hereby designates Parent ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates and Interest Periods, delivery or receipt of communications (including any Notice of Borrowing, Notice of Conversion/Continuation, any electronic mail notice or request for a Borrowing or the conversion, or continuation of any Loan, or any request for the issuance of any Letter of Credit), preparation and delivery of Borrowing Base Certificates and all attachments thereto, financial reports and Compliance Certificates, receipt and payment of Obligations, requests for waivers, amendments, or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Administrative Agent, LC Issuer, or any Lender. Borrower Agent hereby accepts such appointment. Administrative Agent, LC Issuer, and the Lenders may give any notice to, or communication with, a Loan Party hereunder or under any other Loan Document to or with Borrower Agent on behalf of such Loan Party. Each Loan Party agrees that any notice, election, communication, representation, agreement, or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it. Administrative Agent, LC Issuer, and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, the terms of this Section 4.3, provided that nothing contained herein shall limit the effectiveness of, or the right of Administrative Agent, LC Issuer or any Lender to rely upon, any notice (including without limitation a borrowing or conversion notice), instrument,

document, certificate, acknowledgment, consent, direction, certification or any other action delivered by any Loan Party pursuant to this Agreement or any other Loan Document.

4.4. **One Obligation**

. The Loans, LC Obligations, and other Obligations shall constitute one general, joint and several obligation of Loan Parties and (unless otherwise expressly provided in any Loan Document) shall be secured by Administrative Agent's Lien upon all Collateral; provided, however, that Administrative Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Loan Party to the extent of any Obligations jointly or severally owed by such Loan Party.

4.5. **Effect of Termination**

. On the Commitment Termination Date, all Obligations shall be immediately due and payable, in full, and each Lender may terminate its and its Affiliates' Bank Products (including, but only with the consent of Administrative Agent, any Treasury Services). All undertakings of all Loan Parties contained in the Loan Documents shall survive any termination, and Administrative Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents, until Payment in Full of all Obligations. Notwithstanding Payment in Full of all Obligations, Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Administrative Agent receives a written agreement in form and substance reasonably satisfactory to Administrative Agent (which may be in the form of a payoff letter), executed by Loan Parties (or their successors in interest), indemnifying Administrative Agent and Lenders from any such damages. The last paragraph of the definition of "Applicable Margin," 2.4, 13, 15.1, 15.2, 15.3, 16.3, 16.4, and 16.23, this section, the obligation of each Loan Party and each Lender with respect to each indemnity given by it in any Loan Document, and each other term, provision, or section of this Agreement or any other Loan Document which states as much, shall survive Payment in Full of the Obligations and any release or termination relating to this Agreement, the other Loan Documents, or the credit facility established hereunder or thereunder.

4.6. **Cash Collateral**

. At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of Administrative Agent or LC Issuer (with a copy to Administrative Agent) Borrowers shall Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure (after giving effect to Section 4.2(a)(iv) and any Cash Collateral provided by the Defaulting Lender). Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to Administrative Agent, for the benefit of LC Issuer, and agrees to maintain, a perfected first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Obligations, to be applied in the manner set forth 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 LC Issuer as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, Borrowers 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). Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 4.6 or Section 4.2 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of LC Obligations (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. Cash Collateral (or the appropriate portion thereof) provided to reduce any LC Issuer's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 4.6 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 LC Issuer that there exists excess Cash

Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 4.6 may be otherwise applied in accordance with Section 5.5) but shall be released upon the waiver of such Default or Event of Default in accordance with the terms of this Agreement, and (y) the Person providing Cash Collateral and LC Issuer or Swingline Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other Obligations.

4.7. **Reserves**

. Notwithstanding anything to the contrary set forth herein (including, without limitation, in the definition of Reserves or its component definitions), any Reserve (including the amount of such Reserve) shall (a) bear a reasonable relationship to the circumstances, conditions, events, or contingencies that are the basis for such Reserve and (b) shall be without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria or factored into any of the advance rate percentages under the Borrowing Base. The Administrative Agent agrees to give the Borrower three (3) Business Days' prior written notice of the establishment of any new category (as opposed to amount) of Reserve, or any material increase in the amount of any Reserve (during which period the Administrative Agent shall be reasonably available to discuss any such proposed Reserve or modification to any existing Reserve with the Borrower and the Borrower may take action as may be required so that the event, condition, or matter that is the basis for such Reserve or modification no longer exists, in a manner acceptable to the Administrative Agent in its Permitted Discretion); provided that, such prior notice shall not be required (i) if an Event of Default then exists, (ii) if such modifications to such Reserve result solely by virtue of mathematical calculations of the amount of such Reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent reserves and dilution), or (iii) if an event having a Material Adverse Change on the Borrowers and the Guarantors taken as a whole (or on the ability of the Lenders to realize upon the Collateral or the value of the Collateral) has occurred or would result if such Reserve is not immediately established or modified.

SECTION 5.
PAYMENTS

5.1. **General Payment Provisions**

. All payments of Obligations shall be made in Dollars, without right of offset, counterclaim, discount, charge back or other defense of any kind, free of (and without deduction for) any Taxes except as provided in Section 15.3 and except for any withholding or deduction that is required to be made under applicable Law, and in immediately available funds, not later than 12:00 noon on the due date to the Principal Office of Administrative Agent, the LC Issuer, the Lenders or other obligee. Any payment after such time shall be deemed made on the next Business Day. Any payment of a Term SOFR Loan before the end of its Interest Period shall be accompanied by all amounts due under Section 15.1(c). Any prepayment of Loans (whether mandatory or voluntary) shall be applied first to Base Rate Loans and Term SOFR Index Loans, and, then, to Term SOFR Loans. Subject to the provisos set forth in Section 3.1(f), in respect of "Interest Period," whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of any applicable fee hereunder, but such payment shall be deemed to have been made on the date therefor for all other purposes hereunder.

5.2. **Repayment of Loans**.

(a) Commitment Termination Date; Prepayments of Loans. Loans shall be due and payable in full on the Commitment Termination Date. Loans may be prepaid from time to time, without penalty or premium. Within five (5) Business Days of any sale of assets or series of related sales of assets permitted under Section 10.4(e), or receipt of any Net Insurance/Condemnation Proceeds, the Borrowers shall

immediately apply such Net Cash Proceeds or Net Insurance/Condemnation Proceeds to prepay the Loans (or if the Loans are $0.00, to Cash Collateralize LC Obligations); provided that (i) so long as an Account Control Period does not then exist, such prepayment (or Cash Collateralization) shall only be required to the extent such Net Cash Proceeds or Net Insurance/Condemnation Proceeds exceed $5,000,000 in the aggregate or to the extent that such prepayment would eliminate an Overadvance or cause the Aggregate Revolving Obligations to equal the Commitments, and (ii) no such prepayment (or Cash Collateralization) shall be required with respect to Proceeds of Term Loan Priority Collateral prior to the Payment in Full of Term Loan Debt (as defined in the Intercreditor Agreement).

(b) Concentration Account. At any time during an Account Control Period, the collected balance in the main Concentration Account as of the end of each Business Day shall, at the beginning of the next Business Day, be applied, first, to the principal balance of the Loans (unless such funds are otherwise required to be applied to some other portion of the Obligations in accordance with this Agreement) and then, to other Obligations, as determined by Administrative Agent. If, as a result of such application, a credit balance exists, the balance shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Default or Event of Default exists. Except to the extent otherwise expressly provided herein, each Borrower irrevocably waives the right to direct the application of any payments or Collateral Proceeds at any time during an Account Control Period, and agrees that at any time during an Account Control Period Administrative Agent shall have the continuing, exclusive right to apply, reverse and reapply the same against the Obligations, in such order or manner as Administrative Agent deems advisable. Any of the foregoing to the contrary notwithstanding, Administrative Agent may charge back to any Concentration Account (or any other account of a Borrower maintained with Administrative Agent) a Payment Item which is returned for inability to collect, plus accrued interest during the period of Administrative Agent's provisional credit for such item before receiving notice of dishonor. Administrative Agent and Lenders assume no responsibility to Borrowers for any Concentration Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

(c) Other Payments. Borrowers shall also pay the Loans to the extent otherwise required pursuant to the terms of this Agreement and the other Loan Documents.

5.3. **Reserved**.

5.4. **Payment of Other Obligations**

. Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **ON DEMAND**.

5.5. **Post-Default Allocation of Payments**.

(a) Allocation. Notwithstanding anything herein to the contrary, during an Event of Default, if so directed by the Required Lenders or at Administrative Agent's discretion, monies to be applied to the Obligations, whether arising from payments by Loan Parties, realization on Collateral, setoff, or otherwise, shall be allocated as follows:

first, to all costs and expenses, including Extraordinary Expenses, owing to Administrative Agent in its capacity as Administrative Agent;

second, to all costs and expenses reimbursable by Borrowers owing to LC Issuer and the Lenders;

third, to all amounts owing to Swingline Lender on Swingline Loans (including principal and interest);

fourth, to all amounts owing to LC Issuer with respect to that portion of the LC Obligations which constitutes unreimbursed draws under Letters of Credit;

fifth, to all Obligations constituting fees to the extent not already paid above (other than any then constituting Bank Product Obligations);

sixth, to all Obligations constituting interest to the extent not already paid above (other than any then constituting Bank Product Obligations);

seventh, to (A) all Loans, (B) LC Obligations (including the Cash Collateralization of that portion of the LC Obligations constituting undrawn amounts under outstanding Letters of Credit, and (C) Bank Product Obligations, if and to the extent that the applicable Bank Product Provider thereof has delivered a Secured Party Designation Notice to Administrative Agent, up to the amount of (if any) of Reserves that the applicable Bank Product Provider has in writing requested that Administrative Agent implement in regard thereto as of the time of determination (whether or not any such Reserve has been implemented);

eighth, to all other Bank Product Obligations described in sub-clause (C) of clause (vii) above, to the extent not already paid;

ninth, to all other Obligations, including Bank Product Obligations, if and to the extent not already paid pursuant to either clause (vii) or clause (viii); and

lastly, the balance, if any, after all of the Obligations have been indefeasibly Paid in Full, to the Borrowers or as otherwise required under applicable Laws or the Intercreditor Agreement.

Amounts shall be applied to each of the foregoing categories of Obligations in the order presented above before being applied to the following category. Where applicable, all amounts to be applied to a given category will be applied on a pro rata basis among those entitled to payment in such category. In determining the amount to be applied to Obligations within any given category, the pro rata share of each Bank Product Provider shall be based on the lesser of (x) the amount presented in the most recent Secured Party Designation Notice from such Bank Product Provider to Administrative Agent and (y) the actual amount of such Obligations, calculated in accordance with a methodology presented to and approved by Administrative Agent by such Bank Product Provider to Administrative Agent. Administrative Agent has no duty to investigate the actual amount of any such Obligations and, instead, is entitled to rely in all respects on the Bank Product Provider's reasonably detailed written accounting thereof. If such Bank Product Provider does not submit such accounting of its own accord and in a timely manner, Administrative Agent, may instead rely on any prior accounting thereof. No Secured Party Designation Notice (including any to increase the maximum dollar amount thereof) shall be effective if received by Administrative Agent during the existence of an Event of Default (until such Event of Default is waived in accordance with the terms of this Agreement) or to the extent a Reserve equal to such amount (if instituted by Administrative Agent after giving effect thereto) would cause an Overadvance. The allocations set forth in this Section are solely to determine the rights and priorities of the Secured Parties among themselves and may be changed by agreement among them without the consent of any Loan Party. No Loan Party is entitled to any benefit under this Section or has any standing to enforce this Section. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or such Loan Party's assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section 5.5(a).

(b) Erroneous Application. Administrative Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made

in error, the sole recourse of any Lender or other Person to which such amount ought to have been made shall be to recover the amount from the Person which actually received it (and, if such amount was received by any Secured Party, then such Secured Party, by accepting the benefits of this Agreement, agrees to return it).

5.6. **Sharing of Payments**

. If any Lender shall, by exercising any right of setoff, charge back or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such Obligations greater than its Pro Rata Share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Loans and such other Obligations of the other Lenders, or make such other adjustments as shall be equitable (as determined by Administrative Agent in its commercially reasonable judgment), so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided, however, that:

if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;

the provisions of this paragraph shall not be construed to apply to (A) any payment made by a Loan Party pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Commitments, Loans, or participations in Swingline Loans or LC Obligations to any Transferee; and

no Lender or Participant may exercise any right of setoff except as provided in Section 16.6.

5.7. **Nature and Extent of each Borrower's Liability**.

(a) Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Administrative Agent, LC Issuer and the Lenders the prompt payment and performance of, all Obligations and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Payment in Full of the Obligations (or as otherwise provided in Section 16.29), and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination, or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument, or agreement to which any Loan Party is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent, or indulgence of any kind by Administrative Agent, LC Issuer, or any Lender with respect thereto; (iii) the existence, value, or condition of, or failure to perfect a Lien, or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by Administrative Agent, LC Issuer, or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Loan Party or Subsidiary; (v) any election by Administrative Agent, LC Issuer, or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Loan Party, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Administrative Agent, LC Issuer or any Lender against any Loan Party for the repayment of any Obligations under Section 502 of the

Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Payment in Full of all Obligations.

(b) Waivers.

Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Administrative Agent or any other Secured Party to marshal assets or to proceed against any Loan Party, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor, or accommodation co-obligor other than Payment in Full of all Obligations. It is agreed among each Borrower, Administrative Agent, LC Issuer and the Lenders that the provisions of this Section 5.7 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Administrative Agent, LC Issuer and the Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business and can be expected to benefit such business.

Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Section 5.7. If, in taking any action in connection with the exercise of any rights or remedies, Administrative Agent, LC Issuer or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Loan Party or other Person, whether because of any applicable Law pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Loan Party might otherwise have had. Any election of remedies that results in denial or impairment of the right of Administrative Agent, LC Issuer or any Lender to seek a deficiency judgment against any Loan Party shall not impair any Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as non-judicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Administrative Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Administrative Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 5.7, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Administrative Agent, LC Issuer or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

Notwithstanding anything herein to the contrary, each Borrower's liability under this Section 5.7 shall be limited to the greater of (A) all amounts for which such Borrower is primarily liable, as described below and (B) such Borrower's Allocable Amount.

If any Borrower makes a payment under this Section 5.7 of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower,

exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately before such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this Section 5.7 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any other applicable Debtor Relief Law.

Nothing contained in this Section 5.7 shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then remade or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses, and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.

(d) Joint Enterprise. Each Borrower has requested that Administrative Agent, LC Issuer and the Lenders make this credit facility available to Borrowers on a combined basis, to finance Borrowers' business most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and Borrowers believe that consolidation of their credit facilities will enhance the borrowing power of each Borrower and ease the administration of their relationship with credit providers (including Administrative Agent, LC Issuer and the Lenders), all to the mutual advantage of Borrowers. Borrowers acknowledge and agree that Administrative Agent, LC Issuer and Lenders' willingness to extend credit to Borrowers and to administer the Collateral on a combined basis, as set forth herein, is done solely as an accommodation to Borrowers and at Borrowers' request.

(e) Subordination. Each Borrower hereby subordinates any claims, including any rights at law or in equity, to payment, subrogation, reimbursement, exoneration, contribution, indemnification, or setoff, that it may have at any time against any other Loan Party, howsoever arising, to Payment in Full of all Obligations.

(f) Keepwell. Borrowers hereby agree to cause each Qualified ECP Guarantor to jointly and severally absolutely, unconditionally and irrevocably undertake to provide such funds or other support as may be needed from time to time by each Specified Loan Party to honor all of such Specified Loan Party's obligations under its guaranty and the Security Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under its undertaking pursuant to this Section 5.7 for the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under its guaranty, voidable under the Bankruptcy Code and other applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 5.7 shall remain in full force and effect until Payment in Full of the Obligations. Each Borrower, for itself and on behalf of each Qualified ECP Guarantor, intends that this Section 5.7 (and any corresponding provision of any applicable guaranty) constitute, and this Section 5.7 (and any corresponding provision of any applicable guaranty) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Loan Party for all purposes of section 1a (18)(A)(v)(II) of the Commodity Exchange Act.

(g) Inquiry. Each Borrower represents and warrants to Administrative Agent, LC Issuer and Lenders that such Borrower is currently informed of the financial condition of the other Borrowers and of all other circumstances that a diligent inquiry would reveal and that bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Administrative Agent, LC Issuer and

Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants to Administrative Agent, LC Issuer and Lenders that such Borrower will continue to keep informed of the other Borrowers' financial condition and of all other circumstances that bear upon the risk of nonpayment or non-performance of the Obligations.

SECTION 6.
[RESERVED]

SECTION 7.
CONDITIONS PRECEDENT

7.1. **Conditions Precedent to Initial Loans**

. In addition to the conditions set forth in Section 7.2 and Administrative Agent's receipt of the documentation required by Section 9.20(c), the obligations of Administrative Agent, LC Issuer and each Lender to fund any requested Loan, issue any Letter of Credit, or otherwise make any extension of credit or financial accommodation to or for the benefit or account of any Borrower hereunder is subject to the satisfaction (as determined by Administrative Agent) or waiver in accordance with the terms of this Agreement (of each of the following conditions precedent (the date of such satisfaction or waiver, the "Closing Date"):

(a) Loan Documents. Notes shall have been executed by Borrowers and delivered to each Lender that, before the Closing Date, has requested the issuance of a Note. This Agreement and each other Loan Document shall have been duly executed and delivered to Administrative Agent by each of the signatories thereto.

(b) Evidence of Filings; Lien Searches. Administrative Agent shall have received acknowledgments of all filings or recordations (other than those filings with respect to As-Extracted Collateral that may be recorded on a post-closing basis in accordance with Section 9.20) necessary to perfect its Liens in the Collateral, and UCC, Lien, and Intellectual Property searches and all other searches and other evidence satisfactory to Administrative Agent that such Liens are the only Liens upon the Collateral (other than Permitted Liens), other than those searches that may be conducted on a post-closing basis in accordance with Section 9.20.

(c) Term Loan Documents; Receivables Purchase Documents; Intercreditor Agreement. Administrative Agent shall have received executed copies of (i) the Term Loan Agreement and the other Term Loan Documents, (ii) the Receivables Purchase Agreement and the other Receivables Purchase Documents (including any amendment to any Receivables Purchase Document entered into in connection with the closing of this Agreement in form and substance satisfactory to the Administrative Agent), and (iii) the Intercreditor Agreement.

(d) Reserved.

(e) Closing Certificate. Administrative Agent shall have received a certificate, in form and substance satisfactory to it, from a knowledgeable Senior Officer of the Parent (on behalf of each Borrower) certifying that, after giving effect to the initial Loans and transactions hereunder, (i) the Borrowers and their Subsidiaries on a consolidated basis are Solvent; (ii) no Default or Event of Default exists; and (iii) the representations and warranties set forth in Section 8 are true and correct.

(f) Officer's Certificates. Administrative Agent shall have received a certificate of the corporate (company) secretary or another knowledgeable and duly authorized officer of each Loan Party, certifying (i) that attached copies of such Loan Party's Organizational Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions

authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted by the appropriate governing body, have not been amended, modified, or revoked, and constitute all resolutions adopted with respect to the credit facility contemplated in this Agreement and the other Loan Documents; and (iii) to the title, name, and signature of each Person authorized to sign the Loan Documents on behalf of such Loan Party. Administrative Agent may conclusively rely on each such certificate until it is otherwise notified by the applicable Loan Party in writing.

(g) Organizational Documents; Good Standing Certificates. Administrative Agent shall have received copies of the Organizational Documents of each Loan Party, certified currently (if requested by Administrative Agent) by the Secretary of State or other appropriate official of such Loan Party's jurisdiction of organization. Administrative Agent shall have received good standing certificates for each Loan Party issued by the Secretary of State or other appropriate official of such Loan Party's jurisdiction of organization and, if reasonably requested by Administrative Agent, each jurisdiction where such Loan Party's material business activities or ownership of material property necessitates qualification.

(h) Opinions of Counsel. Administrative Agent shall have received written opinions of counsel to the Loan Parties, as well as any local counsel to Loan Parties, in form and substance satisfactory to Administrative Agent.

(i) Insurance. Administrative Agent shall have received copies of policies and certificates of insurance for the insurance policies carried by Loan Parties, all of which shall be in compliance with Section 9.3 and any other provisions of the Loan Documents relevant thereto, together with such lender's loss payable and additional insured endorsements showing Administrative Agent as agent for the Secured Parties, each of which shall be in form and substance satisfactory to Administrative Agent.

(j) Due Diligence. Administrative Agent shall have completed its business, financial and legal due diligence of Loan Parties, including the receipt of Qualified Appraisals on Borrowers' Inventory and financial statements for the Fiscal Year of Loan Parties ending on or about December 31, 2016, and the results, form, and substance of such due diligence shall be satisfactory to Administrative Agent.

(k) Material Adverse Change. No event or circumstance that, taken alone or in conjunction with other events or circumstances has resulted in, or could be expected to result in, a Material Adverse Change shall have occurred since the date of the audited financial statements of the Parent and its Subsidiaries described in the Historical Statements.

(l) Debt and Capital Structure. Administrative Agent shall be satisfied with the Loan Parties' debt and capital structure.

(m) Payment of Fees. Borrowers shall have paid all fees and expenses to be paid to Administrative Agent and Lenders on the Closing Date (including pursuant to the Fee Letter) or Administrative Agent shall be satisfied with all arrangements made to pay such fees and expenses on the Closing Date with the proceeds of Loans to be made on the Closing Date.

(n) Reserved.

(o) Governmental and Third Party Consents. The Borrowers shall have received all governmental, shareholder, and third party consents and approvals that are required in connection with the transactions contemplated hereby and, to the extent applicable, all waiting periods relating thereto shall have expired and no investigation or inquiry by any Governmental Authority regarding this Agreement or any other Loan Document or any transaction contemplated herein shall be ongoing.

(p) Reliance Letter. Administrative Agent shall have received a reliance letter, in form and substance satisfactory to Administrative Agent, from Hilco Valuation Services with respect to the inventory appraisal and related report dated January 6, 2017.

(q) No Litigation. There shall be no litigation or other proceeding in which any Loan Party or any Subsidiary is a party defendant which would constitute an Event of Default under Section 12.1(f) or that could result in a Material Adverse Change.

(r) Perfection Certificate. Administrative Agent shall have received a complete and executed Perfection Certificate.

(s) PATRIOT Act. The Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

7.2. **Conditions Precedent to All Extensions of Credit**

. The obligations of Administrative Agent, LC Issuer and the Lenders to fund any Loans, issue any Letter of Credit or grant any other financial accommodation to or for the benefit of Borrowers (including on the Closing Date), shall be subject to the satisfaction or waiver (in accordance with the terms hereof) of the following conditions precedent:

(a) No Default. No Default or Event of Default shall exist at the time of, or result from, such funding, issuance, or grant;

(b) Accuracy of Representations and Warranties. The representations and warranties of each Loan Party in this Agreement and the other Loan Documents shall be true and correct in all material respects on the date of, and after giving effect to, such funding, issuance, or grant (provided that any representation or warranty that is qualified as to "materiality," "Material Adverse Change" or similar language shall be true and correct (after giving effect to such qualification) in all respects on such effective date), except for those representations and warranties that expressly relate to an earlier date, in which case, they shall have been true and correct in all material respects as of such date;

(c) No Material Adverse Change. No event shall have occurred or circumstance shall have existed since the Closing Date which has had or could be expected to result in a Material Adverse Change;

(d) LC Conditions. With respect to issuance of any Letter of Credit, each of the LC Conditions shall be satisfied or waived in accordance with the terms of this Agreement; and

(e) Notice of Borrowing. With respect to any Loan, Administrative Agent shall have received a Notice of Borrowing.

Each request (or deemed request) by Borrowers for funding of a Loan, issuance of a Letter of Credit, or grant of an accommodation shall constitute a representation by Loan Parties that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance, or grant.

SECTION 8.
REPRESENTATIONS AND WARRANTIES

To induce Administrative Agent, LC Issuer and the Lenders to, as applicable, enter into this Agreement, provide their respective Commitments, make Loans, issue Letters of Credit, and make any other extension of credit or financial accommodation provided for herein or in the other Loan Documents, each Loan Party makes the following representations and warranties, all of which shall survive the

execution and delivery of this Agreement and the other Loan Documents and each of which shall be deemed made as of the Closing Date and as of the date of each request for the making of a Loan, the issuance of a Letter of Credit, or the making of any other extension of credit or financial accommodation hereunder or under the other Loan Documents:

8.1. **Organization and Qualification**

. Each Loan Party and each Subsidiary of each Loan Party is a corporation, partnership or limited liability company, duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization. Each Loan Party and each Subsidiary of each Loan Party has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct, except where the failure to have such power would not reasonably be expected to result in any Material Adverse Change. Each Loan Party and each Subsidiary of each Loan Party is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it or both makes such licensing or qualification necessary and where the failure to so qualify would reasonably be expected to result in a Material Adverse Change.

8.2. **Shares of Borrower; Subsidiaries; and Subsidiary Shares**

. As of the Closing Date, Schedule 8.2 states the name of each of the Parent's Subsidiaries, its jurisdiction of incorporation, its authorized capital stock, the issued and outstanding shares (referred to herein as the "Subsidiary Shares") and the owners thereof if it is a corporation, its outstanding partnership interests (the "Partnership Interests") and the owners thereof if it is a partnership and its outstanding limited liability company interests, the voting rights associated therewith (the "LLC Interests") and the owners thereof if it is a limited liability company. As of the Closing Date, Schedule 8.2 also sets forth for each Subsidiary of the Parent and whether such Subsidiary is a Bonding Subsidiary, an Immaterial Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary. As of the Closing Date, Schedule 8.2 also sets forth the jurisdiction of incorporation of the Borrowers, their authorized capital stock or other equity interests (the "Borrower Shares") and the voting rights associated therewith. The Parent and each Subsidiary of the Parent has good title to all of the Subsidiary Shares, Partnership Interests and LLC Interests it purports to own, free and clear in each case of any Lien, other than Permitted Liens. Except as set forth on Schedule 8.2, all Borrower Shares, Subsidiary Shares, Partnership Interests and LLC Interests have been validly issued, and all Borrower Shares, all Partnership Interests, all LLC Interests and all Subsidiary Shares are fully paid and nonassessable. All capital contributions and other consideration required to be made or paid in connection with the issuance of the Partnership Interests and LLC Interests have been made or paid, as the case may be, except where the failure to do so would not result in a Material Adverse Change. As of the Closing Date, there are no options, warrants or other rights outstanding to purchase any such Subsidiary Shares, Partnership Interests or LLC Interests except as indicated on Schedule 8.2.

8.3. **Power and Authority**

. Each Loan Party has full power to enter into, execute, deliver and carry out this Agreement and the other Loan Documents to which it is a party, to incur the Debt contemplated by the Loan Documents and to perform its Obligations under the Loan Documents to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its part.

8.4. **Validity and Binding Effect**

. This Agreement has been duly and validly executed and delivered by each Borrower, and each other Loan Document which any Loan Party is required to execute and deliver on or after the date hereof will have been duly executed and delivered by such Loan Party on the required date of delivery of such Loan Document. This Agreement and each other Loan Document constitutes, or will constitute, legal, valid and binding obligations of each Loan Party which is or will be a party thereto on and after its date of delivery thereof, enforceable against such Loan Party in accordance with its terms, except to the extent that enforceability of any of such Loan Document may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance.

8.5. **No Conflict**

. Neither the execution and delivery of this Agreement or the other Loan Documents by any Loan Party, nor the consummation of the transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them will (a) conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other Organizational Documents of any Loan Party or any Subsidiary of any Loan Party or (ii) except as would not reasonably be expected to result in a Material Adverse Change, any Law or any agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party or any Subsidiary of any Loan Party is a party or by which any Loan Party or any Subsidiary of any Loan Party is bound or subject to, or (b) result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Loan Party or any Subsidiary of any Loan Party (other than the Liens granted under the Loan Documents and Permitted Liens securing the Term Loan Obligations).

8.6. **Litigation**

. Except as set forth on **Schedule 8.6**, there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Governmental Authority which individually or in the aggregate would reasonably be expected to result in a Material Adverse Change. None of the Loan Parties nor any Subsidiary of any Loan Party is in violation of any order, writ, injunction or any decree of any Governmental Authority which would reasonably be expected to result in a Material Adverse Change.

8.7. **Financial Statements**

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(a) Historical Statements. The Parent has delivered to the Lenders or their affiliates copies of its audited consolidated year-end financial statements for and as of the end of the Fiscal Year ended December 31, 2016 (the "Historical Statements"). The Historical Statements were compiled from the books and records maintained by the Parent's management, are correct and complete in all material respects and fairly represent the consolidated financial condition of the Parent and its Subsidiaries as of their dates and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied.

(b) Since December 31, 2016, there has been no Material Adverse Change.

8.8. **Margin Stock**

. None of the Loan Parties nor any Subsidiary of any Loan Party engages or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U). No part of the proceeds of any Loan, Letter of Credit or other credit extension made to such Loan Party will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock (within the meaning of Regulation U).

8.9. **Full Disclosure**

. Neither this Agreement nor any other Loan Document, nor any certificate, statement, agreement or other documents furnished in writing by or on behalf of a Loan Party or any Subsidiary thereof to the Agent or any Lender in connection herewith (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains with respect to the Parent and its Subsidiaries any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not materially misleading; provided that to the extent any such certificate, statement, agreement or other document was based upon or constitutes a forecast or projection, such Loan Party represents only that the relevant Loan Party acted in good faith and utilized assumptions believed by it to be reasonable at the time made available to the Lenders (it being understood that any such forecasts or projections are subject

to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, that no assurance can be given that any such forecasts or projections will be realized and that actual results may differ from any such forecasts or projections and such differences may be material). All information set forth in the Perfection Certificate delivered on the Closing Date is true and correct in all material respects as of the Closing Date, and all information set forth in any Perfection Certificate delivered to Administrative Agent after the Closing Date shall be true and correct in all material respects as of the date that such Perfection Certificate is delivered.

8.10. **Taxes**

. Except where failure to do so would not reasonably be expected to result in a Material Adverse Change, (a) all federal and state, local and other tax returns required to have been filed by or with respect to any Loan Party and any Subsidiary of any such Loan Party have been filed, and (b) payment or adequate provision has been made for the payment of all Taxes that have or may become due pursuant to said tax returns or to assessments received, except to the extent that such Taxes are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. As of the Closing Date, other than as set forth on **Schedule 8.10**, there are no agreements or waivers extending the statutory period of limitations applicable to any federal income tax return of any Loan Party or Subsidiary of any Loan Party.

8.11. **Consents and Approval**

. No consent, approval, exemption, order or authorization of, or registration or filing with, any Governmental Authority or any other Person is necessary under any Law in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents by any Loan Party, except for any consents (i) that have been obtained prior to the Closing Date and are in full force and effect or (ii) of which the failure to obtain would not reasonably be expected to result in a Material Adverse Change.

8.12. **No Event of Default; Compliance with Instruments and Material Contracts**

. No event has occurred and is continuing and no condition exists or will exist after giving effect to the borrowings of Loans and issuance of Letters of Credit on the Closing Date under or pursuant to the Loan Documents which constitutes an Event of Default or Default. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of (a) any term of its certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other Organizational Documents or (b) any agreement or instrument to which it is a party or by which it or any of its properties may be subject or bound where such violation described in this clause (b) could reasonably be expected to result in a Material Adverse Change. All Material Contracts to which any Loan Party or Subsidiary of any Loan Party is bound are valid, binding and enforceable upon such Loan Party or Subsidiary and to the best knowledge of the Parent upon each of the other parties thereto in accordance with their respective terms except in each case to the extent the same could not reasonably be expected to result in a Material Adverse Change. None of the Loan Parties or their Subsidiaries is bound by any Contractual Obligation, or subject to any restriction in any Organizational Document, or any requirement of Law which could reasonably be expected to result in a Material Adverse Change.

8.13. **Insurance**

. As of the Closing Date, **Schedule 8.13** lists all material insurance policies to which any Loan Party or Subsidiary of any Loan Party is a party, all of which are valid and in full force and effect as of the Closing Date. Such policies provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each Loan Party and each Subsidiary of each Loan Party in accordance with prudent business practice in the industry of the Loan Parties and their Subsidiaries.

8.14. **Compliance with Laws**

. The Loan Parties and their Subsidiaries are in compliance (a) with Anti-Terrorism Laws and Anti-Corruption Laws in all material respects, and (b) in all material respects

with all other applicable Laws (other than Environmental Health and Safety Laws which are specifically addressed in Section 8.18, but including all Mining Laws (to the extent not covered by Environmental Health and Safety Laws which are specifically addressed in Section 8.18)) in all jurisdictions in which any Loan Party or Subsidiary of any Loan Party is doing business except (in the case of this clause (b)) where the failure to do so would not reasonably be expected to result in a Material Adverse Change.

8.15. **Investment Companies**

. None of the Loan Parties is an "investment company" registered or required to be registered under the Investment Company Act of 1940.

8.16. **Plans and Benefit Arrangements**

. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change:

(a) The Parent and each other member of the ERISA Group are in compliance with any applicable provisions of ERISA with respect to all Benefit Arrangements, Plans, and Multiemployer Plans. There has been no Prohibited Transaction with respect to any Benefit Arrangement or any Plan or, to the knowledge of any Borrower, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any liability of the Parent or any other member of the ERISA Group. No Plan is in "at risk" status within the meaning of Section 303(i) of ERISA or Section 430(i) of the Code. The Parent and all other members of the ERISA Group have made when due any and all payments required to be made under any agreement relating to a Multiemployer Plan or a Multiple Employer Plan or any Law pertaining thereto. With respect to each Plan and Multiemployer Plan, the Parent and each other member of the ERISA Group (i) have fulfilled their obligations under the minimum funding standards of ERISA and the Code, (ii) have not applied for a waiver of the minimum funding standards under Section 302(c) of ERISA or Section 412(c) of the Code; (iii) have not incurred any liability to the PBGC, and (iv) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA or the Code. All Plans, Benefit Arrangements and, to the knowledge of any Borrower, Multiemployer Plans have been administered in accordance with their terms and applicable Law.

(b) Neither the Parent nor any other member of the ERISA Group has instituted proceedings to terminate any Plan.

(c) No event requiring notice to the PBGC under Section 303(k)(4) of ERISA or Section 430(k) of the Code has occurred or is reasonably expected to occur with respect to any Plan, and no amendment with respect to which security is required under Section 436(f) of the Code has been made or is reasonably expected to be made to any Plan.

(d) To the extent that any Benefit Arrangement is insured, the Parent and all other members of the ERISA Group have paid when due all premiums required to be paid. To the extent that any Benefit Arrangement is funded other than with insurance, the Parent and all other members of the ERISA Group have made when due all contributions required to be paid.

(e) Neither the Parent nor any other member of the ERISA Group has withdrawn from a 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. To the knowledge of the Parent, no Multiemployer Plan or Multiple Employer Plan has been terminated within the meaning of Title IV of ERISA.

(f) Neither the Parent nor any member of the ERISA Group (i) currently has, or with the last six years has had, any obligation to contribute to a Multiemployer Plan, (ii) has incurred any Withdrawal Liability that remains outstanding, or (iii) has incurred any liability in connection with, a transaction described in Section 4212(c) of ERISA, except to the extent such liability has been fully satisfied or discharged.

8.17. **Employment Matters**.

(a) Each of the Loan Parties and each of their Subsidiaries is in compliance with the Labor Contracts and all applicable federal, state and local labor and employment Laws including those related to wage and hour, equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance continuation, worker adjustment and relocation notices, immigration controls and worker and unemployment compensation, except where the failure to comply could not reasonably be expected to result in a Material Adverse Change. There are no outstanding grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of any of the Loan Parties or any of their Subsidiaries which in any case could reasonably be expected to result in a Material Adverse Change.

(b) Except as could not reasonably be expected to result in a Material Adverse Change: (i) each of the Loan Parties, each of their respective Subsidiaries and each of the "related persons" (as defined in the Coal Act) of each Loan Party and each Subsidiary of each Loan Party are in compliance with the Coal Act; (ii) none of the Loan Parties, any Subsidiary of any Loan Party nor any related person of any Loan Party or its Subsidiaries has any liability under the Coal Act except with respect to premiums or other payments required thereunder which have been paid when due; (iii) the Loan Parties and their respective Subsidiaries are in compliance with the Black Lung Act; and (iv) none of the Loan Parties nor any of their Subsidiaries has any liability under the Black Lung Act except with respect to premiums, contributions or other payments required thereunder which have been paid when due.

8.18. **Environmental Health and Safety Matters**

. Except as set forth on **Schedule 8.18**:

(a) the Loan Parties and their Subsidiaries and the Real Estate are and have been in substantial compliance with all Environmental Health and Safety Laws and Environmental Health and Safety Orders (if any such orders are in effect), except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change;

(b) (i) the Loan Parties and their Subsidiaries hold and are operating in compliance with applicable Environmental Health and Safety Permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change, (ii) none of the Loan Parties has received any written notice from a Governmental Authority that such Governmental Authority has or intends to suspend, revoke or adversely amend or alter, whether in whole or in part, any such Environmental Health and Safety Permit, and (iii) there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Governmental Authority challenging an application for, or the modification, amendment or issuance of, any Environmental Health and Safety Permit, except, in the case of either (i), (ii) or (iii), which could not reasonably be expected to result in a Material Adverse Change;

(c) there are no pending or, to the knowledge of any Loan Party, threatened Environmental Health and Safety Claims against any Loan Party or any Subsidiary of any Loan Party, in each case which could reasonably be expected to result in a Material Adverse Change;

(d) neither the Loan Parties nor their Subsidiaries, nor the Real Estate, are subject to any Environmental Health and Safety Orders, except where the existence of any such Environmental Health and Safety Orders could not reasonably be expected to result in a Material Adverse Change; and

(e) no Lien or encumbrance on the ownership, occupancy, use or transferability of real property, whether owned or leased (other than Permitted Liens), authorized by Environmental Health and

Safety Laws exists against any Real Estate, whether owned or leased, of any Loan Party or any Subsidiary which could reasonably be expected to result in a Material Adverse Change, and none of the Loan Parties has any reason to believe that such a Lien or encumbrance (other than Permitted Liens) may be imposed, attached or be filed or recorded against any Real Estate, whether owned or leased, of any Loan Party or any Subsidiary, which Lien or encumbrance could reasonably be expected to result in a Material Adverse Change.

8.19. **Title to Real Estate**

. Each Loan Party and each Subsidiary of each Loan Party has (a) Mining Title to all Active Operating Properties that are necessary or appropriate for the Parent and its Subsidiaries to conduct their respective operations in all material respects, (b) and except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, good and valid title to all of their other respective assets, in the case of both the foregoing items (a) and (b) of this sentence, free and clear of all Liens and encumbrances except Permitted Liens, and subject to the terms and conditions of the applicable leases; provided, however, a Loan Party or a Subsidiary of a Loan Party shall not be in breach of the foregoing in the event that (i) it fails to own a valid leasehold interest which, either considered alone or together with all other such valid leaseholds which it fails to own, is not material to the continued operations of such Loan Party or Subsidiary of such Loan Party or (ii) such Loan Party's or such Subsidiary's interest in a leasehold is less than fully marketable because the consent of the lessor to future assignments has not been obtained.

8.20. **Patents, Trademarks, Copyrights, Licenses, Etc**

. Each Loan Party and each Subsidiary of each Loan Party owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, registrations, franchises, permits and rights, without conflict with the rights of others, necessary for the Loan Parties to own and operate their properties and to carry on their businesses as presently conducted and planned to be conducted by such Loan Parties and Subsidiaries, except where the failure to so own or possess with or without such conflict would not reasonably be expected to result in a Material Adverse Change.

8.21. **Security Interests**

. The Security Documents are effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. Upon (a) the filing of financing statements relating to said security interests in each office and in each jurisdiction where required in order to perfect the security interests described above, (b) taking possession of possessory Collateral by Administrative Agent (or by the Term Agent as bailee for Administrative Agent pursuant to the Intercreditor Agreement, if applicable) with respect to possessory Collateral and (c) the entering of Control Agreements, the Liens created by the Security Agreement and the Pledge Agreement in favor of Administrative Agent for the benefit of the Secured Parties will constitute fully perfected first priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute ABL Priority Collateral and second priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral, in each case, to the extent perfection can be obtained by filing such financing statements, by entering into such Control Agreements or by taking possession of such possessory Collateral.

8.22. **Regulated Entity**.

(a) Enemy Act. No Loan Party or any of its Subsidiaries is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended. To its knowledge, no Loan Party or any of its Subsidiaries is in violation in any material respect of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the PATRIOT Act. No Loan

Party or any of its Subsidiaries (i) is a Sanctioned Person or (ii) to its knowledge, engages in any dealings or transactions with any Sanctioned Person in material violation of Sanctions.

(b) OFAC. Each Loan Party and its Subsidiaries, and, to their knowledge, their respective directors, officers, officers and employees, are in compliance with applicable Sanctions in all material respects and are not engaged in any activity that could reasonably be expected to result in any Loan Party or Subsidiary being designated as a Sanctioned Person.

(c) Sanctions. None of the Loan Parties and their Subsidiaries or, to the knowledge of each Loan Party or its Subsidiaries, any of their respective directors, officers, employees or Affiliates (i) is a Sanctioned Person, (ii) has any of its assets located in a Sanctioned Country, or (iii) derives any of its operating income from investments in, or transactions with Sanctioned Persons. The proceeds of any Loan, Letter of Credit, credit extension or other transaction contemplated by this Agreement or any other Loan Document have not been used (x) in violation of any Sanctions, (y) to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country in violation of applicable Sanctions or (z) in any other manner that would result in a violation of Sanctions by any Person (including Administrative Agent, the LC Issuer, the Lenders or any other Person making, issuing or participating in such Loans, Letters of Credit, other credit extensions or other transactions whether as an underwriter, advisor, investor or otherwise).

(d) Anti-Corruption Laws. Each of the Loan Parties and their Subsidiaries and, to the knowledge of each Loan Party and its Subsidiaries, each of their respective directors, officers, employees and Affiliates, is in compliance in all material respects with Anti-Corruption Laws. No part of the proceeds of any Loans, Letters of Credit, other credit extension or other transaction contemplated by this Agreement or any other Loan Document will violate any receipt or use restrictions in any Anti-Corruption Laws.

(e) Beneficial Ownership. All information set forth in each Beneficial Ownership Certification is true and correct in all respects as of the Fifth Amendment Date.

(f) EEA. No Loan Party is an Affected Financial Institution.

8.23. **Status of Pledged Collateral**

. All the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral to be pledged pursuant to the Pledge Agreement are or will be upon issuance validly issued and nonassessable and owned beneficially and of record by the pledgor thereof free and clear of any Lien or restriction on transfer, except for (a) Permitted Liens securing the Term Loan Obligations or other permitted secured Debt that is subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and (b) other Permitted Liens arising by operation of law, and as otherwise provided by the Pledge Agreement and except as the right of the Secured Parties to dispose of the Subsidiary Shares, Partnership Interests or LLC Interests may be limited by the Securities Act of 1933, as amended, and the regulations promulgated by the Securities and Exchange Commission thereunder and by applicable state securities laws. There are no shareholder, partnership, limited liability company or other agreements or understandings with respect to the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral, except for the partnership agreements and limited liability company agreements described on **Schedule 8.23**. The Loan Parties have delivered true and complete copies of such partnership agreements and limited liability company agreements to the Administrative Agent.

8.24. **Surety Bonds**

. All surety, reclamation and similar bonds required to be maintained by the Parent or any of its Subsidiaries under any Environmental Health and Safety Laws or Contractual Obligation are in full force and effect except for any failure which individually or when taken together with all failures under all such bonds would not reasonably be expected to result in a Material Adverse Change,

and were not and will not be terminated, suspended, revoked or otherwise adversely affected by virtue of the consummation of the financing (including the making of all Loans and issuance of all Letters of Credit) contemplated by this Agreement, provided that certain of such bonds may be terminated, suspended or revoked so long as, taken together, such events could not reasonably be expected to result in a Material Adverse Change. All required guaranties of, and letters of credit with respect to, such surety, reclamation and similar bonds are in full force and effect except where such failure to be in full force and effect could not reasonably be expected to result in a Material Adverse Change.

8.25. **Coal Supply Agreements**

. As of the Closing Date, all Coal Supply Agreements to which the Parent or any of its Subsidiaries is subject or by which it is bound are in full force and effect, except for any failure which individually or when taken together with all failures under all Coal Supply Agreements would not reasonably be expected to result in a Material Adverse Change.

8.26. **Solvency; Fraudulent Transfer**

. As of the Closing Date, after giving effect to the transactions contemplated hereby on such date, Borrowers and their Subsidiaries, on a consolidated basis, are Solvent. No transfer of property is being made and no obligation is being incurred by any Loan Party or any of its Subsidiaries in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party or any of its Subsidiaries.

8.27. **Reserved**.

8.28. **Reserved**.

8.29. **Updates to Schedules**

. Should any of the information or disclosures provided on any of the Schedules attached hereto become outdated or incorrect in any material respect, Borrowers (a) may at any time, or (b) shall, in connection with the delivery of a Joinder Agreement with respect to any Loan Party, provide the Administrative Agent, in writing, with such revisions or updates to such Schedule as may be necessary or appropriate to update or correct the same; provided, however, that no Schedule shall be deemed to have been amended, modified or superseded by any such correction, revisions or update, nor shall any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such Schedule be deemed to have been cured thereby, unless and until the Administrative Agent shall have accepted in writing such revisions or updates to such Schedules (other than revisions or updates to **Schedules 8.2** and **8.23**, which result solely from actions of the Loan Parties permitted hereunder, which revised schedules shall be deemed to be accepted by the Administrative Agent upon delivery of such Schedules by Borrowers thereto).

SECTION 9.
AFFIRMATIVE COVENANTS AND CONTINUING AGREEMENTS

Until Payment in Full of the Obligations and termination of the Commitments:

9.1. **Preservation of Existence, Etc.**

The Parent shall maintain its legal existence as a corporation. Each other Borrower shall maintain its legal existence as a corporation, limited partnership or limited liability company, as the case may be, except as otherwise expressly permitted in Section 10.3 or Section 10.4. The Borrowers shall cause each of their respective Subsidiaries (other than Immaterial Subsidiaries) to maintain its legal existence as a corporation, limited partnership or limited liability company, as the case may be, except as otherwise expressly permitted in Section 10.3 or Section 10.4. Each Borrower shall maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify or maintain such qualification could not reasonably be expected to

result in a Material Adverse Change. Each Borrower shall cause each of its Subsidiaries (other than Immaterial Subsidiaries) to maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify would not reasonably be expected to result in a Material Adverse Change.

9.2. **Payment of Liabilities, Including Taxes, Etc.**

Except where failure to do so could not reasonably be expected to result in a Material Adverse Change, the Borrowers shall, and shall cause each of their respective Subsidiaries to, duly pay and discharge all Taxes imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid after becoming due, might become a lien or charge upon any properties of the Parent or any Subsidiary of the Parent other than any such Tax or claim which is being contested in good faith and by proper proceedings and with respect to which there are proper reserves as required by GAAP.

9.3. **Maintenance of Insurance**

. Each Loan Party shall, and shall cause each of its Subsidiaries to, insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers' compensation, public liability and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with reputable and financially sound insurers, including self-insurance to the extent customary. The Loan Parties shall deliver to the Agent (x) on the Closing Date and annually thereafter an original certificate of insurance of the Loan Parties' independent insurance broker describing and certifying as to the existence of the insurance on the Collateral required to be maintained by this Agreement and the other Loan Documents, together with a copy of the endorsement described in the next sentence attached to such certificate and, (y) at the reasonable request of the Agent, from time to time a summary schedule indicating all insurance then in force with respect to each of the Loan Parties. Such policies of insurance shall contain special endorsements, in form and substance reasonably acceptable to the Agent, which shall (i) specify the Agent as an additional insured, mortgagee and lender loss payee as its interests may appear, with the understanding that any obligation imposed upon the insured (including the liability to pay premiums) shall be the sole obligation of the applicable Loan Parties and not that of the insured, (ii) provide that the interest of the Agent, the Lenders and the LC Issuer shall be insured regardless of any breach or violation by the applicable Loan Parties of any warranties, declarations or conditions contained in such policies or any action or inaction of the applicable Loan Parties or others insured under such policies, (iii) provide to the extent commercially available that no cancellation of such policies for any reason (including non-payment of premium) shall be effective until at least ten (10) days after receipt by the Agent of written notice of such cancellation, (iv) be primary without right of contribution of any other insurance carried by or on behalf of any additional insureds with respect to their respective interests in the Collateral, and (v) provide that inasmuch as the policy covers more than one insured, all terms, conditions, insuring agreements and endorsements (except limits of liability) shall operate as if there were a separate policy covering each insured. The applicable Loan Parties shall notify the Agent promptly of any casualty or condemnation event causing a loss or decline in value of the Collateral in excess of $50,000,000 (or, in the case of ABL Priority Collateral, in excess of $5,000,000) and the estimated (or actual, if available) amount of such loss or decline. Upon the occurrence of an Event of Default under Sections 12.1(a) (unless that has been waived), 12.1(k) or 12.1(l), monies constituting insurance proceeds or condemnation proceeds (pursuant to the Mortgages, if any) shall be paid to the Agent and applied in accordance with Section 5.5 and the Loan Documents.

9.4. **Maintenance of Properties and Leases**

. Except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, the Borrowers shall, and shall cause each of their respective Subsidiaries to, maintain and preserve all of its respective material properties, necessary

or useful in the proper conduct of the business of such Borrower or such Subsidiary of such Borrower, in good working order and condition, ordinary wear and tear excepted (except as otherwise expressly permitted by this Agreement). Without limiting the generality of the foregoing, the Borrowers shall, and shall cause each of their respective Subsidiaries to, maintain in full force and effect all material patents, trademarks, service marks, trade names, copyrights, licenses and franchises necessary for the ownership and operation of its properties and business if the failure to so maintain the same would constitute a Material Adverse Change.

9.5. **Inspections; Appraisals**

. Borrowers shall, and shall cause each Loan Party to:

(a) Inspections. Permit Administrative Agent and its agents from time to time, subject to reasonable notice and during normal business hours (except when a Default or Event of Default exists), to visit, inspect, and appraise the properties of any Loan Party or Subsidiary, inspect, audit, and make extracts from any Loan Party's or Subsidiary's books and records and discuss with such Person's officers, employees, agents, advisors, and independent accountants such Person's business, financial condition, assets, prospects, and results of operations. Lenders may participate in any such visit or inspection at their own expense. Neither Administrative Agent nor any Lender shall have any duty to any Loan Party or Subsidiary to make any inspection, appraisal or report nor to share any results of any inspection, appraisal, or report with any Loan Party or Subsidiary. Borrowers acknowledge that all inspections, appraisals and reports are prepared by Administrative Agent and Lenders for their own purposes, and no Loan Party or Subsidiary shall be entitled to receive them, or rely upon them.

(b) Reimbursements. Reimburse Administrative Agent in accordance with the requirements of Section 16.3 and Section 16.4, as applicable, for all charges, costs, and expenses of Administrative Agent and its agents in connection with (i) field examinations of any Loan Party's or Subsidiary's books and records or any other financial or Collateral matters as Administrative Agent deems appropriate, up to two times per Fiscal Year and (ii) appraisals of Inventory, one time per Fiscal Year or, if required by Administrative Agent in its sole discretion, two times per Fiscal Year; provided, however, that if an examination or appraisal is initiated during the existence of a Default or Event of Default, all charges, costs, and expenses therefor shall be reimbursed by Loan Parties without regard to such limits. Subject to and without limiting the foregoing, if any field examination is conducted using Administrative Agent's internal field examination group, Borrowers specifically agree to pay the standard charges of Administrative Agent's internal field examination group (including Administrative Agent's then standard per-person charges for each day that an employee or agent of Administrative Agent or its Affiliates is engaged in any field examination activities). This Section shall not be construed to limit Administrative Agent's right to conduct field examinations or obtain appraisals at any time and from time to time in its discretion, or use third parties for such purposes.

9.6. **Keeping of Records and Books of Account**

. Each Borrower shall, and shall cause each Subsidiary of a Borrower to, maintain and keep proper books of record and account which enable each Borrower and its Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by applicable Laws of any Governmental Authority having jurisdiction over any Borrower or any Subsidiary of a Borrower, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs.

9.7. **Compliance with Laws**

. The Borrowers shall, and shall cause each of their Subsidiaries to, comply with (a) all Anti-Terrorism Laws and Anti-Corruption Laws in all material respects, and (b) all other applicable Laws (other than Environmental Health and Safety Laws which are specifically addressed in Section 9.8) in all respects, provided that it shall not be deemed to be a violation of this Section 9.7(b) if any failure to comply with any Law would not result in fines, penalties, costs, other similar liabilities or

injunctive relief which in the aggregate could not reasonably be expected to result in a Material Adverse Change.

9.8. **Environmental Health and Safety Matters**

. The Borrowers shall, and shall cause each of their respective Subsidiaries to:

comply with applicable Environmental Health and Safety Laws and Environmental Health and Safety Orders;

obtain, maintain in full force and effect and comply with the terms and conditions of all Environmental Health and Safety Permits;

take reasonable precautions to prevent Contamination on the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party;

take reasonable precautions against the imposition, attachment, filing or recording of any Lien (other than Permitted Liens) or other encumbrance authorized by Environmental Health and Safety Laws (other than Permitted Liens) to be imposed, attached or be filed or recorded against the Real Estate or any other real property owned or leased by any of them; and

perform or pay for performance of any Remedial Actions necessary to (A) comply with Environmental Health and Safety Laws or respond to any Environmental Health and Safety Claim and Environmental Health and Safety Order related to the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party, or (B) to manage Contamination at, in, on, under, emanating to or from or otherwise affecting the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party; except, in the case of each of clauses (i)-(v) above, as could not reasonably be expected to result in a Material Adverse Change; provided, in each case, that a failure to take such actions described above shall not be a violation of this Section 9.8 if the applicable Loan Party or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental Health and Safety Laws.

9.9. **Further Assurances**

. Each Borrower shall, and shall cause each Loan Party to, at its expense, promptly, (a) execute and deliver to Administrative Agent, LC Issuer and the Lenders, or cause to be executed and delivered to Administrative Agent, LC Issuer and the Lenders, all documents, agreements, and instruments which are, in Administrative Agent's reasonable determination, necessary to (i) correct any omissions in the Loan Documents or any agreement relating to Bank Products; (ii) more fully state the obligations set out in this Agreement or in any other Loan Document or agreement relating to Bank Products; (b) obtain any consents, as may be necessary or reasonably appropriate in connection therewith as may be reasonably requested by Administrative Agent; and (c) deliver such instruments, assignments, or other documents or agreements, and take such actions, as Administrative Agent reasonably deems appropriate under applicable Law to evidence or perfect Administrative Agent's Lien in and to any Collateral; provided, however, that no Loan Party shall be required to deliver Security Documents as to any leasehold interest held by such Loan Party in Real Estate the perfection of a Lien in which requires a consent from a third party such as a Governmental Authority, landlord, fee owner or a similar party (in each case other than an Affiliate of such Loan Party) and such consent has not been received despite the fact that such Loan Party has used commercially reasonable efforts to obtain the same.

9.10. **Equity Interests in Bonding Subsidiaries**

. In the event that the Parent or any Subsidiary of the Parent is required to pledge the equity interests of any Bonding Subsidiary in favor of any provider of surety bonds required by the lessor of the leasehold interest held by such Bonding Subsidiary as otherwise

permitted by Section 10.14, then prior to the granting of such lien, the Borrowers shall use commercially reasonable good faith efforts to grant a third priority perfected lien in such equity interests to Administrative Agent for the benefit of the Secured Parties subject to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent and the Parent.

9.11. **Requirements for Permitted Joint Ventures**

. With respect to any Permitted Joint Venture, neither the Parent nor any Subsidiary of the Parent shall be required to pledge the equity interests of such Permitted Joint Venture if and to the extent such equity interests shall constitute Excluded Property, provided that, in the case of a Person that becomes a Permitted Joint Venture after the Closing Date and whose equity interests shall constitute Excluded Property, upon the date that such Person becomes a Permitted Joint Venture, (a) the equity interests of such Permitted Joint Venture shall be held by a JV Holding Company and (b) the equity interests in such JV Holding Company shall constitute Collateral.

9.12. **Requirements for Significant Subsidiaries**.

(a) Within forty-five (45) days (or such longer period as may be extended by the Administrative Agent in its reasonable discretion) after any Significant Subsidiary is formed or acquired after the Closing Date or a Subsidiary becomes a Significant Subsidiary, the Borrowers shall: (i) cause each such Significant Subsidiary to execute a Joinder Agreement pursuant to which it shall join as a joint and several Borrower under this Agreement and the other Loan Documents to which Borrowers are parties, and if such Significant Subsidiary is to be a Guarantor, a Guaranty and a Joinder Agreement pursuant to which it shall join as a joint and several Guarantor under the other Loan Documents to which Guarantors are parties; (ii) execute and deliver to the Administrative Agent documents, modified as appropriate to relate to such Significant Subsidiary, in the forms described in Sections 7.1(e), 7.1(f), and 7.1(h) and deliver to the Administrative Agent such other documents and agreements as the Administrative Agent may reasonably request.

(b) Within forty-five (45) days (or such longer period as may be extended by the Administrative Agent in its reasonable discretion) after any Significant Subsidiary is formed or acquired after the Closing Date or a Subsidiary becomes a Significant Subsidiary, the Borrowers shall cause such new Significant Subsidiary to, unless the Administrative Agent otherwise agrees in its reasonable discretion, (i) execute and deliver to the Administrative Agent a Perfection Certificate relating to such Significant Subsidiary, (ii) execute and deliver to the Administrative Agent for the benefit of the Secured Parties a joinder agreement to the Security Agreement substantially in the form attached to the Security Agreement and a joinder to the Pledge Agreement substantially in the form attached to the Pledge Agreement, pursuant to which such Significant Subsidiary shall grant a lien in and pledge its assets (including equity interests it owns in any other Significant Subsidiary), other than Excluded Property, to the Administrative Agent for the benefit of the Secured Parties on a first priority perfected basis (subject only to Permitted Liens) with respect to assets that constitute ABL Priority Collateral and second priority perfected basis (subject only to Permitted Liens) with respect to assets that constitute Term Loan Priority Collateral, (iii) execute and deliver to the Administrative Agent a joinder to the Intercreditor Agreement in the form attached to the Intercreditor Agreement, (iv) subject to the Intercreditor Agreement, cause all of the issued and outstanding capital stock, partnership interests, member interests or other equity interests of such Significant Subsidiary (except to the extent constituting Excluded Property) that are owned by another Loan Party to be pledged on a first priority perfected basis to the Administrative Agent for the benefit of the Secured Parties pursuant to the Pledge Agreement, (v) execute and deliver to the Administrative Agent for the benefit of the Secured Parties any other applicable Security Documents in form and substance satisfactory to the Administrative Agent in its reasonable discretion, including without limitation, patent, trademark and copyright security agreements necessary or reasonably requested by the Administrative Agent to grant first priority (subject to the Intercreditor Agreement) perfected liens and security interests (subject only to Permitted Liens) in favor of the Administrative Agent for the benefit of the Secured Parties

in substantially all of the assets of such new Significant Subsidiary (other than Excluded Property), including proper financing statements under the UCC of the applicable jurisdictions of organization covering the Collateral described in the relevant Security Documents and appropriate equity certificates and powers evidencing the Collateral pledged pursuant to the Pledge Agreement, (vi) obtain UCC, lien, tax, mortgage, leasehold mortgage, and judgment searches (including searches of the applicable real estate indexes), with the results, form scope and substance of such searches to be reasonably satisfactory to the Administrative Agent and (vii) deliver opinions of legal counsel with respect to such new Significant Subsidiary, including opinions of local counsel in each applicable jurisdiction, as such opinions may be reasonably requested by the Administrative Agent and with such opinions to be reasonably satisfactory to the Administrative Agent in its reasonable discretion.

(c) Any document, agreement, or instrument executed or issued pursuant to this Section 9.12 shall be a "Loan Document" for purposes of this Agreement. Unless otherwise agreed to by Administrative Agent in its reasonable discretion, none of the property of any such Significant Subsidiary shall be included in the calculation of the Borrowing Base unless and until such Significant Subsidiary is a Borrower and Administrative Agent shall have (1) conducted a field examination and, if applicable, obtained a Qualified Appraisal of such property (with each such field examination and appraisal being at such Significant Subsidiaries' sole cost and expense and in excess of any other field examination or appraisal otherwise permitted by this Agreement or the other Loan Documents to be charged to the Loan Parties) and found the results thereof satisfactory, (2) received a revised Borrowing Base Certificate (and all supporting documentation and reports) giving effect to such property and its inclusion in such calculation, and (3) established such Reserves in connection therewith as Administrative Agent shall require in its Permitted Discretion.

9.13. **Subordination of Intercompany Loans**

. The Borrowers agree that any intercompany Debt, loans or advances owed by (i) any Loan Party to any other Loan Party and (ii) any Loan Party to any Non-Loan Party Subsidiary shall be subordinated to the payment of the Obligations.

9.14. **Reserved**.

9.15. **Use of Proceeds**

. The Borrowers will use the proceeds of Loans and Letters of Credit solely (i) to pay fees and expenses incurred in connection with the loan transactions contemplated hereby, and (ii) for working capital needs and general corporate purposes of the Borrowers and their Subsidiaries. The Borrowers will not, directly or indirectly, use the proceeds of any Loan or Letter of Credit or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (a) to fund any activities or business of or with any Person that, at the time of such funding, is, or whose government is, the subject of Sanctions, or in any Sanctioned Country or (b) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit, whether as underwriter, advisor, investor, or otherwise) or that would violate Regulation U. No part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws. Without limitation of the foregoing, no portion of the proceeds of any Loan or Letter of Credit shall be used, directly or indirectly, to finance (or refinance) any commercial paper, including, without limitation, any issued by a Loan Party, or any other Debt, except for Debt that such Loan Party incurred for working capital or general corporate (or company) purposes, if and to the extent that the financing (and refinancing) thereof are expressly permitted herein.

9.16. **Borrowing Base Reporting; Financial and Other Information**

. The Borrowers shall provide Administrative Agent with the following:

(a) Borrowing Base Certificate. A Borrowing Base Certificate fully completed and executed, delivered to Administrative Agent no later than (i) at any time other than during an Account Control Period, the 15th day of each Fiscal Month, prepared as of the end of the immediately preceding Fiscal Month, and (ii) during an Account Control Period, the third Business Day of each week, prepared as of the last Business Day of the immediately preceding week. Borrower Agent shall attach the following to each Borrowing Base Certificate, each of which shall be in form and substance reasonably satisfactory to Administrative Agent and certified by Borrower Agent's Senior Officer to be complete and accurate in all material respects:

Liquidity. A report setting forth Liquidity determined as of the date of such Borrowing Base Certificate (together with supporting detail in a form reasonably acceptable to Administrative Agent).

Inventory Reports. A summary of Inventory by location and type (in the case of coal inventory, by tons), together with such other information regarding Borrowers' Inventory as Administrative Agent may reasonably request, accompanied by such supporting detail and documentation as shall be reasonably satisfactory to Administrative Agent.

Accounts Payable Reports. A summary report (in form and substance reasonably satisfactory to Administrative Agent), including a listing of (A) each Loan Party's accounts payable for any vendor that holds a material portion of the Inventory of a Loan Party; (B) the number of days which have elapsed since the original date of invoice of such account payable; (C) the name and address of each Person to whom such account payable is owed; and (D) such other information concerning accounts payable as Administrative Agent may reasonably request from time to time.

Other Reports. Such other reports (each of which shall be in form and substance reasonably satisfactory to Administrative Agent) as Administrative Agent may reasonably request from time to time, each prepared with respect to such periods and with respect to such information and reporting as Administrative Agent may reasonably request from time to time.

(b) Quarterly Financial Statements. Within forty-five (45) calendar days after the end of each of the first three Fiscal Quarters in each Fiscal Year (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), financial statements of the Parent and its Subsidiaries, consisting of a consolidated balance sheet as of the end of such Fiscal Quarter, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the Fiscal Quarter then ended and the Fiscal Year through that date, all in reasonable detail and certified (subject to normal year-end audit adjustments) by the Chief Executive Officer, President, Treasurer or Chief Financial Officer of the Parent as having been prepared in accordance with GAAP, consistently applied, and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous Fiscal Year. The Parent will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 9.16(b) if within forty-five (45) days after the end of its Fiscal Quarter (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), the Parent delivers to the Agent (for delivery to each of the Lenders) a copy of the Parent's Form 10Q as filed with the SEC and the financial statements contained therein meet the requirements described in this Section.

(c) Annual Financial Statements. Within ninety (90) days after the end of each Fiscal Year (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), financial statements of the Parent and its Subsidiaries consisting of a consolidated balance sheet as of the end of such Fiscal Year, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the Fiscal Year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding Fiscal Year, and certified,

in the case of the consolidated financial statements, by independent certified public accountants of nationally recognized standing reasonably satisfactory to the Agent (it being understood and agreed that as of the Closing Date Ernst & Young LLP is reasonably satisfactory). The certificate or report of accountants shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and shall not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Loan Party under any of the Loan Documents. The Parent will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 9.16(c) if within ninety (90) days after the end of its Fiscal Year (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), the Parent delivers to the Agent (for delivery to each of the Lenders) a copy of the Parent's Annual Report and Form 10K as filed with the SEC and the financial statements and certification of public accountants contained therein meet the requirements described in this Section.

(d) Compliance Certificate and Collateral Information. (i) Concurrently with any delivery of financial statements under Section 9.16(b) and (c), a Compliance Certificate, and (ii) concurrently with any delivery of financial statements under Section 9.16(c), (x) a Perfection Certificate with then-current information and (y) a supplement to Schedule A to the Security Agreement with respect to any matter hereafter arising that, if existing or occurring at the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby, and, in each case of this clause (ii), such Perfection Certificate or Schedule shall be appropriately marked to show the changes made therein; provided that any information disclosed on any such updated Perfection Certificate or Schedule provided to the Agent pursuant to this clause (ii) shall be deemed to revise the representations and warranties set forth in Section 3 of the Security Agreement from and after the date of delivery.

(e) SEC Website. (A) The delivery by the Parent to the Agent of annual reports on Form 10-K of the Parent and its consolidated Subsidiaries shall satisfy the requirements of Section 9.16(c) solely to the extent such annual reports include the information specified herein and (B) the delivery by the Parent to the Agent of quarterly reports on Form 10-Q of by the Parent and its consolidated Subsidiaries shall satisfy the requirements of Section 9.16(b) solely to the extent such quarterly reports include the information specified herein.

(f) Notices. Written notice to the Agent for distribution to the Lenders:

promptly after any Senior Officer of any Borrower has learned of the occurrence of any Default or Event of Default;

promptly after any Senior Officer of any Borrower has learned of any event which would reasonably be expected to result in a Material Adverse Change;

promptly after any Senior Officer of any Borrower has learned that Liquidity no longer equals or exceeds $125,000,000;

two Business Days prior to the consummation of a transaction permitted under Section 10.4 (an "Asset Sale") (or merger, consolidation or amalgamation that constitutes an Asset Sale), or such later date as the Agent may agree in its sole discretion, of (i) Collateral that is included in the Borrowing Base with an aggregate value in excess of $2,500,000 (measured at the time of such Asset Sale) to any Person other than a Borrower or (ii) any capital stock or other equity interests of a Borrower to any Person other than a Borrower that results in the disposition of Collateral that is included in the Borrowing Base with an aggregate value in excess of $2,500,000 (measured at the

time of such Asset Sale);

promptly in the event that at any time any Loan Party receives or otherwise gains knowledge that (A) an Overadvance exists, in which case such notice shall also include the amount of such Overadvance or (B) an Account Control Period has begun;

promptly upon receipt of notice or knowledge of any Loan Party thereof, of any loss, damage or destruction to any ABL Priority Collateral in excess of $5,000,000, whether or not covered by insurance;

any change to the list of beneficial owners identified in any Beneficial Ownership Certification.

(g) Certain Events. Written notice to the Agent for distribution to the Lenders of:

any acquisition of assets with a fair market value in excess of $2,500,000 pursuant to Section 10.3 during an Account Control Period;

any Investment (other than pursuant to Sections 10.11(a), (b), (c) or (e)) during an Account Control Period in excess of $2,500,000;

any Restricted Payment (other than pursuant to Sections 10.8(b) or (d)) during an Account Control Period in excess of $2,500,000;

any payment with respect to subordinated Debt during an Account Control Period in excess of $2,500,000;

any incurrence of Debt during an Account Control Period in excess of $2,500,000;

any Disposition (other than pursuant to Sections 10.4(a), (b) or (d)) during an Account Control Period in excess of $2,500,000;

the occurrence of any event for which any Borrower is required to make a mandatory prepayment pursuant to Section 5.2(a);

the occurrence of any mandatory prepayment with respect to any of the Term Loan Obligations;

any material amendment to the Organizational Documents of any Loan Party; and

any material change in accounting policies or financial reporting practices by any Loan Party.

(h) Environmental Health and Safety Matters. Reasonably prompt written notice upon any Borrower or applicable Subsidiary obtaining actual knowledge of any of the following which has resulted or could reasonably be expected to result in a Material Adverse Change: (a) the existence of material Contamination; (b) the receipt by any Borrower or any of its Subsidiaries of a material Environmental Health and Safety Claim or Environmental Health and Safety Order; (c) the imposition, attachment, filing or recording against the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party of a Lien (other than a Permitted Lien) or other encumbrance authorized under Environmental Health and Safety Laws; (d) the inability to obtain or renew a material Environmental Health and Safety

Permit, a notice from a Governmental Authority that it has, will or intends to suspend, revoke or adversely amend or alter, in whole or in part, any Environmental Health and Safety Permit or knowledge that a Person has filed a suit or claim or instituted a proceeding challenging the application for, or the modification, amendment or issuance of any Environmental Health and Safety Permit; or (e) any violation of Environmental Health and Safety Laws, Environmental Health and Safety Permits or Environmental Health and Safety Order by the Parent or any of its Subsidiaries; provided, in each case, that a failure to provide such written notice shall not be a violation of this Section 9.16(h) if the Parent or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental Health and Safety Laws.

(i) Other Reports and Information.

Any reports, notices or proxy statements generally distributed by the Parent to its stockholders on a date no later than the date supplied to such stockholders and regular or periodic reports, including Forms 10-K, 10-Q and 8-K, registration statements and prospectuses, filed by the Parent or any other Loan Party with the SEC, provided that, subject to Section 9.16(d), the foregoing reports shall be deemed to have been delivered on the date on which such report is posted on the SEC's web site at www.sec.gov, and such posting shall be deemed to satisfy this reporting requirement,

Promptly upon their becoming available to any Borrower, a copy of any material order in any material proceeding to which such Borrower or any other Loan Party is a party issued by any Governmental Authority,

Within thirty (30) days of the end of each month, consolidated monthly income summaries of the Parent and its consolidated Subsidiaries,

Promptly upon request, such other reports and information as the Agent, any of the LC Issuer or any of the Lenders may from time to time reasonably request, and

Promptly upon request by any Lender, all documentation and other information that such Lender reasonably 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.

(j) Projections. Within thirty (30) days after the commencement of each Fiscal Year, Projections for such Fiscal Year, prepared on a quarter-by-quarter basis. Such Projections shall represent the Parent's reasonable estimate of the future financial performance of the Parent and its Subsidiaries for the periods set forth therein and shall have been prepared on the basis of assumptions that the Parent believes are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such Projections, and such differences may be material). The Parent shall provide Administrative Agent with prompt written notice of any material amendment or change approved by the board of directors or other governing Persons or body of the Parent with respect to such Projections.

9.17. **Reserved**.

9.18. **Cash Management; Deposit Accounts**

. Borrowers shall, and shall cause Loan Parties to:

(a) Payments on Account of the Sale of Receivables. On or before the Closing Date, (a) establish one or more Concentration Accounts and, thereafter, maintain each such Concentration Account

and (b) direct each Securitization Subsidiary to make all payments in respect of a sale of Receivables Assets to such Securitization Subsidiary pursuant to a Permitted Receivables Financing (including each payment made pursuant to the Receivables Purchase Documents) to a Concentration Account;

(b) Making Deposits. Hold in trust for Administrative Agent and during any Account Control Period promptly (but, in any event, on the Business Day immediately following its receipt thereof) deposit into a Concentration Account all tangible Payment Items and cash such Loan Party receives on account of the payment of any of such Loan Party's Accounts (other than any portion thereof that constitutes Term Loan Priority Collateral) or as Proceeds of any Inventory or other Collateral (other than any portion thereof that constitutes Term Loan Priority Collateral);

(c) Maintenance of Accounts. Not establish or maintain any Deposit Accounts other than Deposit Accounts (i) either (x) maintained at Administrative Agent or (y) maintained at any bank other than Administrative Agent but subject to Administrative Agent's Article 9 Control on terms acceptable to Administrative Agent; and (ii) that are Excluded Accounts;

(d) Control. To the extent requested by Administrative Agent from time to time, promptly (but, in any event, within ten (10) Business Days) (or such longer period as the Administrative Agent may agree in its sole discretion) after request take all actions reasonably requested by Administrative Agent to establish or continue Administrative Agent's Article 9 Control over any of Loan Parties' Deposit Accounts; and

9.19. **Reserved**.

9.20. **Post-Closing Matters**.

(a) As-Extracted Collateral Matters. On or before July 5, 2017 (or such later date as the Administrative Agent may agree in its sole discretion), the Borrowers shall deliver or cause to be delivered to Administrative Agent each of the following, in each case in form and substance satisfactory to Administrative Agent: (i) UCC financing statements with respect to As-Extracted Collateral, duly recorded in each jurisdiction in which any Loan Party owns, leases or has an interest in any minehead, and in each other jurisdiction necessary to perfect Administrative Agent's Liens in any Collateral constituting As-Extracted Collateral under the UCC, (ii) Lien searches confirming that Administrative Agent's Liens upon As-Extracted Collateral of the Loan Parties are the only Liens upon such As-Extracted Collateral (other than Permitted Liens), and (iii) legal opinions from local counsel to Loan Parties in form and substance reasonably acceptable to the Administrative Agent with respect to the Administrative Agent's security interest in the As-Extracted Collateral described in the UCC financing statements.

(b) Control Agreements. On or before the earlier of (i) June 26, 2017, and (ii) the tenth (10th) Business Day following the commencement of an Account Control Period (or such later date under clause (i) or (ii) as the Administrative Agent may agree in its sole discretion), the Borrowers shall deliver or cause to be delivered to Administrative Agent a Control Agreement with respect to each Deposit Account, Commodity Account and Securities Account listed on Schedule D to the Security Agreement.

(c) Borrowing Base Certificate. Prior to the first funding of any Loan, issuance of any Letter of Credit, or other extension of credit or financial accommodation to or for the benefit or account of any Borrower, the Borrowers shall deliver to Administrative Agent a Borrowing Base Certificate (and any supporting reports as Administrative Agent may reasonably require) prepared as of March 31, 2017 (or, if such first funding, issuance or other extension occurs at any time after a Borrowing Base Certificate has been delivered pursuant to Section 9.16(a), prepared as of the date required for the Borrowing Base Certificate most recently delivered pursuant to Section 9.16(a)).

(d) Insurance Endorsements. On or before May 27, 2017 (or such later date as the Administrative Agent may agree in its sole discretion), the Borrowers shall deliver or cause to be delivered to Administrative Agent endorsements issued by each applicable insurer with respect to each property and casualty insurance policy of any Loan Party, in each case naming Administrative Agent as lender loss payee in accordance with Section 9.3.

(e) Fifth Amendment Collateral Matters. On or before November 1, 2022 (or such later date as the Administrative Agent may agree in its sole discretion), the Borrowers shall deliver to Administrative Agent, an amendment to financing statement number 2018 6284299, filed with the Delaware Department of State, by Motion Industries, Inc., as Secured Party, naming Arch Coal, Inc., as debtor, amending the description of collateral covered thereby in a manner satisfactory to Administrative Agent in its permitted discretion.

SECTION 10.
NEGATIVE COVENANTS

Until Payment in Full of the Obligations and termination of the Commitments:

10.1. **Debt**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, at any time create, incur, assume or suffer to exist any Debt, except:

(a) The Obligations;

(b) Debt (including, without limitation, letters of credit) on account of any demand, request or requirement of any Governmental Authority for any surety bond, letter of credit or other financial assurance pursuant to any Mining Laws, Reclamation Laws or Environmental Health and Safety Laws, or any related Permit, in each case, in the ordinary course of business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances;

(c) Debt of Parent constituting (A) unsecured senior or senior subordinated debt securities, (B) debt securities that are secured by a Lien ranking junior to the Liens securing the Term Loan Obligations or (C) debt securities that are secured by a Lien ranking *pari passu* with the Liens securing the Term Loan Obligations, in each case, in an aggregate principal amount outstanding, which when all amounts outstanding under clauses (A), (B) and (C) above are added to the aggregate principal amount of all the other Incremental Term Debt outstanding (and any Permitted Refinancing thereof) does not exceed the Incremental Term Debt Cap (such Debt, the "Incremental Term Notes"), and any Permitted Refinancing thereof; provided that (1) with respect to Debt of Parent incurred under clause (C) hereof (or any Permitted Refinancing of the type described in clause (C) hereof), (x) the final stated maturity of such Debt shall not be sooner than the latest maturity date of any Term Loan Obligations at the time such Incremental Term Notes (or such Permitted Refinancing) are issued, (y) the Weighted Average Life to Maturity of such Debt is greater than or equal to the Weighted Average Life to Maturity of the Term Loan Obligations at the time such Incremental Term Notes (or such Permitted Refinancing) are issued and (z) such Debt shall not be subject to any mandatory prepayment, repurchase or redemption provisions, unless the prepayment, repurchase or redemption of such Debt is accompanied by the prepayment of a pro rata portion of the Term Loan Obligations, in each case, to the extent permitted under Section 10.9, (2) with respect to Debt of the Borrower incurred under clause (A) or (B) hereof (or any Permitted Refinancing of the type described in clause (A) or (B) hereof), (x) the final stated maturity of such Debt shall not be sooner than the latest maturity date of the Term Loan Obligations at the time such Incremental Term Notes (or such Permitted Refinancing) are issued, (y) the Weighted Average Life to Maturity of such Debt is greater than the Weighted Average Life to Maturity of the Term Loan

Obligations at the time such Incremental Term Notes (or such Permitted Refinancing) are issued and (z) such Debt does not have scheduled amortization or payments of principal and shall not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than pursuant to customary asset sale (other than ABL Priority Collateral), event of loss (other than ABL Priority Collateral), excess cash flow (provided that such excess cash flow sweep does not require the application of any excess cash flow that would otherwise be required to be applied to the prepayment of the Term Loans pursuant to the Term Loan Agreement) or change of control prepayment provisions and a customary acceleration right after an event of default, in each case, to the extent permitted under Section 10.9, in each case prior to the Stated Commitment Termination Date at the time such Debt is incurred, (3) no Default or Event of Default (or no Default or Event of Default under Section 11.1(a), 11.1(k) or 11.1(l) in the event that such Incremental Term Notes are used to fund a Limited Condition Acquisition) shall have occurred or be continuing at the time of occurrence of such Debt or would result therefrom, (4) to the extent secured, (x) such Debt shall not be secured by a Lien on any asset of Parent and its Subsidiaries that does not also secure the Term Loan Obligations and (y) such Debt shall be subject to (I) a *pari passu* or junior lien intercreditor agreement, as applicable, with Term Agent and (II) the Intercreditor Agreement or another intercreditor agreement with the Administrative Agent and Term Agent, on terms reasonably acceptable to the Administrative Agent, (5) to the extent guaranteed, such Debt shall not be guaranteed by a Subsidiary that is not a Guarantor of the Obligations (and, for the avoidance of doubt, the guarantee of such Debt in accordance with this clause (c) is permitted) and (6) to the extent subordinated, such Debt must be on subordination terms reasonably satisfactory to the Administrative Agent;

(d) [Reserved];

~~**(c) Debt permitted by Section 8.02(a)(iii) of the Term Loan Agreement as in effect on the Closing Date (the "Incremental Term Notes");**~~

~~**(d) Debt permitted by Section 8.02(a)(iv) of the Term Loan Agreement as in effect on the Closing Date (the "Refinancing Term Notes");**~~

(e) unsecured (i) Debt of any Loan Party payable to any other Loan Party (including Disqualified Equity Interests issued to any Loan Party), it being understood and agreed that such Debt (other than Disqualified Equity Interests) is subordinated to the Obligations of the Loan Parties under the Loan Documents, (ii) Debt of any Non-Loan Party Subsidiary payable to any other Non-Loan Party Subsidiary, (iii) loans or guaranties from any Non-Loan Party Subsidiary to any Loan Party, it being understood and agreed that such Debt (other than Disqualified Equity Interests) is subordinated to the Obligations of the Loan Parties under the Loan Documents, and (iv) Debt of any Non-Loan Party Subsidiary payable to any Loan Party to the extent such Debt would constitute a permitted Investment under Section 10.11(p);

(f) Debt of the Parent and its Subsidiaries existing on the Fifth Amendment Date and included on **Schedule 10.1** and any Permitted Refinancings thereof;

~~**(g) Debt of the Parent or any Subsidiary of the Parent under a letter of credit facility in an aggregate face amount, when combined with the aggregate amount of the Commitments then outstanding and the aggregate amount of Debt then outstanding under Section 10.1(h), not to exceed in the aggregate the greater of $300,000,000 and 16.50% of Consolidated Net Tangible Assets so long as: (A) the purpose of such facility is to provide letters of credit necessary in the business of the Parent and its Subsidiaries, including without limitation to secure surety and other bonds, and (B) such Debt;**~~

~~if secured, is only secured as permitted by clause (l) of the definition of Permitted Liens (a "Permitted Secured Letter of Credit Facility");~~

(g) [Reserved];

(h) Debt of Securitization Subsidiaries pursuant to Permitted Receivables Financings in an aggregate principal amount, when combined with the aggregate amount of the Commitments then outstanding and the aggregate face amount of letters of credit issued and outstanding pursuant to Section 10.1(g), does not exceed in the aggregate the greater of $300,000,000 and 16.50% of Consolidated Net Tangible Assets;

(i) Debt or other obligations of the Parent and its Subsidiaries in respect of any capital lease (as determined in accordance with GAAP) or Debt of the Parent and its Subsidiaries secured by Purchase Money Security Interests so long as the aggregate amount for the Parent and its Subsidiaries of all Debt and other obligations permitted by this Section 10.1(i) shall not exceed, at any time outstanding the greater of $150,000,000 and 8.25% of Consolidated Net Tangible Assets;

(j) Debt (x) of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary) in connection with any Permitted Acquisition or Permitted Joint Venture or Debt of any Person that is assumed by the Parent or any Subsidiary in connection with any Permitted Acquisition or Permitted Joint Venture; provided that (i) such Debt was not incurred in contemplation of such Permitted Acquisition or Permitted Joint Venture and (ii) immediately prior and after giving pro forma effect to the assumption of such Debt, the Total Net Leverage Ratio is no greater than 3.00:1.00 as if such Debt was assumed at the beginning of the most recent four consecutive Fiscal Quarters ending prior to such assumption for which consolidated financial statements of the Parent have been (or were required to be) delivered to the Administrative Agent pursuant to Section 9.16(b) or 9.16(c) or (y) constituting a Permitted Refinancing of the foregoing;

(k) subject to Section 10.11 and Section 10.14, Debt of any Bonding Subsidiary payable to the Parent;

(l) Debt of the Parent pursuant to the Term Loan Agreement ~~in an~~**; provided that the** aggregate principal amount ~~when combined with the aggregate amount of Incremental Term Notes and Refinancing Term Notes, that~~**thereof** does not exceed in the aggregate the sum of (i) $~~300,000,000 plus (ii)~~**20,000,000 plus (ii) when taken together with all other Incremental Term Debt (and any Permitted Refinancing thereof) then outstanding,** the Incremental **Term** Debt Cap ~~(as defined in the Term Loan Agreement as~~**then** in effect ~~on the Closing Date)~~;

(m) Debt (i) in respect of Swap Agreements entered into in the ordinary course of business consistent with past practice, (ii) in connection with a Permitted Bond Hedge Transaction or Permitted Warrant Transaction or (iii) arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds or other cash management services including, but not limited to, treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements, in each case entered into or arising in the ordinary course of business;

(n) Debt (including any Permitted Refinancing thereof) secured by Liens permitted by clause (n) of the definition of Permitted Liens;

(o) Guaranties in respect of Debt otherwise permitted hereunder;

(p) Debt relating to the financing of insurance policy premiums in the ordinary course of business;

(q) other Debt in an aggregate principal amount not to exceed the greater of $50,000,000 and 2.75% of Consolidated Net Tangible Assets; provided that the amount of Debt permitted by this clause (q) that is secured shall not exceed the greater of $25,000,000 and 1.25% of Consolidated Net Tangible Assets; and

(r) Debt of Non-Loan Party Subsidiaries which, when combined with the aggregate amount of Investments permitted pursuant to Section 10.11(p) does not exceed at any one time the greater of $10,000,000 and 0.50% of Consolidated Net Tangible Assets.

10.2. **Liens; Negative Pledge**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, (i) at any time create, incur, assume or suffer to exist any Lien on any of its respective property or assets, tangible or intangible, now owned or hereafter acquired, except Permitted Liens, and (ii) at any time, directly or indirectly, enter into any Contractual Obligation that prohibits or restricts the Borrowers' or their respective Subsidiaries' ability to grant a security interest or Lien on any of the Collateral to the Agent or any of the other Secured Parties in connection with this Agreement or any other Loan Document (as such Agreement or Loan Documents may be amended, restated, modified or supplemented); provided that the foregoing clause (ii) shall not apply to any Contractual Obligations which:

(a) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Parent, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Subsidiary of the Parent and do not extend beyond such Subsidiary and its subsidiaries;

(b) arise in connection with any Permitted Lien under clause (g) of such definition to the extent such restrictions relate to the assets (and any proceeds in respect thereof) which are the subject of such Lien;

(c) arise under loan documents or other agreements in connection with Debt permitted by Section 10.1 (other than secured Debt permitted by Section 10.1(i)) (including the Term Loan Documents ~~and documents in connection with the Permitted Secured Letter of Credit Facility)~~, and documents in connection with the Permitted Refinancing of any of the foregoing; provided that such restrictions (i) apply solely to Non-Loan Party Subsidiaries or (ii) are no more restrictive with respect to the Parent and its Subsidiaries than the limitations (taken as a whole) set forth in the Loan Documents and do not materially impair the ability of the Loan Parties to grant the security interests to Administrative Agent contemplated by the Loan Documents or pay the Obligations under the Loan Documents as and when due (as reasonably determined in good faith by the Parent), it being understood and agreed that the Term Loan Documents as of the Closing Date satisfy this clause (ii);

(d) are contained in agreements relating to any Disposition permitted by Section 10.4 solely with respect to the assets that are the subject of such Disposition;

(e) are customary provisions in joint venture agreements and other similar agreements applicable solely to such joint venture or the equity interests therein;

(f) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby, so long as such restrictions relate solely to the assets subject thereto;

(g) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Parent or any Subsidiary;

(h) are customary limitations existing under or by reason of leases entered into in the ordinary course of business;

(i) are restrictions on cash or other deposits imposed under contracts entered into in the ordinary course of business;

(j) are customary provisions restricting assignment of any agreements;

(k) are restrictions imposed by any agreement relating to any Permitted Receivables Financing to the extent that such restrictions relate to the assets (and any proceeds in respect thereof) that are the subject of such Permitted Receivables Financing; or

(l) are set forth in any agreement evidencing an amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the Contractual Obligations referred to in clauses (a) through (k) above; provided that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Parent, not materially less favorable to the Loan Party with respect to such limitations than those applicable pursuant to such Contractual Obligation prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

10.3. **Liquidations, Mergers, Consolidations, Acquisitions**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, dissolve, liquidate or wind up its affairs, or consummate any merger or consolidation, or acquire by purchase, lease or otherwise all or substantially all of the assets or capital stock of any other Person, provided that:

(a) (i) any Loan Party, other than the Borrowers, may consolidate or merge into the Parent and the security interest granted by the Parent pursuant to the Security Documents shall remain in full force and effect, (ii) any Non-Loan Party Subsidiary may consolidate or merge into any other Non-Loan Party Subsidiary, (iii) any Non-Loan Party Subsidiary may consolidate or merge into any Loan Party, so long as such Loan Party survives such merger or consolidation and the security interest granted by the Loan Parties pursuant to the Security Documents shall remain in full force and effect, (iv) any transaction otherwise permitted by Section 10.4 and Section 10.11 shall be permitted under this Section 10.3, and (v) any Borrower, other than the Parent, may consolidate or merge into any other Borrower, and any other Loan Party may consolidate or merge into any Borrower, so long as such Borrower survives such merger or consolidation and the security interest granted by the Borrowers pursuant to the Security Documents shall remain in full force and effect; provided that, solely with respect to clauses (i), (iii) and (v) of this clause (a), no Default or Event of Default exists or would result therefrom;

(b) the Parent or any Subsidiary may acquire, whether by purchase or by merger, (A) all of the ownership interests of another Person or (B) all or substantially all of the assets of another Person or of a business or division of another Person, provided that each of the following requirements is met (any acquisition made in accordance with this clause (b) being referred to herein as a "Permitted Acquisition"):

the business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be substantially the same as, or shall support or be complementary to, one or more line or lines of business conducted by the Loan Parties and shall comply with Section 10.7, in the case of any merger a Loan Party shall be the surviving entity after giving effect to such transaction and, to the extent that a Significant Subsidiary is acquired or formed in connection with or as a result of such acquisition, the Loan Parties shall comply with the provisions of Section 10.6 and Section 9.12 and, to the extent the assets or business acquired constitute Collateral, the Loan Parties shall comply with the provisions of Section 9.9;

no Default or Event of Default shall exist immediately prior to and immediately after giving effect to any such Permitted Acquisition; provided that, subject to Section 1.5, in the case of any Limited Condition Acquisition, at the option of the Parent, this Section 10.3(b)(ii) may be deemed satisfied so long as no Default or Event of Default exists on the date the definitive agreements for such Limited Condition Acquisition are entered into;

the business acquired, or the business conducted by the Person whose ownership interests are being acquired, shall be located in the United States and the Person acquired (if applicable) shall be organized under the laws of any State of the United States; provided that the Parent or any of its Subsidiaries shall be permitted to consummate Permitted Acquisitions that do not satisfy the requirements of this clause (iii) in an aggregate amount of up to the greater of $30,000,000 and 1.50% of Consolidated Net Tangible Assets;

both immediately before and immediately after giving effect to any Permitted Acquisition, Borrowers are in compliance with the Financial Covenant;

(c) Borrowers or any of their Subsidiaries may acquire by purchase, lease or otherwise all or substantially all of the assets or equity interests of a Securitization Subsidiary; and

(d) any Subsidiary of the Parent (other than a Borrower) that holds only *de minimis* assets and is not conducting any material business may dissolve or otherwise wind up its affairs.

10.4. **Disposition of Assets or Subsidiaries**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, sell, convey, assign, license, lease, abandon, securitize or enter into a securitization transaction, or otherwise transfer or dispose of (collectively, to "Dispose"; and "Disposition" shall have a correlative meaning), voluntarily or involuntarily, any of its properties or assets, tangible or intangible (including sale, assignment, discount or other disposition of accounts, contract rights, chattel paper, equipment, general intangibles with or without recourse or of capital stock, shares of beneficial interest, partnership interests or limited liability company interests of a Subsidiary of the Parent), except:

(a) (i) transactions involving the sale of Inventory in the ordinary course of business, (ii) any Disposition of assets in the ordinary course of business which are no longer necessary or required in the conduct of any Loan Party's business or the grant in the ordinary course of business of any non-exclusive easements, permits, licenses, rights of way, surface leases or other surface rights or interests, (iii) any sale of accounts arising from the export outside of the U.S. of goods or services by any Loan Party, provided that, in the case of this clause (iii), (x) at the time of any such sale, no Event of Default shall exist or shall result from such sale, (y) such sale shall be for fair market value and (z) the consideration to be paid to the Parent and its Subsidiaries as permitted by this clause (iii) shall consist solely of cash, (iv) any lease, sublease or non-exclusive license of assets (with a Loan Party as the lessor, sublessor or licensor) in the ordinary course of business, provided that the interests of the Loan Parties in any such lease, sublease or license are subject to the Agent's first priority Lien (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute ABL Priority Collateral and second priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral, and (v) transfers of condemned property as a result of the exercise of "eminent domain" or other similar policies to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of properties that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement;

(b) (i) any Disposition of assets by any Loan Party or any Subsidiary of a Loan Party which is a Guarantor to any Borrower, (ii) any Disposition of assets by any Non-Loan Party Subsidiary to any Loan

Party or (iii) any Disposition of assets by any Non-Loan Party Subsidiary to any other Non-Loan Party Subsidiary;

(c) any Disposition of property by the Parent or any of its Subsidiaries of assets with a fair market value (as reasonably determined by the Parent in good faith) of less than $5,000,000;

(d) any Disposition (including by capital contribution) of Receivables Assets pursuant to a Permitted Receivables Financing;

(e) (i) any Disposition where the fair market value (as reasonably determined by the Parent in good faith) of the assets subject thereto, when aggregated with the fair market value of all other assets subject to Dispositions made within the same Fiscal Year are less than $50,000,000; provided that (A) at the time of any such Disposition, no Event of Default shall exist or shall result from such Disposition and (B) the Net Cash Proceeds for all such Dispositions are applied as a mandatory prepayment of the Loans in accordance with, and to the extent required under, the provisions of Section 5.2; plus (ii) any other Disposition of assets; provided that (in the case of this clause (ii) only): (A) at the time of any such Disposition, no Event of Default shall exist or shall result from such disposition, (B) such Disposition shall be for fair market value (as determined by the Parent in good faith), (C) the consideration to be paid to the Parent and its Subsidiaries as permitted by this clause (e) shall consist of cash in an amount that is not less than 75% of such consideration; provided, however, for purposes of this clause (C), the following will be deemed to be cash: (1) any reclamation and other liabilities arising under applicable Permits, applicable workers' compensation acts and the federal black lung laws and other liabilities associated with the applicable employees, in each case that are assumed by the transferee with respect to the applicable sale, transfer or lease pursuant to a customary assumption or similar agreement (which agreement shall release the applicable Loan Parties from all such liabilities so assumed), (2) any letters of credit with respect to the reimbursement of which the Borrower or its Subsidiaries are obligated, to the extent such letters of credit relate to the assets or business subject to such sale, transfer or lease and are cancelled no later than 60 days following such sale, transfer or lease and for which the transferee with respect to the applicable sale, transfer or lease has guaranteed or indemnified the reimbursement of any drawing thereunder on customary terms and (3) any Designated Non-Cash Consideration received by the Borrower or any of its Subsidiaries in such Disposition (provided that (x) the aggregate fair market value of such Designated Non-Cash Consideration, as reasonably determined by the Borrower in good faith, taken together with the fair market value at the time of receipt of all other Designated Non-Cash Consideration received pursuant to this clause (3) minus (y) the amount of Net Cash Proceeds previously realized in cash from prior Designated Non-Cash Consideration shall not exceed $75,000,000) and (D) the Net Cash Proceeds for all such Dispositions of ABL Priority Collateral are applied as a mandatory prepayment of the Loans and/or to Cash Collateralize LC Obligations in accordance with, and to the extent required under, the provisions of Section 5.2(a);

(f) any Disposition of assets as part of an Investment which is either (i) an Investment in a Permitted Joint Venture which is permitted by Section 10.6 or (ii) an Investment permitted by Section 10.11;

(g) any transactions otherwise permitted by Section 10.3 or Section 10.8; and

(h) those Dispositions set forth on **Schedule 10.4**.

10.5. **Affiliate Transactions**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, enter into or carry out any transaction (including purchasing property or services from or selling property or services to) with any Affiliate of the Parent involving an aggregate consideration in excess of $5,000,000 unless (1) such transaction is not otherwise prohibited by this Agreement, (2) with respect to any Investment in, Disposition to or Restricted Payment to any Affiliate of the Parent (other than

a Loan Party), both immediately before and immediately after giving effect to such transaction, Borrowers are in compliance with the Financial Covenant, and (3) such transaction is either (a) entered into upon fair and reasonable arm's-length terms and conditions or (b) in the event that there is no comparable third party transaction, would be entered into by a prudent Person in the position of the Parent or such Subsidiary (as determined by the Parent in good faith); provided, however that this Section 10.5 shall not prohibit (i) the consummation of the transactions contemplated hereby (including the transactions pursuant to the Term Loan Agreement), (ii) any dividend, distribution or Investment which is not otherwise prohibited by this Agreement, (iii) any transaction described on **Schedule 10.5** (including any modification, extension or renewal thereof on terms no less favorable to the parties thereto than the terms of such transaction as described on such Schedule) which is not otherwise prohibited by this Agreement, (iv) any transaction provided for in, or in connection with, a Permitted Receivables Financing, (v) any transaction between or among Loan Parties and (vi) payments to directors and officers of the Parent and its Subsidiaries in respect of the indemnification of such Persons in such respective capacities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, pursuant to the Organizational Documents or other corporate action of the Parent or its Subsidiaries, respectively, or pursuant to applicable Law.

10.6. **Subsidiaries, Partnerships and Joint Ventures**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) Non-Loan Party Subsidiaries (including any Securitization Subsidiary which is the subject of clause (iii) below), (ii) any Significant Subsidiary which has complied with Section 9.12, and (iii) any Securitization Subsidiary whose equity interests are pledged to Administrative Agent for the benefit of the Secured Parties (pursuant to the Pledge Agreement).

Neither the Parent nor any Subsidiary of the Parent shall become or agree to become a joint venturer or hold a joint venture interest in any joint venture except that the Loan Parties may make an Investment in a Permitted Joint Venture, so long as the Parent and its Subsidiaries at all times are in compliance with all requirements of the following clauses (a) through (f) or to the extent otherwise permitted under Section 10.11:

(a) the Permitted Joint Venture is either a corporation, limited liability company, trust, or a limited partnership or another form of an entity or arrangement that permits the Parent and its Subsidiaries to limit their liability, as a matter of Law, for the obligations of the Permitted Joint Venture;

(b) the Investment is either (A) of the type described in clauses (a), (b) or (d) of the definition of Investments, or (B) of the type described in clauses (c) or (e) of the definition of Investments and, on the date such Investment is made, the amount of the Guaranty or other obligation, as the case may be, is reasonably estimable;

(c) other than the amount of an Investment permitted under clause (b) immediately above of the type described in clause (c) or clause (e) of the definition of Investments, there is no recourse to any Loan Party or any Subsidiary of any Loan Party for any Debt or other liabilities or obligations (contingent or otherwise) of the Permitted Joint Venture;

(d) the Total Net Leverage Ratio shall be no more than 2.50:1.00 after giving pro forma effect to the transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive Fiscal Quarters ending prior to the Investment for which consolidated financial statements of the Parent are available;

(e) to the extent that the equity interests owned, directly or indirectly, by the Parent in such Permitted Joint Venture constitutes Excluded Property, such equity interests shall be held by a JV Holding Company and the equity interest of such JV Holding Company shall constitute Collateral; and

(f) no Default or Event of Default shall exist immediately prior to and immediately after giving effect to any such Investment in a Permitted Joint Venture.

10.7. **Continuation of or Change in Business**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, engage in any business other than the business of the Loan Parties and their Subsidiaries, substantially as conducted and operated by the Loan Parties and their Subsidiaries, taken as a whole, as of the Closing Date or business that supports or is complimentary to such business or is a reasonable extension thereof.

10.8. **Restricted Payments**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any shares of capital stock or other equity interests of the Parent or any Subsidiary of the Parent or directly or indirectly redeem, purchase, retire or otherwise acquire for value any shares of any class of the capital stock or other equity interests of the Parent or any Subsidiary of the Parent or set aside any amount for any such purposes (any of the above, a "Restricted Payment"), except:

(a) Restricted Payments so long as both immediately before and immediately after giving effect to any Restricted Payment under this clause (a), Borrowers are in compliance with the Financial Covenant;

(b) any Subsidiary of the Parent may declare and pay dividends or make any other distribution (by reduction of capital or otherwise) to, or repurchase its capital stock or equity interests from, the Parent or any other Subsidiary of the Parent (or, in the case of non-wholly owned Subsidiaries of the Parent, to the Parent or any other Subsidiary that is a direct or indirect parent of such non-wholly-owned Subsidiary and to each other owner of equity interests of such non-wholly owned Subsidiary on a pro rata basis (or more favorable basis from the perspective of the Parent or its applicable Subsidiary) based on their relative ownership interests);

(c) (i) so long as no Event of Default shall exist immediately prior to or after giving effect to any such stock purchase or redemption, stock purchases or redemptions (other than repurchases described in clause (ii) of this Section 10.8(c)) in connection with the rights of employees or members of the board of directors of the Parent or any of its Subsidiaries of any capital stock or equity interests issued pursuant to an employee or board of directors equity subscription agreement, equity option agreement or equity ownership arrangement or other compensation plan permitted to be issued hereunder, provided that the aggregate consideration of such stock purchase and redemptions made pursuant to this clause (i) shall not, in any Fiscal Year, exceed $5,000,000 and (ii) repurchases of equity interests deemed to occur upon (A) the exercise of stock options if the equity interests represent a portion of the exercise price thereof or (B) the withholding of a portion of equity interests issued to employees and other participants under an equity compensation program of the Parent and its Subsidiaries, in each case to cover withholding tax obligations of such persons in respect of such issuance;

(d) dividends or other distributions payable solely in capital stock or equity interests;

(e) the Parent may declare and make Restricted Payments in an amount not exceeding in the aggregate $5,000,000 during any Fiscal Year; or

(f) (i) any payments in connection with a Permitted Bond Hedge Transaction and (ii) the settlement of any related Permitted Warrant Transaction (A) by delivery of shares of Parent's common stock upon settlement thereof or (B) by (1) set-off against the related Permitted Bond Hedge Transaction or (2) payment of an early termination amount thereof in common stock upon any early termination thereof.

10.9. **Payment of Other Debt**

. (a) The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity in any manner any Debt that is owed to a third party that is subordinated to the Obligations or Debt that is secured by a Lien ranking junior to the Liens securing the Obligations (excluding, for the avoidance of doubt, permitted unsecured Debt, permitted Convertible Indebtedness**,** any Permitted Receivables Financing**, the Term Loan Obligations and any other Debt that is secured on a *pari passu* or junior lien basis to the Term Loan Obligations (other than Debt that is secured on a junior lien basis to the Liens securing both the Obligations** and the Term Loan Obligations)**)**, except:

the conversion (or exchange) of any such Debt to, or the payment of any such Debt from the proceeds of the issuance of, the common stock or other equity interests of the Borrower (other than Disqualified Equity Interests);

for a Permitted Refinancing thereof;

payments of or in respect of any such Debt so long as both immediately before and after giving effect to any such prepayment, redemption, purchase or defeasance of any Debt under this Section 10.9(a)(iii), Borrowers are in compliance with the Financial Covenant; or

so long as no Event of Default has occurred and is continuing or would exist immediately after giving effect to any such payment, other payments of or in respect of any such Debt in an aggregate amount not to exceed the greater of $30,000,000 and 1.50% of Consolidated Net Tangible Assets.

(a) The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, prepay, redeem, purchase or defease, in each case on a voluntary (and not mandatory) basis, prior to the scheduled maturity thereof in any manner any principal amount of any Debt (other than (w) the Obligations, (x) any permitted refinancing of such Debt in accordance with the applicable provisions of Section 10.1, (y) any intercompany Debt and (z) to the extent set forth in Section 10.9(a)), unless both immediately before and after giving effect to any such prepayment, redemption, purchase or defeasance of any Debt under this Section 10.9(b), Borrowers are in compliance with the Financial Covenant.

10.10. **No Restriction in Agreements on Dividends or Certain Loans**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, enter into or be bound by any agreement (a) which prohibits or restricts, in any manner the payment of dividends by any of its Subsidiaries (whether in cash, securities, property or otherwise), or (b) which prohibits or restricts in any manner the making of any loan to any Borrower by any of its Subsidiaries or payment of any Debt or other obligation owed to any Loan Party, other than, in each case, (i) restrictions applicable to a Securitization Subsidiary in connection with a Permitted Receivables Financing, (ii) restrictions imposed by any applicable law, rule or regulation (including applicable currency control laws and applicable state or provincial corporate statutes restricting the payment of dividends or any other distributions in certain circumstances), (iii) restrictions in effect under any Contractual Obligation outstanding on the Closing Date, and (iv) restrictions pursuant to any Contractual Obligation described in clauses (a) through (l) of Section 10.2.

10.11. **Loans and Investments**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, at any time make any Investment in notes or securities of, or any partnership

interest (whether general or limited) or limited liability company interest in, or any other Investment or interest in, or make any capital contribution to, any other Person, or agree, become or remain liable to do any of the foregoing, except:

(a) trade credit extended on usual and customary terms in the ordinary course of business and stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to any Borrower or any Subsidiary in satisfaction of judgments;

(b) (i) Investments by the Parent or any of its Subsidiaries in any Loan Party and (ii) Investments by any Non-Loan Party Subsidiary in any other Non-Loan Party Subsidiary;

(c) (i) Permitted Investments and Investments in cash and (ii) any Investments arising in connection with any Swap Agreements;

(d) Investments in Permitted Joint Ventures as permitted by Section 10.6;

(e) bonds required in the ordinary course of business of the Parent and its Subsidiaries, including without limitation, surety bonds, royalty bonds or bonds securing performance by the Parent or a Subsidiary of the Parent under bonus bids;

(f) loans by the Parent to any Bonding Subsidiary; provided, however (i) prior to any loan being made to any Bonding Subsidiary, such loan shall be evidenced by a note, reasonably satisfactory to the Agent, and such note shall be pledged pursuant to the applicable Security Document to the Agent for the benefit of the Secured Parties and (ii) any loans by the Parent to any Bonding Subsidiary shall in each and every case be subject to Section 10.14;

(g) other Investments so long as both immediately before and immediately after giving effect to any such Investment under this clause (g), Liquidity equals or exceeds $175,000,000;

(h) other Investments, in connection with or related to the operations of the Parent and its Subsidiaries, not exceeding in the aggregate $5,000,000 during any Fiscal Year;

(i) [Reserved];

(j) Investments by the Borrowers of the type described in clause (a) of the definition of Investments in any Bonding Subsidiary, provided that any such Investments by a Borrower in any Bonding Subsidiary shall in each case be subject to Section 10.14;

(k) any transaction which is an Investment permitted by Section 10.3 (including, without limitation, any Permitted Acquisition), Section 10.4 (including, without limitation, Investments arising out of the receipt by any Borrower or any Subsidiary of noncash consideration for the sale of assets permitted thereunder) or Section 10.8;

(l) any guaranty which is permitted under Section 10.1;

(m) (A) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and (B) loans or advances to employees made in the ordinary course of business and consistent with past practice, provided that such loans and advances to all such employees do not exceed an aggregate amount outstanding at any time equal to the greater of $10,000,000 and 0.50% of Consolidated Net Tangible Assets;

(n) Investments existing as of the Fifth Amendment Date and set forth on **Schedule 10.11**, and extensions, renewals, modifications, restatements or replacements thereof; provided that no such extension, renewal, modification, restatement or replacement shall increase the amount of the original loan, advance or investment, except by an amount equal to any premium or other reasonable amount paid in respect of the underlying obligations and fees and expenses incurred in connection with such extension, renewal, modification, restatement or replacement;

(o) to the extent constituting an Investment, the repurchase, repayment, defeasance or retirement of any Debt of the Parent or any Subsidiary to the extent such repurchase, prepayment or retirement is expressly permitted hereunder; and

(p) Investments by Borrowers and Guarantors in Non-Loan Party Subsidiaries, which, when combined with the aggregate amount of Debt permitted pursuant to Section 10.1(r), does not exceed at any time the greater of $10,000,000 and 0.50% of Consolidated Net Tangible Assets.

10.12. **Sale and Leaseback Transactions**

. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Person (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Parent or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Person to any Person (other than the Parent or any of its Subsidiaries) in connection with such lease (such transaction, a "Sale and Leaseback Transaction"); provided that the foregoing shall not prohibit any such Sale and Leaseback Transaction in which such lease, to the extent constituting Debt, is permitted to be incurred under Section 10.1 and in which the leased property is permitted to be Disposed of by Section 10.4.

10.13. **Changes in Organizational Documents and Loan Party Information**.

(a) The Borrowers shall not, and shall not permit any of their respective Subsidiaries that are Loan Parties to, amend in any respect their respective certificate of incorporation (including any provisions or resolutions relating to capital stock), by-laws, certificate of limited partnership, partnership agreement, certificate of formation or limited liability company agreement if such change would be materially adverse to the Lenders as determined by the Borrower in good faith (provided that any amendment of any provision in the limited liability company agreement, operating agreement or partnership agreement of any Loan Party that permits a pledgee of such Loan Party's limited liability, membership or partnership interests (or such pledgee's designee or any purchaser of such interests) to be substituted for the member or partner under such agreement upon the exercise of such pledgee's rights with respect to its collateral shall be deemed to be materially adverse to the Lenders).

(b) The Borrowers shall not, and shall not permit any of their respective Subsidiaries that are Loan Parties to, effect any change (i) in any such Loan Party's legal name, (ii) in the location of its chief executive office, (iii) in its identity or organizational structure, (iv) in its Federal Taxpayer Identification Number (or equivalent thereof) or organizational identification number, if any or (v) in its jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), unless it shall have given the Administrative Agent prior written notice thereof (or, solely in the case of the Borrowers, ten (10) calendar days' prior written notice thereof) clearly describing such change and providing such other information in connection therewith as the Administrative Agent may reasonably request.

(c) No Borrower shall make any change in its Fiscal Year.

10.14. **Transactions With Respect to the Bonding Subsidiaries**

. Except as otherwise expressly permitted under this Agreement, the Borrowers shall not permit any Bonding Subsidiary to (a) own any assets other than a leasehold interest, as lessee, in a coal lease where the lessor is a Person that is not an Affiliate of the Parent and cash and Permitted Investments necessary to assure either the lessor of such leasehold interest of the performance of all obligations by such Bonding Subsidiary thereunder or to assure the provider of surety bonds described in the following clause (b) that such Bonding Subsidiary is able to perform its obligations to such provider under the described surety bonds; and (b) incur any Debt or other obligation or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) except those to the lessor of the coal lease owned by such Bonding Subsidiary and those in favor of the provider of the surety bonds which provide payment assurances to such lessor under the coal lease owned by such Bonding Subsidiary related to the cost of acquiring such leasehold interest, the bonus bid and royalty payments thereunder and the costs and expenses incidental to such lease; provided, however that in lieu of any surety bond such Bonding Subsidiary may request that the Parent obtain a letter of credit on behalf of such Bonding Subsidiary and such Bonding Subsidiary may incur reimbursement obligations in connection therewith.

SECTION 11.
FINANCIAL COVENANTS

11.1. **Financial Covenant**

. Until Payment in Full of the Obligations and termination of the Commitments, Borrowers shall comply, or cause compliance with, the following covenant:

(a) Minimum Liquidity. At all times, Borrowers shall cause (i) Liquidity to equal or exceed $100,000,000 and (ii) the portion of Liquidity consisting of unrestricted cash or Permitted Investments of the Parent and its Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) that are not Foreign Subsidiaries to equal or exceed $90,000,000.

SECTION 12.
EVENTS OF DEFAULT; REMEDIES UPON DEFAULT

12.1. **Events of Default**

. An "Event of Default" shall mean the occurrence or existence of any one or more of the following events or conditions (whatever the reason therefor and whether voluntary, involuntary or effected by operation of Law):

(a) Payments of Obligations. The Parent or any other Loan Party shall fail to pay (i) any principal of (or premium with respect to) any Loan or any LC Obligation when due hereunder (whether at stated maturity, on demand, upon acceleration, or otherwise), or (ii) any interest on any Loan or on any LC Obligation or any fee owing hereunder or under the Fee Letter, or any other Obligations within three (3) Business Days after such interest, fee or other Obligation becomes due in accordance with the terms hereof or thereof.

(b) Breach of Warranty. Any representation or warranty made at any time by or on behalf of any Borrower herein or by any of the Loan Parties in any other Loan Document, or in any certificate, other instrument or statement furnished pursuant to the provisions hereof or thereof, shall prove to have been false or incorrect in any material respect (or, if subject to a materiality or Material Adverse Change qualification, in any respect) as of the time it was made, deemed made or furnished.

(c) Breach of Negative Covenants or Certain Other Covenants. Any of the Loan Parties shall default in the observance or performance of (i) the covenant contained in Section 10.13(b) and such default, solely to the extent capable of cure, shall continue unremedied for a period of thirty (30) days or (ii) any

covenant contained in Section 9.1, 9.3 (with respect to the ABL Priority Collateral), 9.5, 9.15, 9.16(f)(i), 9.16(f)(ii), 9.18, 9.20(e), Section 10 (other than Section 10.13(b)), or Section 11.

(d) Breach of Other Covenants. Any of the Loan Parties shall default in the observance or performance of (i) any covenant contained in Section 9.16(a) and such default shall continue unremedied for a period of (A) five (5) Business Days, at any time other than during an Account Control Period, or (B) three (3) Business Days, at any time during an Account Control Period, (ii) any covenant contained in Section 9.16(b), 9.16(c) or 9.16(d) and such default shall continue unremedied for a period of fifteen (15) days, or (iii) any other covenant, condition or provision hereof or of any other Loan Document and such default shall continue unremedied for a period of thirty (30) days after the earlier of (A) any Senior Officer of any Borrower becomes aware of the occurrence thereof or (B) the date upon which Parent has received written notice of such default from the Administrative Agent.

(e) Defaults in Other Agreements or Debt; Bonding Matters.

A default or event of default shall occur at any time under the terms of **(A) the Term Loan Agreement or (B)** any other agreement involving borrowed money or the extension of credit or any Debt under which any Loan Party or a Subsidiary of any Loan Party may be obligated as a borrower, guarantor, counterparty or other party (including Bank Product Agreements) in excess of $50,000,000 in the aggregate, and **in each case** such default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto) any indebtedness or other obligation when due (whether at stated maturity, by acceleration or otherwise) or if such default or event of default permits or causes (or with the giving of notice would permit or cause) the acceleration of any such indebtedness or other obligation or the termination of any commitment to lend **(x) under the Term Loan Agreement or (y) in the case of any other Debt** in amount in excess of $50,000,000.

One or more surety, reclamation or similar bonds securing obligations of any Borrower or any Subsidiary of the Parent (or any required guaranties thereof or required letters of credit with respect thereto) with an aggregate face amount of $50,000,000 or more shall be actually terminated, suspended or revoked prior to the full and complete satisfaction or discharge of such obligations by any Borrower or any Subsidiary of the Parent and not replaced within 30 days of such termination, suspension or revocation; provided that any Borrower or any Subsidiary of the Parent shall be permitted to replace such surety bonds with self-bonding obligations to the extent permitted by any Person to which satisfaction of the obligations secured by such bonds are owed prior to full satisfaction of the obligations secured by such bonds.

(f) Judgments or Orders. Any judgments or orders (including with respect to any Environmental Health and Safety Claims and Environmental Health and Safety Order) (x) for the payment of money in excess of $50,000,000 in the aggregate shall be entered against any Loan Party or any Subsidiary of any Loan Party by a court having jurisdiction in the premises or (y) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change shall be entered against any Loan Party, which judgment, in either case, is not discharged, vacated, bonded or stayed pending appeal within a period of thirty (30) days from the date of entry; provided, however, that any such judgment or order under subclause (x) of this clause (f) shall not be an Event of Default under this Section 12.1(f) if and for so long as the amount of such judgment or order in excess of $50,000,000 is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof (and such insurer has been notified of the potential claim and does not dispute coverage).

(g) Loan Document Unenforceable. Any of the Loan Documents shall cease to be legal, valid and binding agreements enforceable against any Loan Party executing the same or such party's successors and assigns (as permitted under the Loan Documents) in accordance with the respective terms thereof or shall in any way be terminated (except in accordance with its terms), or cease to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby, or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Security Documents on a portion of the Collateral that is not *de minimis*.

(h) Uninsured Losses. There shall occur any material uninsured damage to or loss, theft or destruction of any of the Collateral in excess of $50,000,000 (or, in the case of the ABL Priority Collateral, $5,000,000) (it being understood that the amount of deductibles payable in connection with such claim shall not be included in such threshold) or the Collateral or any other of the Loan Parties' or any of their Subsidiaries' assets in excess of $50,000,000 (or, in the case of the ABL Priority Collateral, $5,000,000) in the aggregate are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within thirty (30) days thereafter.

(i) Events Relating to Plans and Benefit Arrangements. Any of the following occurs, in each case, which individually or in the aggregate, could reasonably be expected to have a Material Adverse Change: (i) any Reportable Event, which could reasonably be expected to constitute grounds for the termination of any Plan by the PBGC or the appointment of a trustee to administer or liquidate any Plan, shall have occurred and be continuing; (ii) proceedings shall have been instituted or other action taken to terminate any Plan, or a termination notice shall have been filed with respect to any Plan or a Multiemployer Plan; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) any Loan Party or any member of the ERISA Group shall fail to make any contributions when due, after the expiration of any applicable grace period, to a Plan; or (v) the Parent or any member of the ERISA Group is assessed Withdrawal Liability with respect to a Multiemployer Plan.

(j) Change of Control. (i) Any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Exchange Act) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) 50% or more of the voting capital stock of the Borrower or (ii) within a period of twelve (12) consecutive calendar months, individuals who (1) were directors of the Parent on the first day of such period, (2) were nominated for election by the Parent, or (3) were approved for appointment by the board of directors of the Parent shall cease to constitute a majority of the board of directors of the Parent; provided that the appointment of any directors of the Parent pursuant to the Plan of Reorganization shall not result in an Event of Default (a "Change of Control").

(k) Involuntary Proceedings. A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Loan Party or Material Subsidiary of a Loan Party in an involuntary case under any applicable Debtor Relief Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of such Loan Party or Subsidiary for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;

(l) Voluntary Proceedings. Any Loan Party or Material Subsidiary of a Loan Party shall commence a voluntary case under any applicable Debtor Relief Law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator,

conservator (or other similar official) of itself or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing.

12.2. **Remedies upon Default**.

(a) Termination and Acceleration. Upon the occurrence of an Event of Default under Sections 12.1(k) or (l), all Commitments shall, automatically and without notice to any Person, terminate and all Obligations (other than Obligations under any Swap Agreements between a Loan Party and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements) shall, automatically and without notice to any Person, become immediately due and payable, without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by Loan Parties to the fullest extent permitted by applicable Law. During the existence of any other Event of Default, Administrative Agent may (and, at the written direction of the Required Lenders, shall) do one or more of the following at any time and from time to time:

declare any Obligations immediately due and payable (other than Obligations under any Swap Agreements between a Loan Party and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements), whereupon they shall be due and payable without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by Loan Parties to the fullest extent permitted by applicable Law;

refuse to make Loans, cause the issuance of any Letters of Credit, make any other extensions of credit or grant any other financial accommodations to or for the benefit of any Loan Parties; (B) terminate, reduce, or condition any Commitment; (C) make any adjustment to the Borrowing Base (including by instituting additional Reserves); and (D) require Loan Parties to Cash Collateralize LC Obligations, Bank Product Obligations, and other Obligations that are contingent or not yet due and payable (and, if Loan Parties do not, for whatever reason, promptly provide such Cash Collateral, Administrative Agent may provide such Cash Collateral with the proceeds of a Loan and each Lender shall fund its Pro Rata Share thereof regardless of whether an Overadvance exists or would result therefrom or any condition precedent to the making of any such Loan has not been satisfied); and

exercise such other rights and remedies which may be available to it under this Agreement, the other Loan Documents, and agreements relating to Bank Products, or applicable Law (including the rights of a secured party under the UCC), all of which shall be cumulative.

(b) Safekeeping. Administrative Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto, for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whatsoever, and the same shall be at all times at Loan Parties' sole risk.

12.3. **License**

. Each Loan Party hereby grants to Administrative Agent during the existence of any Event of Default an irrevocable, non-exclusive license or other right to use, license, or sublicense (without payment of any royalty or other compensation to such Loan Party or any other Person) any or all of such Loan Party's Intellectual Property, computing hardware, brochures, promotional and advertising materials, labels, packaging materials, and other property in connection with the advertising for sale or lease, marketing, selling, leasing, liquidating, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs

used for the compilation or printout thereof. Each Loan Party's rights and interests in and to any Intellectual Property shall inure to Administrative Agent's benefit.

12.4. **Receiver**

. Subject to the Intercreditor Agreement, in addition to any other remedy available to it, Administrative Agent, upon the request of the Required Lenders, shall have the absolute right, during the existence of an Event of Default, to seek and obtain the appointment of a receiver to take possession of and operate and/or dispose of the business and assets of any Loan Party and Subsidiaries, and Loan Parties hereby consent (for themselves and on behalf of the Subsidiaries) to such rights and such appointment and hereby waive any objection Loan Parties may have thereto or the right to have a bond or other security posted by Administrative Agent or any Lender in connection therewith.

12.5. **Deposits; Insurance**

. Subject to the Intercreditor Agreement, Loan Parties (a) authorize Administrative Agent to, during the existence of an Event of Default, settle, collect, and apply against the Obligations any refund of insurance premiums or any insurance proceeds payable to any Loan Party on account of any Loss or otherwise and (b) irrevocably appoints Administrative Agent as its attorney-in-fact to endorse any check or draft or take other action necessary to obtain such funds.

12.6. **Remedies Cumulative**

. All rights and remedies of Administrative Agent or any other Secured Party contained in the Loan Documents, the UCC, and applicable Law are cumulative and not in derogation or substitution of each other. In particular, the rights and remedies of Administrative Agent and the other Secured Parties may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that Administrative Agent or the other Secured Parties may have, whether under any Loan Document, the UCC, applicable Law and shall include the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Loan Party of this Agreement or any of the other Loan Documents. Administrative Agent and the other Secured Parties may at any time or times, proceed directly against any Loan Party to collect the Obligations without prior recourse to any other Loan Party or the Collateral. All rights and remedies of Administrative Agent and the other Secured Parties shall continue in full force and effect until Payment in Full of all Obligations.

SECTION 13.
ADMINISTRATIVE AGENT

13.1. **Appointment, Authority, and Duties of Administrative Agent; Professionals**.

(a) Appointment and Authority. Each Lender, LC Issuer and other Secured Party hereby irrevocably appoints Regions Bank to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to (i) take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and (ii) enter into all Loan Documents to which Administrative Agent is intended to be a party and accept all Security Documents for Administrative Agent's benefit and the Pro Rata benefit of the Lenders, all of which shall be binding upon the Secured Parties. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive authority to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (ii) execute and deliver as Administrative Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Borrower or other Person; (iii) act as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (iv) manage, supervise, or otherwise deal with Collateral; and (v) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, applicable Law, or otherwise. Subject to Section 16.2(a)(iv)(F), Administrative Agent alone shall be authorized to determine whether any Inventory constitutes Eligible Coal Inventory or Eligible

Parts and Supplies Inventory, or whether to impose or release any Reserve, which determinations and judgments, if exercised in good faith, shall exonerate Administrative Agent from liability to any other Secured Party or other Person (other than the Loan Parties) for any error in judgment. It is understood and agreed that the use of the term "agent" (or any other similar nomenclature) herein or in any other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Each Secured Party hereby acknowledges the Intercreditor Agreement may be entered into by Administrative Agent on behalf of the Secured Parties pursuant to the terms of this Agreement (and amended from time to time with the consent of Required Lenders) and agrees to be bound by all of its terms.

(b) Duties; Delegation. The duties of Administrative Agent shall be ministerial and administrative in nature, and Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement or the other Loan Documents. Administrative Agent shall not have a fiduciary relationship with any Lender, LC Issuer, Secured Party, Participant or other Person, whether by reason of this Agreement or any other Loan Document or any transaction relating hereto or thereto or otherwise, and regardless of whether a Default or Event of Default exists. The conferral upon Administrative Agent of any right shall not imply a duty on Administrative Agent's part to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement. Administrative Agent may perform its duties through agents, employees, and other Related Parties and may consult with and employ Administrative Agent Professionals and shall be entitled to act upon (or refrain from acting), and shall be fully protected in any action taken (or omitted to be taken) in good faith reliance upon, any advice given by any Administrative Agent Professional. Administrative Agent shall not be responsible for the negligence or misconduct of any agents, employees, other Related Parties or Administrative Agent Professionals selected by it. Except as otherwise may be expressly set forth herein or in any of the other Loan Documents, Administrative Agent shall not have any duty to disclose, and shall not be liable for any failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its agents, employees, other Related Parties or Administrative Agent Professionals in any capacity.

(c) Instructions of Required Lenders. The rights and remedies conferred upon Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by applicable Law. Administrative Agent may request instructions from Required Lenders with respect to any act (including the failure to act) in connection with this Agreement or any other Loan Document, and may seek assurances to its satisfaction from Lenders of their indemnification obligations under Section 13.5 against all Claims which could be incurred by Administrative Agent in connection with any act (or failure to act). Administrative Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Administrative Agent shall not incur liability to any Person by reason of so refraining. Instructions of the Required Lenders shall be binding upon all Lenders, and no Lender or any other Person shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent's acting or refraining from acting in accordance with the instructions of the Required Lenders. Notwithstanding the foregoing, instructions by and consent of all Lenders (except any Defaulting Lender) shall be required in the circumstances described in Section 16.2(a)(iv). The Required Lenders, without the prior written consent of each Lender, may not direct Administrative Agent to accelerate and demand payment of Loans held by one Lender without accelerating and demanding payment of all other Loans or terminate the Commitments of one Lender without terminating the Commitments of all Lenders. Administrative Agent shall not be required to take any action which, in its opinion, or in the opinion of its legal counsel, is contrary to applicable Law or any Loan Document or could subject any Administrative Agent Indemnitee to liability, including for the avoidance of doubt any action that may be in violation of

the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law.

13.2. **Agreements Regarding Guarantors, Collateral and Field Examination Reports**.

(a) Lien Releases; Release of Guarantors; Care of Collateral. Each Secured Party authorizes Administrative Agent to (i) release any Lien with respect to any Collateral (A) upon Payment in Full of the Obligations, (B) that Borrower Agent certifies in writing to Administrative Agent is Excluded Property (and Administrative Agent may rely conclusively on any such certificate without further inquiry); provided that such certification shall not be required with respect to Excluded Property under clause (a) or clause (f) of such definition, or (C) that is the subject of a Disposition which Borrower Agent certifies in writing to Administrative Agent is permitted under this Agreement (including under Section 10.4) (and Administrative Agent may rely conclusively on any such certificate without further inquiry) or to which Required Lenders or such other number or percentage of Lenders may be required to give such consent under Section 16.2 have otherwise consented, (ii) subordinate its Liens in any Collateral in favor of any other Lien if Borrower Agent certifies that such other Lien is a Permitted Lien entitled to priority over Administrative Agent's Liens (and Administrative Agent may rely conclusively on any such certificate without further inquiry), (iii) release any Guarantor from its obligations under any Guaranty and the Security Documents pursuant to any transaction permitted hereunder pursuant to which such Guarantor becomes a Non-Loan Party Subsidiary or ceases to be a Subsidiary (including, without limitation, in the event the ownership interests in such Loan Party are sold or otherwise disposed of or transferred to persons other than Loan Parties in a transaction permitted under this Agreement (including under Section 10.4)) or to which Required Lenders (or such other number or percentage of Lenders as may be required to give such consent under Section 16.2) have otherwise consented, (iv) subordinate its Liens or enter into non-disturbance agreements satisfactory to Administrative Agent in its Permitted Discretion with respect to any Term Loan Priority Collateral in connection with any easements, permits, licenses, rights of way, surface leases or other surface rights or interests permitted to be granted hereunder, and (v) release each Loan Party from its obligations under the Loan Documents (other than those obligations that survive Payment in Full of the Obligations or termination of the applicable Loan Document) upon Payment in Full of the Obligations. Administrative Agent shall have no obligation whatsoever to any Lenders to assure that any Collateral exists or is owned by a Loan Party or any other Person, or is cared for, protected, insured or encumbered, nor to assure that Administrative Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral. Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under this Agreement or any other Loan Document pursuant to this Section 13.2(a).

(b) Possession of Collateral. Administrative Agent and the Lenders appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or under Article 9 Control of such Lender, to the extent such Liens are perfected by possession or Article 9 Control. If any Lender obtains possession or Article 9 Control of any Collateral, it shall notify Administrative Agent thereof and, promptly upon Administrative Agent's request, deliver such Collateral to Administrative Agent or otherwise deal with such Collateral in accordance with Administrative Agent's instructions.

(c) Reports. Administrative Agent shall promptly forward to LC Issuer and each Lender (upon any such Person's request therefor), when complete, copies of any field audit, field examination, or appraisal report prepared by or for Administrative Agent with respect to any Loan Party or Subsidiary or any Collateral (each, a "Report"). LC Issuer and each Lender agrees (i) that neither Regions Bank nor Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report and shall not be liable for any information contained in or omitted from any Report; (ii) that the

Reports are not intended to be comprehensive audits or examinations of any Person, thing, or matter and that Administrative Agent or any other Person performing any such audit, examination, or appraisal will inspect only specific information regarding the subject matter thereof and will rely significantly upon the books and records, as well as upon representations of, the Persons (and their officers and employees) subject to such audit, examination, or appraisal; and (iii) to keep all Reports confidential and strictly for LC Issuer's or such Lender's internal use and not to distribute any Report (or the contents thereof) to any Person (except to such Person's Participants, attorneys, and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each of LC Issuer and the Lenders agrees to indemnify, defend and hold harmless Administrative Agent and any other Person preparing a Report (excepting therefrom any Loan Party) from any action LC Issuer or such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising in connection with any third parties that obtain any information contained in a Report through LC Issuer or such Lender.

(d) Rights of Individual Secured Parties. Anything contained in any of the Loan Documents to the contrary notwithstanding, each of the Loan Parties, Administrative Agent and each other Secured Party hereby acknowledge and agree that (i) no Secured Party except Administrative Agent shall have any power, right or remedy hereunder individually to realize upon any of the Collateral or to enforce this Agreement or any other Loan Document, it being understood and agreed that all such powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and thereof, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, Administrative Agent or any other Secured Party may be the purchaser of any or all of such Collateral at any such sale or other disposition and Administrative Agent, as agent for and representative of the Secured Parties (but not any of the other Secured Parties in their respective individual capacities) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale or other disposition.

13.3. **Reliance By Administrative Agent**

. Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, or other writing (including any electronic message, facsimile, Internet or intranet website posting, or other distribution), or any statement made to it orally or by telephone believed by it to be genuine and to have been made, signed, sent, or otherwise authenticated, as applicable, by the proper Person. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or LC Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or LC Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or LC Issuer in accordance with Section 16.1 before the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other Administrative Agent Professionals 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.

13.4. **Action Upon Default**

. Administrative Agent shall be entitled to assume that no Default or Event of Default has occurred and is continuing and shall not be deemed to have knowledge of any Default or Event of Default unless, in its capacity as a Lender it has actual knowledge thereof, or it has received written notice from any other Lender or any Loan Party specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify Administrative Agent and the other Lenders thereof in writing specifying in detail the nature thereof. Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of Administrative Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations under any Loan Documents, or exercise any right that it might otherwise have under applicable

Law to credit bid at foreclosure sales, UCC sales, or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Borrower where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

13.5. **Indemnification of Administrative Agent Indemnitees**

. EACH SECURED PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS ADMINISTRATIVE AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY LOAN PARTIES (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF LOAN PARTIES UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY ADMINISTRATIVE AGENT INDEMNITEE, PROVIDED SUCH CLAIM RELATES TO OR ARISES FROM AN ADMINISTRATIVE AGENT INDEMNITEE'S ACTING AS OR FOR ADMINISTRATIVE AGENT (IN ITS CAPACITY AS ADMINISTRATIVE AGENT). In Administrative Agent's discretion, it may reserve for any such Claims made against an Administrative Agent Indemnitee and may satisfy any judgment, order, or settlement relating thereto, from proceeds of Collateral before making any distribution of Collateral proceeds to any other Secured Parties. If Administrative Agent is sued by any receiver, bankruptcy trustee, debtor-in-possession, or other Person for any alleged preference or fraudulent transfer, then any monies paid by Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs, and expenses (including attorneys' fees) incurred in the defense of same, shall be reimbursed to Administrative Agent by each Lender to the extent of its Pro Rata Share. All payment obligations under this Section 13.5 shall be due and payable **ON DEMAND**.

13.6. **Limitation on Responsibilities of Administrative Agent**

. Administrative Agent shall not be liable for any action taken or not taken by it under any Loan Document (a) 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 Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 16.2) or (b) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment. Administrative Agent does not assume any responsibility for any failure or delay in performance or any breach by any Loan Party or any Secured Party of any obligations under the Loan Documents. Administrative Agent does not make to Lenders any express or implied warranty, representation, or guarantee with respect to any Obligations, Collateral, Loan Documents, or Borrower. No Administrative Agent Indemnitee shall be responsible to any Secured Party for (a) any recitals, statements, information, representations, or warranties contained in any Loan Documents; (b) the execution, validity, genuineness, effectiveness, or enforceability of any Loan Documents; (c) the genuineness, enforceability, collectibility, value, sufficiency, location, or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; (d) the validity, enforceability or collectibility of any Obligations; or (e) the assets, liabilities, financial condition, results of operations, business, creditworthiness, or legal status of any Loan Party or Account Debtor. No Administrative Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document 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 in any other Loan Document, or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 7 or elsewhere herein or in any other Loan Document. Administrative Agent shall have no liability with respect to the administration, submission or any other matter related to the rates in the definition of Term SOFR, Adjusted Term SOFR, Term SOFR Index Rate or with respect to any comparable or successor rate thereto.

13.7. **Resignation; Successor Administrative Agent**

. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, Administrative Agent may resign at any time by giving at least thirty (30) days prior written notice thereof to Lenders and Borrowers. Upon receipt of such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent which shall be (i) a Lender or an Affiliate of a Lender (in each case excluding Defaulting Lenders) or (ii) a commercial bank that is organized under the laws of the United States or any state or district thereof, or an Affiliate of such bank, and (provided no Default or Event of Default exists) is reasonably acceptable to the Borrower Agent. If no successor agent is appointed before the effective date of the resignation of Administrative Agent, then Administrative Agent may appoint a successor agent meeting the qualifications set forth above, provided that if Administrative Agent shall notify Borrowers and Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral security held by Administrative Agent on behalf of the Lenders or LC Issuer under any of the Loan Documents the retiring Administrative Agent shall continue to hold such Collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications, and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and LC Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent (with consent from the Borrower Agent unless a Default or Event of Default then exists) as provided for above in this paragraph. Upon acceptance by a successor Administrative Agent of an appointment to serve as Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this paragraph) but shall continue to have the benefits of the indemnification set forth in Sections 13.5, 16.3, and 16.4. Notwithstanding any Administrative Agent's resignation, the provisions of this Section 13 shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Administrative Agent. Any successor to Regions Bank by merger or acquisition of equity interests or its Loans hereunder shall continue to be Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above. In addition to the foregoing, and notwithstanding anything to the contrary contained herein, if the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law by notice in writing to the Borrower Agent and such Person remove such Person as the Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders (with consent from the Borrower Agent unless a Default or Event of Default then exists) and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders (the "Removal Effective Date"), then, such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date and the Required Lenders instituting such removal shall continue thereafter as co-Administrative Agents unless and until a successor Administrative Agent is appointed and accepts such appointment.

13.8. **Separate Collateral Agent**

. It is the intent of the parties that there shall be no violation of any applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If Administrative Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any applicable Law, Administrative Agent with consent from the Borrower Agent unless a Default or Event of Default then exists (such consent not be unreasonably withheld) may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If Administrative Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to Administrative Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as Administrative Agent. Lenders shall execute and

deliver such documents as Administrative Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign, or be removed, then all the rights and remedies of such agent, to the extent permitted by applicable Law, shall vest in and be exercised by Administrative Agent until appointment of a new agent.

13.9. **Due Diligence and Non-Reliance**

. Each Secured Party acknowledges and agrees that it has, independently and without reliance upon Administrative Agent or any other Secured Party, or any of their respective Related Parties, and based upon such documents, information, and analyses as it has deemed appropriate, made its own credit analysis of each Loan Party and its own decision to enter into this Agreement and to fund Loans, issue Letters of Credit, participate in LC Obligations hereunder, make or participate in other credit extensions to Loan Parties hereunder and grant other financial accommodations to or on behalf of any Loan Party pursuant hereto. Each Secured Party has made such inquiries concerning the Loan Documents, the Collateral and each Loan Party as such Lender believes necessary. Each Secured Party further acknowledges and agrees that the other Secured Parties, including Administrative Agent, or any of their respective Related Parties, have made no representations or warranties concerning any Loan Party or Subsidiary, any Collateral, or the legality, validity, sufficiency, or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon the other Secured Parties, including Administrative Agent, or any of their respective Related Parties, and based upon such financial statements, documents, and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans, issuing Letters of Credit, participating in LC Obligations, making or participating in other credit extensions to Loan Parties and granting other financial accommodations to or on behalf of any Loan Party and in taking or refraining from any action under any Loan Documents. Except as expressly required hereby and except for notices, reports, and other information expressly requested by a LC Issuer or any Lender, neither Administrative Agent nor any of its Related Parties shall have no duty or responsibility to provide LC Issuer, any Lender or any other Secured Party with any notices, reports, or certificates furnished to Administrative Agent by any Loan Party or Subsidiary or any credit or other information concerning the affairs, financial condition, business, or properties of any Loan Party or Subsidiary which may come into possession of Administrative Agent or any of its Affiliates.

13.10. **Remittance of Payments**.

(a) Remittances Generally. All payments by any Lender to Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Administrative Agent and request for payment is made by Administrative Agent by 11:00 a.m. on a Business Day, payment shall be made by such Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Administrative Agent to any Lender shall be made by wire transfer, in the type of funds received by Administrative Agent. Any such payment shall be subject to Administrative Agent's right of offset for any amounts due from such Lender under the Loan Documents. From and after the due date for payment by lenders, such payment shall bear interest computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Loans until such defaulted sum is Paid in Full. From and after the due date for payment by lenders, such payment shall bear interest computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Loans until such defaulted sum is Paid in Full.

(b) Failure to Pay. If any Lender fails to pay any amount when due by it to Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate

determined by Administrative Agent as customary in the banking industry for interbank compensation. In no event shall Borrowers be entitled to receive credit for any interest paid by a Lender to Administrative Agent.

(c) Recovery of Payments. If Administrative Agent pays any amount to a Secured Party in the expectation that a related payment will be received by Administrative Agent from a Loan Party and such related payment is not received, then Administrative Agent may recover such amount from each Secured Party that received it. If Administrative Agent determines at any time that an amount received under any Loan Document must be returned to a Loan Party or paid to any other Person pursuant to applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Administrative Agent shall not be required to distribute such amount to any Secured Party. If any amounts received and applied by Administrative Agent to any Obligations are later required to be returned by Administrative Agent pursuant to applicable Law, each Lender shall pay to Administrative Agent, **ON DEMAND**, such Lender's Pro Rata Share of the amounts required to be returned in accordance with Section 4.1, together with interest thereon, computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Loans until such defaulted sum is Paid in Full.

(d) Payments Made in Error.

If Administrative Agent (x) notifies a Lender, LC Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, LC Issuer or Secured Party (any such Lender, LC Issuer, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that Administrative Agent has determined in its discretion (whether or not after receipt of any notice under immediately succeeding clause (ii)) that any funds (as set forth in such notice from Administrative Agent) received by such Payment Recipient from Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, LC Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of Administrative Agent pending its return or repayment as contemplated below in this **Section 13.10(d)** and held in trust for the benefit of Administrative Agent, and such Lender, LC Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as Administrative Agent may, in its discretion, specify in writing), return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with then standard banking industry rules on interbank compensation from time to time in effect. A notice of Administrative Agent to any Payment Recipient under this clause (i) shall be conclusive, absent manifest error.

Without limiting the immediately preceding clause (i), each Lender, LC Issuer, Secured Party or any Person who has received funds on behalf of a Lender, LC Issuer or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees,

distribution or otherwise) from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates), or (z) that such Lender, LC Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then, in each such case:

(A) it acknowledges and agrees that (1) in the case of immediately preceding sub-clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from Administrative Agent to the contrary) or (2) an error and mistake has been made (in the case of immediately preceding sub-clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(B) such Lender, LC Issuer or Secured Party shall use commercially reasonable efforts to, (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding sub-clauses (x), (y) and (z)) notify Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Administrative Agent pursuant to this Section 13.10(d). For the avoidance of doubt, the failure to deliver a notice to Administrative Agent pursuant hereto shall not have any effect on a Payment Recipient's obligations pursuant hereto or on whether or not an Erroneous Payment has been made.

Each Lender, LC Issuer or Secured Party hereby authorizes Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, LC Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by Administrative Agent to such Lender, LC Issuer or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that Administrative Agent has demanded to be returned under immediately preceding clause (ii).

(A) In the event that an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor in accordance with the immediately preceding clause (i), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon Administrative Agent's notice to such Lender at any time, then, effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as Administrative Agent in its discretion may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by Administrative Agent in such instance)), and is hereby (together with the Borrowers) deemed to execute and deliver an Assignment Agreement (or, to the extent applicable, an agreement incorporating an Assignment Agreement by reference pursuant to an MarkitClear or another electronic

platform as to which Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrowers or Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) Administrative Agent and the Borrowers shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(B) Subject to Section 14.1 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrowers or otherwise)), Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by Administrative Agent) and (y) may, in the sole discretion of Administrative Agent, be reduced by any amount specified by Administrative Agent in writing to the applicable Lender from time to time.

The parties hereto agree that (x) irrespective of whether Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, LC Issuer or Secured Party, to the rights and interests of such Lender, LC Issuer or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Loan Party; provided that this Section 13.2(d) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have

been payable had such Erroneous Payment not been made by Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding sub-clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Administrative Agent from the Borrowers for the purpose of making such Erroneous Payment.

To the extent permitted by applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

Each party's obligations, agreements and waivers under this Section 13.2.(d) shall survive the resignation or replacement of Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or LC Issuer the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

13.11. **Administrative Agent in its Individual Capacity**

. As a Lender, Administrative Agent shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders," or any similar term, as and when used herein or in any other Loan Document, unless otherwise expressly provided, shall include Administrative Agent in its capacity as a Lender. Each of Administrative Agent and its Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, be a Bank Product Provider to, act as trustee under indentures of, serve as financial or other advisor to, and generally engage in any kind of business with, Borrowers and their Affiliates, as if Administrative Agent were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In their individual capacity, Administrative Agent and its Affiliates may receive information regarding Borrowers, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that Administrative Agent and its Affiliates shall be under no obligation to provide such information to Lenders if acquired in such individual capacity and not as Administrative Agent hereunder.

13.12. **Administrative Agent Titles**

. Each Lender, other than Administrative Agent, that is designated (on the cover page of this Agreement or otherwise) by Administrative Agent as an "Arranger," "Documentation Agent," or "Syndication Agent" or words of similar type or effect shall not have any right, power, responsibility, or duty under any Loan Documents other than those applicable to all Lenders and shall in no event be deemed to have any fiduciary relationship with any other Lender or Secured Party.

13.13. **Bank Product Providers**

. Each holder of Bank Product Obligations not party to this Agreement agrees to be bound by this Agreement in relation to Bank Products. Each holder of Bank Product Obligations shall indemnify, defend and hold harmless Administrative Agent Indemnitees, to the extent not reimbursed by Loan Parties, against all Claims that may be incurred by or asserted against any Administrative Agent Indemnitee in connection with such provider's Bank Product Obligations. Anything contained in any of the Loan Documents to the contrary notwithstanding, no Bank Product Provider will create (or be deemed to have created) in its favor any rights in connection with the management or release of any Collateral or of the Obligations of Borrowers or any other Loan Party under the Loan Documents except as otherwise may be expressly provided herein or in the other Loan Documents. By accepting the benefits of the Collateral, each Bank Product Provider shall be deemed to have appointed Administrative Agent as its agent and agreed to be bound by the Loan Documents as a holder of Bank Product Obligations, subject to the limitations set forth herein. Furthermore, it is understood and agreed that each Bank Product

Provider, in its capacity as such, shall not have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Loan Documents or otherwise in respect of the Collateral (including the release or impairment of any Collateral, or to any notice of or consent to any amendment, waiver or modification of the provisions hereof or of the other Loan Documents) other than in its capacity (if any) as a Lender and, in any case, only as expressly provided herein or therein

13.14. **No Third Party Beneficiaries**

. This Section 13 is an agreement solely among Administrative Agent, LC Issuer, Lenders and the other Secured Parties and shall survive Payment in Full of the Obligations. This Section 13 does not confer any rights or benefits upon Loan Parties or any other Person, and no Loan Party or other Person shall have any standing to enforce this Section 13. As between Loan Parties and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by LC Issuer, the Lenders and the other Secured Parties, as applicable.

13.15. **Certifications From Lenders and Participants; PATRIOT Act; No Reliance**.

(a) PATRIOT Act Certifications. Each Lender or assignee or Participant of a Lender that is not incorporated under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender, assignee or Participant is not a "shell" and certifying to other matters as required by Section 313 of the PATRIOT Act and the applicable regulations: (1) within ten (10) days after the Closing Date, and (2) as such other times as are required under the PATRIOT Act.

(b) No Reliance. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, Participants or assignees, may rely on Administrative Agent to carry out such Lender's, Affiliate's, Participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 1020.220 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such other Anti-Terrorism Laws.

13.16. **Bankruptcy**.

(a) Proofs of Claim. In case of the pendency of any Insolvency Proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan or LC Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such Insolvency Proceeding or otherwise: (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Obligations 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 Lenders, LC Issuer and Administrative Agent (including any claim for compensation, expenses, disbursements and advances of Lenders, LC Issuer and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, LC Issuer and Administrative Agent arising hereunder) allowed in such Insolvency Proceeding; and (ii) 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, or other similar official in any such judicial proceeding is hereby authorized by each Lender and LC Issuer to make such payments directly to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and/or LC Issuer, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent hereunder.

(b) Credit Bids. The holders of the Obligations hereby irrevocably authorize Administrative Agent, acting 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 all or some of the Obligations pursuant to a deed in lieu of foreclosure, strict 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 Sections 363, 1123 or 1129 thereof, or any similar applicable Law in any other jurisdictions to which a Loan Party is subject, or (b) at any sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent of, or at the direction of) 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 holders thereof 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 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(s) used to consummate such purchase). In connection with any such credit bid (i) 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(s) (provided that any actions by Administrative Agent with respect to such acquisition vehicle(s), 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 (ii) to the extent that any Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (whether 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 which is credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the holders of the Obligations pro rata and the equity interests 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 Lender or any acquisition vehicle to take any further action.

SECTION 14.
ASSIGNMENTS AND PARTICIPATIONS

14.1. **Successors and Assigns**.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Documents except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement or any other Loan Document, whether expressed or implied,

shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Loans and obligations hereunder at the time owing to it) and the other Loan Documents; provided that any such assignment shall be subject to the following conditions:

Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it (in each case with respect to any credit facility) or contemporaneous assignments to Approved Funds that equal at least to the amounts specified in subsection (b)(i)(B) of this Section in the aggregate) or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitments (which for this purpose includes Loans and Obligations in respect thereof outstanding thereunder) or, if any of the Commitments are not then in effect, the principal outstanding balance of the Loans and other Obligations of the assigning Lender subject to each such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment Agreement, as of the Trade Date) shall not be less than $5,000,000, in the case of any assignment in respect of any Commitments and/or Loans, unless each of the Administrative Agent and, so long as no Event of Default shall have occurred and is continuing, the Borrower Agent otherwise consents (each such consent not to be unreasonably withheld or delayed).

Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Commitments and Loans assigned.

Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) an Event of Default shall have occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower Agent shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of Commitments under revolving credit facilities if such assignment is to a Person that is not a Lender with a Commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the LC Issuer (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of any Commitment; and

(D) the consent of the Swingline Lender (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of any Commitment.

Assignment Agreement. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement, together with a processing and recordation fee in the amount of $3,500, unless waived, in whole or in part by the Administrative Agent in its discretion. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

No Assignment to Certain Persons. No such assignment shall be made by any Lender to (A) any Borrower or other Loan Party or any of a Borrower's or a Loan Party's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) the Term Agent or any Term Lender.

No Assignment to Natural Persons. No such assignment shall be made by any Lender to a natural person.

Certain Additional Payments. 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 the 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 the Borrower Agent and the 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 the Administrative Agent, each LC Issuer, each Swingline 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 Swingline 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.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 15.2, 15.3 and 16.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a

waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. The Borrowers will execute and deliver on request, at their own expense, Notes to the assignee evidencing the interests taken by way of assignment hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at one of its offices in the United States, a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than (w) a natural Person, (x) a Borrower or other Loan Party, (y) any of a Borrower's or other Loan Party's Affiliates or Subsidiaries, or (z) the Term Agent or any Term Lender) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the LC Issuer and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 16.3 with respect to any payments made by such Lender to its Participant(s). Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in (iii) or (iv) of Section 16.2(a) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 15.1, 15.2 and 15.3 (subject to the requirements and limitations therein, including the requirements under Section 15.3 (it being understood that the documentation required under Section 15.3 shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 15.4 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 15.2 or 15.3, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with Borrowers to effectuate the provisions of Section 15.4 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 16.6 as though it were a Lender; provided that such Participant agrees to be subject to Section 5.6 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in

any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, or any promissory notes evidencing its interests hereunder, to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 15.
YIELD PROTECTION

15.1. **Making or Maintaining Term SOFR Loans or Term SOFR Index Loans**.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any date after the Closing Date, with respect to any Term SOFR Loans or Term SOFR Index Loans, that reasonable and adequate means do not exist for ascertaining the interest rate applicable to such Term SOFR Loans or Term SOFR Index Loans, on the basis provided for in the definition of Term SOFR, Adjusted Term SOFR, or Term SOFR Index, Administrative Agent shall on such date give notice to Borrower Agent and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Term SOFR Loans or Term SOFR Index Loans, until such time as Administrative Agent notifies Borrower Agent and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Borrowers (or Borrower Agent) with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrowers (or Borrower Agent) and such Loans shall be automatically made or continued as, or converted to, as applicable, Base Rate Loans but without reference to the Adjusted Term SOFR component of the Base Rate, unless Borrowers prepay such Loans prior thereto in accordance with the terms hereof. If the circumstances described in this Section 15.1(a) occur but only with respect to limited, but not all, tenors of the then applicable term rate Benchmark (including Term SOFR or Adjusted Term SOFR), then (i) Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such illegal or impracticable tenor and (ii) if a tenor that was removed pursuant to clause (i) of this sentence is subsequently displayed on a screen or information service for a Benchmark, then, Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(b) Illegality or Impracticability.

Subject to Section 15.1(b)(ii), in the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after notice to and consultation with the Borrower and Administrative Agent) that a Benchmark Illegality/Impracticability Event has occurred with respect to such Lender, such Lender shall be an "Affected Lender" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower Agent and Administrative

Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, Term SOFR Loans or Term SOFR Index Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Term SOFR Loan or Term SOFR Index Loans then being requested by a Borrower pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan without reference to Adjusted Term SOFR (or other then-current Benchmark) component of the Base Rate, (3) the Affected Lender's obligation to maintain its outstanding Term SOFR Loans or Term SOFR Index Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans without reference to Adjusted Term SOFR (or other then-current Benchmark) component of the Base Rate on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Term SOFR Loan or Term SOFR Index Loans then being requested by the Borrower Agent pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, the Borrower Agent shall have the option, subject to the provisions of Section 3.1(a), to rescind such Notice of Borrowing or Notice of Conversion/Continuation as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 15.1(b)(i) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Term SOFR Loans or Term SOFR Index Loans in accordance with the terms hereof. If a Benchmark Illegality/Impracticability Event occurs but only with respect to limited, but not all, tenors of the then applicable term rate Benchmark (including Term SOFR or Adjusted Term SOFR), then (i) Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such illegal or impracticable tenor and (ii) if a tenor that was removed pursuant to clause (i) of this sentence is not, or is no longer, subject to a Benchmark Illegality/Impracticability Event, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders (individually or jointly) notify Administrative Agent (with, in the case of the Required Lenders, a copy to Borrower Agent) that the Required Lenders (as applicable) have determined, that a Benchmark Illegality/Impracticability Event has occurred, then, on a date and time determined by Administrative Agent (any such date, the "Benchmark Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated, the then current Benchmark will be replaced hereunder and under any Loan Document with the Benchmark Replacement.

Notwithstanding anything to the contrary herein, (i) if Administrative Agent determines that the alternative set forth in clause (x) of the definition of Benchmark Replacement is not available on or prior to the Benchmark Replacement Date or (ii) a Benchmark Illegality/Impracticability Event has occurred with respect to the Benchmark Replacement then in effect, then in each case, Administrative Agent and the Borrower Agent may amend this Agreement solely for the purpose of replacing the then current Benchmark in accordance with this Section 15.1 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as

applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Benchmark Replacement Adjustment, giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such Benchmark Replacement Adjustment shall be published on an information service as selected by Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and Benchmark Replacement Adjustment shall constitute a Benchmark Replacement. Any such amendment shall become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower Agent without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders then comprising the Required Lenders.

Administrative Agent will notify (in one or more notices) Borrower Agent and each Lender of the implementation of any Benchmark Replacement.

Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by Administrative Agent.

Notwithstanding anything else herein, if at any time any Benchmark Replacement as so determined in accordance herewith would otherwise be less than 0.75% (75bps), the Benchmark Replacement will be deemed to be 0.75% (75bps) for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Benchmark Replacement, Administrative Agent will have the right to make Benchmark Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such Benchmark Conforming Changes to Borrower Agent and the Lenders reasonably promptly after such amendment becomes effective.

Any determination, decision or election that may be made by Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 15.1(b)(ii), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 15.1(b)(ii).

(c) Compensation for Breakage or Non Commencement of Interest Periods. Borrowers shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable out-of-pocket losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its Term SOFR Loans and any loss, expense or liability sustained by such Lender in connection

with the liquidation or re employment of such funds but excluding loss of anticipated profits) which such Lender sustains: (i) if for any reason (other than a default by such Lender) a borrowing of any Term SOFR Loans does not occur on a date specified therefor in a Notice of Borrowing or a telephonic request for borrowing, or a conversion to or continuation of any Term SOFR Loans does not occur on a date specified therefor in a Notice of Conversion/Continuation or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Term SOFR Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), including as a result of an assignment in connection with the replacement of a Lender pursuant to Section 15.4(b); or (iii) if any prepayment of any of its Term SOFR Loans is not made on any date specified in a notice of prepayment given by Borrowers. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender for breakage or otherwise, as specified herein, and the circumstances giving rise thereto shall be delivered to Borrower Agent and shall be conclusive absent manifest error. In the absence of any such manifest error, Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. Borrowers shall not be required to compensate a Lender pursuant to this Section 15.1 for any such amounts incurred more than six (6) months prior to the date that such Lender delivers to Borrower Agent the foregoing certificate.

(d) Booking of Term SOFR Loans and Term SOFR Index Loans. Any Lender may make, carry or transfer Term SOFR Loans and Term SOFR Index Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Conforming Changes Relating to Term SOFR, Adjusted Term SOFR and Term SOFR Index. In connection with the use or administration of Term SOFR, Adjusted Term SOFR and Term SOFR Index, Administrative Agent will have the right to make Benchmark Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, and any amendments implementing such Benchmark Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Administrative Agent will promptly notify Borrowers and Lenders of the effectiveness of any Benchmark Conforming Changes in connection with the use or administration of Term SOFR, Adjusted Term SOFR, or Term SOFR Index.

(f) Rates. Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to (a) the continuation of, administration of, submission of , calculation of or any other matter related to the Base Rate, Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, Term SOFR Index, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement) or any related spread or other adjustment, including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, Term SOFR Index, or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Conforming Changes. Administrative Agent and its Affiliates or other Related Parties may engage in transactions that affect the calculation of the Base Rate, Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, Term SOFR Index, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner that may be adverse to Borrowers. Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, Term SOFR Index, or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other Person or Entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential

damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

15.2. **Increased Costs**.

(a) Increased Costs Generally. If any Change in Law shall:

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 or LC Issuer;

subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

impose on any Lender or LC Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such LC Issuer or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, LC Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, LC Issuer or other Recipient, Loan Parties will pay to such Lender, LC Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, LC Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital and Liquidity Requirements. If any Lender (including Swingline Lender) or LC Issuer determines that any Change in Law affecting such Lender or LC Issuer or any lending office of such Lender or LC Issuer or such Lender's or LC Issuer's holding company, if any, regarding capital or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's or LC Issuer's capital or on the capital of such Lender's or LC Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender hereunder or the Loans made by, or participations in Letters of Credit and Swingline Loans held by, such Lender, or the Letters of Credit issued by such LC Issuer, to a level below that which such Lender or LC Issuer or such Lender's or LC Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or LC Issuer's policies and the policies of such Lender's or LC Issuer's holding company with respect to capital adequacy and liquidity), then from time to time Loan Parties will pay to such Lender or LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or LC Issuer or such Lender's or LC Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or LC Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or LC Issuer or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and the circumstances giving rise thereto shall be delivered to Borrower Agent and shall be conclusive absent manifest error. In the absence of any such manifest error, Loan Parties shall pay such Lender or LC Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or LC Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or LC Issuer's right to demand such compensation, provided that Loan Parties shall not be required to compensate a Lender or LC Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or LC Issuer, as the case may be, delivers to Borrowers the certificate referenced in Section 15.2(c) and notifies Borrower Agent of such Lender's or LC Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

15.3. **Taxes**.

(a) LC Issuer. For purposes of this Section 15.3, the term "Lender" shall include LC Issuer and the term "Law" shall include FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of the applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by such Withholding Agent, then such Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnification. (i) The Loan Parties shall jointly and severally indemnify each Recipient and shall make payment in respect thereof within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to Borrower Agent by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Lender Indemnity. Each Lender shall severally indemnify within ten (10) Business Days after demand therefor (i) the Administrative Agent for any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) the Administrative Agent and the Loan Parties for any Taxes attributable to such Lender's failure to comply with the provisions of Section 14.1(d) relating to the maintenance of a Participant Register and (iii) the Administrative Agent and the Loan Parties for any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent or, with respect to clauses (ii) and (iii), any Loan Party 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 Administrative Agent or, with respect to clauses (ii) and (iii), any Loan Party shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent and the Loan Parties to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent or a Loan Party to the Lender from any other source against any amount due to Administrative Agent or a Loan Party, as applicable, under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section, such Loan Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of a return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(g) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower Agent and Administrative Agent, at the time or times reasonably requested by Borrower Agent or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower Agent or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Agent or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower Agent or Administrative Agent as will enable Borrower Agent or 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 clauses (ii)(A), (ii)(B) and (ii)(D) below) 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.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to Borrower Agent and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Agent or Administrative Agent), executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Agent or Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable, 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, IRS Form W-8BEN

(or W-8BEN-E, as applicable, 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;

executed copies of IRS Form W-8ECI;

in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit I-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable, or any successor form); or

to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit I-2** or **Exhibit I-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit I-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Agent or Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit Borrower Agent or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower Agent and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower Agent or 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 Borrowers or Administrative Agent as may be necessary for Borrower Agent and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Agent and Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. Unless required by applicable Law, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any indemnified party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of the indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Status of the Agent. The Administrative Agent shall deliver to the Borrower Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which the Administrative Agent becomes the administrative agent hereunder or under any other Loan Document (and from time to time thereafter upon the reasonable request of the Borrower Agent) executed copies of either (i) IRS Form W-9 (or any successor form) or (ii) a U.S. branch withholding certificate on IRS Form W-8IMY (or any successor form) evidencing its agreement with the Borrowers to be treated as a U.S. person (with respect to amounts received on account of any Lender) and IRS Form W-8ECI (with respect to amounts received on its own account), with the effect that, in either case, the Borrowers will be entitled to make payments hereunder to the Administrative Agent without withholding or deduction on account of U.S. federal withholding Tax.

(j) Survival. Each party's obligations under this Section 15.3 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

15.4. **Mitigation Obligations; Designation of a Different Lending Office; Replacement of Lenders**.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 15.2, or requires Borrowers to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.3, then such Lender shall (at the request of Borrowers) 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 15.2 or Section 15.3, 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. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 15.2, or if a Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.3 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 15.4(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then, such Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 16.2), all of its interests, rights (other than its existing rights to payments pursuant to Section 15.2 or Section 15.3) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that: (i) Borrowers shall have paid to Administrative Agent the assignment fee specified in Section 14.1(b); (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Obligations (excluding, for the avoidance of doubt, LC Obligations of the type described in clause (a) of the definition of "LC Obligations"), accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 15.1) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrowers (in the case of all other amounts); (iii) in the case of any such assignment resulting from a claim for compensation under Section 15.2 or payments required to be made pursuant to Section 15.3, such assignment will result in a reduction in such compensation or payments thereafter; (iv) such assignment does not conflict with applicable Law; and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent. 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 Borrowers to require such assignment and delegation cease to apply. Except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 16.
MISCELLANEOUS

16.1. **Notices**.

(a) Notices Generally. 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 telecopier or electronic mail 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:

if to the Administrative Agent, the Borrowers, the Borrower Agent or any other Loan Party, to the address, telecopier number, electronic mail address or telephone number specified in **Appendix B**:

if to any Lender, the LC Issuer or Swingline Lender, to the address, telecopier number, electronic mail address or telephone number in its Administrative Questionnaire on file with the Administrative Agent.

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 telecopier 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 business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the LC Issuer 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 from time to time, provided that the foregoing shall not apply to notices to any Lender or the LC Issuer pursuant to Section 2 if such Lender or such LC Issuer, as applicable, has notified the Administrative Agent and the Borrower Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or any Loan Party 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. 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), 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, provided that, with respect to clauses (i) and (ii) above, 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 Business Day for the recipient.

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by written notice to the other parties hereto.

(d) Platform.

Each Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the LC Issuer and the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform") at Borrowers' expense. "Communications" (as used in this Section 16.1(d)) means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein that is distributed to Administrative Agent or any of its Related Parties, including Administrative Agent Professionals (individually, an "Agent Party," and, collectively, the "Agent Parties"), any Lender or the LC Issuer by means of electronic communications pursuant to this Section 16.1, including through the Platform.

The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, 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 Communications or the Platform. In no event shall the Administrative Agent or any of its officers, directors, employees, managers, Affiliates, agents, trustees, and representatives, including Administrative Agent Professionals (collectively, the "Agent Parties"), have any liability to the Borrowers or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of

any Borrower's, any other Loan Party's or the Administrative Agent's transmission of Communications through the Platform.

Each Loan Party further agrees that certain of the Lenders may not wish to receive material non-public information with respect to the Loan Parties or their securities (each, to such extent, a "Public Lender"). The Loan Parties shall be deemed to have authorized the Agent Parties and the Lenders to treat any Communications marked "PUBLIC" as not containing any material non- public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Communications marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). The Agent Parties, the Loan Parties and the Lenders shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

Each Public Lender agrees to cause at least one delegate 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" portion of the Platform and that may contain material non-public information with respect to any Loan Party or its securities for purposes of United States Federal or state securities laws.

16.2. **Amendments**.

(a) Consent; Amendment; Waiver. None of this Agreement, any other Loan Document nor any term hereof or thereof may be amended orally, but only by an instrument in writing signed by the Required Lenders, or in the case of Loan Documents executed by Administrative Agent (and not the other Lenders), signed by Administrative Agent and approved by the Required Lenders and, in the case of an amendment, also by the Loan Parties party to the applicable Loan Document (or Borrower Agent acting on their behalf); provided, however, that:

without the prior written consent of Administrative Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties, or discretion of Administrative Agent and without the prior written consent of Swingline Lender and Administrative Agent, no amendment or waiver with respect to the provisions of Section 2.3 shall be effective;

without the prior written consent of LC Issuer and Administrative Agent, no modification shall be effective with respect to any LC Obligations, the definitions of "LC Conditions" or "Defaulting Lender" (except to be more inclusive of the facts and circumstances which cause a Lender to become a Defaulting Lender) or the terms of Sections 2.4 or which constitutes a waiver of any LC Condition;

without the prior written consent of each Lender directly affected thereby including a Defaulting Lender, no modification shall be effective that would (A) increase the Commitment of such Lender (or reinstate any commitment terminated pursuant to Section 2.1(c)); (B) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in Section 4.2); provided that only the consent of the Required Lenders shall be necessary to waive any obligation of Borrowers to pay interest at the Default Rate during the existence of an Event of Default; (C) extend the Stated Commitment Termination Date applicable

to such Lender's Obligations; or (D) amend this clause (iii); and

without the prior written consent of all Lenders (except a Defaulting Lender), no modification shall be effective that would (A) amend, waive, or alter the application of payments or obligations of Administrative Agent, LC Issuer or any Lender under Sections 5.5 or 5.6 (except to the extent provided in Section 4.2); (B) amend this Section 16.2 or the definitions of "Pro Rata," "Pro Rata Share" or "Required Lenders" (and the defined terms used in each such definition) or any other provision of this Agreement or the other Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder; (C) release all or substantially all of the Collateral; (D) release any Loan Party from liability for any Obligations, except to the extent expressly permitted by the terms hereof; (E) contractually subordinate any of Administrative Agent's Liens in and to the Collateral, except to the extent expressly permitted by the terms hereof or subordinate the payment of any Obligations; or (F) increase the advance rates or amend the definition of "Borrowing Base" (or any defined term used in such definition) if the effect of such amendment is to increase borrowing availability.

The foregoing notwithstanding (1) this Agreement may be amended to increase the interest rate or any fees hereunder with the consent of Administrative Agent and Borrowers (or Borrower Agent, acting on their behalf) only; (2) this Agreement and the other Loan Documents may be amended to reflect definitional, technical, and conforming modifications to the extent necessary to effectuate any increase in the Commitments pursuant to Section 2.1(f) with the prior written consent of Administrative Agent, Borrowers (or Borrower Agent, acting on their behalf) and each Lender or Eligible Assignee participating in such increase pursuant to documentation reasonably satisfactory to Administrative Agent and Borrowers (or Borrower Agent, acting on their behalf) without the consent of any other Lender or LC Issuer; (3) modifications to the Loan Documents may be made to the extent necessary to grant a security interest in additional Collateral to Administrative Agent or add a Guarantor for the benefit of the Secured Parties with the prior written consent of Administrative Agent and affected Loan Parties (or Borrower Agent, acting on their behalf) only pursuant to documentation reasonably satisfactory to Administrative Agent and such Loan Parties (or Borrower Agent, acting on their behalf) without the consent of any Lender or LC Issuer; (4) only the consent of Administrative Agent shall be required to amend **Appendix A** to reflect assignments of the Commitment and Loans in accordance with this Agreement; (5) modifications of a Loan Document to cure or correct errors or omissions, any ambiguity, omission, defect or inconsistency or to effect administrative changes may be made by Administrative Agent and Loan Parties (or Borrower Agent, acting on their behalf) without the consent of any other party to the Loan Documents so long as (A) such modification does not adversely affect the rights of any Lender in any material respect and (B) all Lenders shall have received at least five (5) Business Days' prior written notice thereof and Administrative Agent shall not have received within five (5) Business Days after the date of receipt of such notice to the Lenders a written notice from the Required Lenders stating that the Required Lenders object to such modification; (6) if this Agreement or any Loan Document contains any blank spaces, such as for dates or amounts, Borrowers (on behalf of themselves and each other Loan Party) and Lenders hereby authorize and direct Administrative Agent, with the consent of the Borrower Agent, to complete such blank spaces according to the terms upon which the transactions contemplated hereby or thereby were contemplated; and (7) only the consent of the parties to the Fee Letter or any agreement relating to a Bank Product shall be required for any modification of such agreement, and any non-Lender which is party to any agreement relating to a Bank Product shall have no right to participate in any manner in modification of any other Loan Document.

(b) Amendment and Restatement. Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of Borrowers (or Borrower Agent, acting on their behalf) and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended

and restated), the Commitments of such Lender shall have terminated (but such Lender shall be entitled to the benefit of Sections 15, 16.3, and 16.4), such Lender shall have no other Commitment or other obligation hereunder and shall have been paid in full all Obligations owing to it or accrued for its account under this Agreement. Any waiver or consent granted by Administrative Agent, LC Issuer or Lender shall not constitute a modification of this Agreement, except to the extent expressly provided in such waiver or consent, or constitute a course of dealing by such Persons at variance with the terms of the Agreement such as to require further notice by such Persons of such their intent to require strict adherence to the terms of the Agreement in the future. Administrative Agent, LC Issuer; and the Lenders expressly reserve the right to require strict compliance with the terms of this Agreement. No waiver or course of dealing shall be established by (i) the failure or delay of Administrative Agent, LC Issuer or any Lender to require strict performance of any Loan Party to this Agreement or any other Loan Document or to exercise any rights or remedies with respect to Collateral or otherwise; (ii) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (iii) acceptance by Administrative Agent, LC Issuer or any Lender of performance by any Loan Party under this Agreement or any other Loan Document in a manner other than that specified herein or therein.

(c) Payment for Consents. No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee, or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

(d) Non-Consenting Lender.

Each Borrower, LC Issuer and each Lender grants to Administrative Agent the option (without any obligation, however), to purchase all (but not less than all) of a Non-Consenting Lender's portion of the Commitments, the Loans, and LC Obligations owing to it and any Notes held by it and all of its rights and obligations hereunder and under the other Loan Documents at a price equal to the outstanding principal amount of the Loans and LC Obligations for unreimbursed draws payable to such Non-Consenting Lender plus any accrued but unpaid interest on such Loans and any accrued but unpaid commitment fee arising under Section 3.2(b) and Letter of Credit fees arising under Section 3.2(c) owing to such Non-Consenting Lender plus the amount necessary to Cash Collateralize any Letters of Credit issued by such Non-Consenting Lender (if any). If Administrative Agent exercises its option under this Section, the Non-Consenting Lender shall promptly execute and deliver to Administrative Agent any Assignment Agreement and other agreements and documentation which Administrative Agent shall reasonably determine are necessary to effect such assignment and which are provided to such Non-Consenting Lender. If the Non-Consenting Lender fails for whatever reason to execute and delivery such Assignment Agreement and other documentation within three (3) Business Days after the date of its receipt thereof, then Administrative Agent shall have the power to do so as power of attorney for such Non-Consenting Lender and any execution and delivery of such Assignment Agreement and such other documentation by Administrative Agent under such power of attorney shall binding upon such Non-Consenting Lender. Administrative Agent may assign its purchase option and powers under this Section to any Eligible Assignee if such assignment otherwise complies with the requirements of Section 14.1(b).

Borrowers may, at their sole expense and effort, replace such Non-Consenting Lender in accordance with Section 15.4(b).

16.3. **Indemnity; Expenses**

. EACH LOAN PARTY SHALL INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY "CLAIMS" AND

"EXTRAORDINARY EXPENSES" (AS SUCH TERMS ARE DEFINED IN SECTION 1.1) THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS AND EXPENSES ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to this Agreement or any other Loan Document have any obligation thereunder to indemnify, defend or hold harmless an Indemnitee with respect to any Claim, Extraordinary Expense or other loss, cost, fees, or expenses (a) that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence, bad faith or willful misconduct of such Indemnitee, or such Indemnitee's controlled Affiliate's acting on the behalf of, or the express instructions of, such Indemnitee or controlled Affiliate, as determined by a court of competent jurisdiction by final and non-appealable judgment or (b) that are solely among Indemnitees. In addition to all other Obligations, the obligations and liabilities described in this Section 16.3 shall (a) constitute Obligations; (b) be in addition to, and cumulative of, any other indemnification provisions set forth elsewhere in this Agreement or any other Loan Document; (c) be secured by the Collateral; and (d) survive termination of this Agreement. Notwithstanding anything to the contrary contained in this Section 16.3, the Loan Parties' obligation to reimburse the Indemnitees for legal fees and expenses shall be limited to the fees and expenses of a single legal counsel (plus, (x) to the extent necessary, one local counsel in each applicable jurisdiction and any special counsel and (y) in the case of an actual or perceived conflict of interest where the Indemnitees endeavor to provide the Parent prior notice of such conflict of interest, another firm of counsel for all similarly affected Indemnitees). All amounts due under this Section shall be payable not later than five (5) Business Days after demand therefor. This Section 16.3 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim.

16.4. **Reimbursement Obligations**

. Without limiting the terms of Section 16.3, Loan Parties shall reimburse Administrative Agent for all Extraordinary Expenses and for all legal, accounting, appraisal, consulting, and other fees, costs, and expenses incurred by it in connection with (a) negotiation and preparation of this Agreement and the other Loan Documents, including any amendment, forbearance, waiver, restatement, supplement, or other modification thereof; (b) administration of and actions relating to any Collateral, this Agreement, any Loan Document, and transactions contemplated hereby and thereby (including any actions taken to perfect or maintain priority of Administrative Agent's Liens in and to any Collateral, to maintain any insurance required hereunder, or to verify Collateral); and (c) subject to the limits of Section 9.5(b), each inspection, field audit, field examination, or appraisal with respect to any Loan Party, Subsidiary, or Collateral, whether prepared by Administrative Agent's personnel or a third party. Loan Parties also shall pay the expenses of Administrative Agent and each Lender in connection with the enforcement of, or any workout or restructuring related to, the Loan Documents. Notwithstanding anything to the contrary contained in this Section 16.4, the Loan Parties' obligation to reimburse the Administrative Agent for legal fees and expenses shall be limited to the fees and expenses of a single legal counsel (plus, (x) to the extent necessary, one local counsel in each applicable jurisdiction and any special counsel and (y) in the case of an actual or perceived conflict of interest where the Indemnitees endeavor to provide prior notice of such conflict of interest, another firm or counsel for all similarly affected Indemnitees). All amounts due under this Section shall be payable not later than five (5) Business Days after demand therefor.

16.5. **Performance of Loan Parties' Obligations**

. Administrative Agent may, in its discretion at any time and from time to time, at Loan Parties' expense, pay any amount or do any act required of a Loan Party under any Loan Documents or otherwise lawfully requested by Administrative Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Administrative Agent's Liens in any Collateral, including any payment of any claim by any Third Party (including any judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim), or any discharge of a Lien. All payments, costs, and expenses (including Extraordinary Expenses) of Administrative Agent under this Section shall be reimbursed to Administrative Agent by Loan Parties, **ON DEMAND**, with interest from

the date incurred to the date of payment thereof (at the Default Rate, if applicable). Any payment made or action taken by Administrative Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

16.6. **Setoff**

. If an Event of Default shall have occurred and be continuing, in addition to (and not in limitation of) any rights now or hereafter granted under applicable Law to Administrative Agent, LC Issuer, any Lender, or, subject to the provisions of Section 14.1(d), any Participant, and each subsequent holder of any of the Obligations and each of their respective Affiliates (collectively, for purposes of this Section, the "Setoff Parties") is hereby authorized by each Loan Party to set off and to appropriate and apply any and all deposits (general or special, time or demand, including Debt evidenced by certificates of deposit, in each case whether matured or unmatured, but excluding (x) any amounts held by any Setoff Party in any escrow account and (y) without the prior consent of Administrative Agent, any Concentration Account and any other Debt at any time held or owing by any Setoff Party to or for the credit or the account of any Loan Party, against the Obligations as provided in this Agreement, irrespective of whether (a) any demand for such Obligations has been made; (b) the Obligations have been accelerated as contemplated in Section 12.2; or (c) such Obligations are contingent or unmatured. Any sums obtained by any Setoff Party shall be subject to the application of payments to the Obligations as set forth in this Agreement. Each Setoff Party agrees to endeavor to notify the Borrower Agent and 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, nor shall such Setoff Party have any liability for failure to give such notice. The rights granted to each Setoff Party under this section may be exercised at any time or from time to time during the continuance of an Event of Default. In addition to the foregoing, and notwithstanding any provision hereof to the contrary, 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 4.2 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, LC Issuer, Swingline Lender and the other 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.

16.7. **Independence of Covenants; Severability**

. All covenants hereunder and under any other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise would be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such manner as to be valid under applicable Law. To the extent any such provision is found to be invalid or unenforceable under applicable Law in a given jurisdiction, then (a) such provision shall be ineffective only to such extent; (b) the remainder of such provision and the other provisions of this Agreement and the other Loan Documents shall remain in full force and effect in such jurisdiction; and (c) such provision shall remain in full force and effect in any other jurisdiction.

16.8. **Cumulative Effect; Conflict of Terms**

. The parties acknowledge that different provisions of this Agreement and the other Loan Documents may contain requirements, limitations, restrictions, or permissions relating to the same subject matter and, in such case, all of such provisions shall be deemed to be cumulative (rather than instead of one another) and must be satisfied or performed, as applicable. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), to the extent any provision contained in this Agreement conflicts directly with any provision in another Loan Document, then the provision in this Agreement shall control.

16.9. **Counterparts**

. This Agreement, the other Loan Documents and any amendments, waivers, or consents relating hereto or thereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together, shall constitute but one and the same instrument.

16.10. **Fax or Other Transmission**

. Delivery by one or more parties hereto of an executed counterpart of this Agreement and any other Loan Document via facsimile, telecopy or other electronic method of transmission pursuant to which the signature of such party can be seen (including Adobe Corporation's Portable Document Format or PDF) shall have the same force and effect as the delivery of an original manually executed counterpart of this Agreement and such other Loan Document 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. Any party delivering an executed counterpart of this Agreement or any other Loan Document by facsimile or other electronic method of transmission shall also deliver an original executed counterpart thereof, but the failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement or such other Loan Document. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form.

16.11. **Entire Agreement**

. This Agreement and the other Loan Documents, together with all other instruments, agreements, supplements, and certificates executed by the parties in connection therewith or with reference thereto, embody the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings negotiations, discussions, representations, warranties, commitments, proposals, offers, contracts and inducements, whether express or implied, oral or written. There are no unwritten oral agreements between the parties.

16.12. **Relationship with Lenders**

. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. Amounts payable hereunder by Administrative Agent, LC Issuer or any Lender, on the one hand, to any other of such Persons, on the other hand, shall be separate and independent debts and obligations, and claims by one of such Persons against any other of such Persons may proceed between such Persons without requiring the joinder of Administrative Agent, LC Issuer or any Lender as an additional party. Nothing in this Agreement and no action of Administrative Agent, LC Issuer or Lenders pursuant to the Loan Documents shall cause Administrative Agent, LC Issuer and the Lenders, or any of them, to be deemed a partnership, association, joint venture, or any other kind of entity with each other or with any Loan Party, or to have any control of each other or any Loan Party.

16.13. **No Advisory or Fiduciary Responsibility**

. In connection with all aspects of each transaction contemplated by any Loan Document, Loan Parties acknowledge and agree that (a) (i) the credit facility evidenced by this Agreement and any related arranging or other services by Administrative Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Loan Parties and such Persons; (ii) Loan Parties have consulted their own legal, accounting, regulatory, and tax advisors to the extent they have deemed appropriate; and (iii) Loan Parties are capable of evaluating and understanding, and do understand and accept, the terms, risks, and conditions of the transactions contemplated by this Agreement and the other Loan Documents; (b) each of Administrative Agent, LC Issuer, Lenders, their Affiliates and any arranger is and has been acting solely as a principal in connection with this credit facility, is not the financial advisor, agent, or fiduciary of, to, or for any Loan Party or any

of their Affiliates or any other Person and has no obligation with respect to the transactions contemplated by this Agreement and the other Loan Documents except as expressly set forth herein or therein; and (c) Administrative Agent, LC Issuer, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from the Loan Parties and their Affiliates and have no obligation to disclose any of such interests to any Loan Party or any such Affiliate. To the fullest extent permitted by applicable Law, each Loan Party hereby waives and releases any claims that it may have against Administrative Agent, LC Issuer, Lenders, their Affiliates and any arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Agreement or any other Loan Document.

16.14. **Confidentiality; Credit Inquiries**

. Each of the Administrative Agent and Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective Related Parties and to other Persons authorized by the Administrative Agent and Lenders to organize, present or disseminate such Information in connection with disclosures otherwise made in accordance with this Section 16.14 (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory or quasi-regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or the order of any court or administrative agency, or in any pending legal or administrative proceeding; provided that, unless specifically prohibited by applicable law or court order, the disclosing party agrees to make reasonable efforts to provide the Parent with prior notice of any such request to the extent practical (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency), (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or, Participant or in, or any prospective assignee of, or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective Bank Product Provider, (g) with the consent of the Parent, (h) to any rating agency or other data collectors when required by it (subject to customary rating agency confidentiality conditions), (i) to the extent such Information (Y) becomes publicly available other than as a result of a breach of this Section or (Z) becomes available to any Agent, Arranger, Lender, or any of their respective Affiliates on a non-confidential basis from a source other than the Borrowers or the other Loan Parties, (j) for purposes of establishing a "due diligence" defense, (k) in response to credit inquiries from third Persons concerning any Loan Party or any of its Subsidiaries (although none of Administrative Agent, any Lender or LC Issuer shall be required to so respond), and (l) to Gold Sheets and other similar bank trade publications (such information to consist of deal terms and other information customarily found in such publications). In addition, Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to rating agencies, credit insurers, CUSIP Service Bureau, Inc. (or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans), market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own Information. Notwithstanding the foregoing, Administrative Agent, LC Issuer and the Lenders may publish or disseminate general information describing the credit facility evidenced hereby, including the names and addresses of Loan Parties and the Subsidiaries and a general description of Loan Parties' and the Subsidiaries' businesses, and may use Loan Parties' logos, trademarks, insignia, or product photographs in any "tombstone" or

comparable advertising materials on its website or in other of Administrative Agent, LC Issuer, or such Lender's marketing materials.

16.15. **Governing Law**

. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED BY THE TERMS HEREOF OR THEREOF OR UNLESS THE LAWS OF ANOTHER JURISDICTION MAY, BY REASON OF MANDATORY PROVISIONS OF LAW, GOVERN THE PERFECTION, PRIORITY, OR ENFORCEMENT OF SECURITY INTERESTS IN ANY COLLATERAL, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES OR OTHER RULE OF LAW WHICH WOULD CAUSE THE APPLICATION OF THE LAW OF ANY JURISDICTION OTHER THAN THE LAW OF THE STATE OF NEW YORK.

16.16. **Submission to Jurisdiction**

. EACH BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, IN RESPECT OF ANY PROCEEDING, DISPUTE, OR LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO AND AGREES THAT ANY SUCH PROCEEDING, DISPUTE, OR LITIGATION SHALL BE BROUGHT BY IT SOLELY IN SUCH COURTS. WITH RESPECT TO SUCH COURTS, EACH BORROWER IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS, AND DEFENSES IT MAY HAVE REGARDING PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE, OR INCONVENIENT FORUM. EACH PARTY HERETO WAIVES PERSONAL SERVICE OF PROCESS OF ANY AND ALL PROCESS SERVED UPON IT AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 16.1, SUCH SERVICE TO BE EFFECTIVE AT THE TIME SUCH NOTICE WOULD BE DEEMED DELIVERED UNDER SECTION 16.1. Nothing in this Agreement shall be deemed to preclude enforcement by Administrative Agent of any judgment or order obtained in any forum or jurisdiction.

16.17. **Waivers; Limitation on Damages; Limitation on Liability**.

(a) Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER, BY EXECUTION HEREOF, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, OR ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO ADMINISTRATIVE AGENT, LC ISSUER, AND THE LENDERS TO ENTER INTO AND ACCEPT THIS AGREEMENT. EACH OF THE PARTIES HERETO AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

(b) Waiver of Certain Damages. NO PARTY TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO THIS

AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY SUCCESSOR OR ASSIGNEE OF SUCH PERSON, OR ANY THIRD PARTY BENEFICIARY, OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH ANY SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES AS A RESULT OF ANY TRANSACTION CONTEMPLATED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, INCLUDING SPECIFICALLY, BUT WITHOUT LIMITATION, IN THE CASE OF ADMINISTRATIVE AGENT, THE TAKING OF ANY ENFORCEMENT ACTION.

(c) Other Waivers. To the fullest extent permitted by applicable Law, each Loan Party waives (i) presentment, demand, protest, notice of presentment, notice of dishonor, default, non-payment, maturity, release, compromise, settlement, extension, or renewal of any commercial paper, accounts, documents, instruments, chattel paper, and guaranties at any time held by Administrative Agent or any Lender on which a Loan Party may in any way be liable; (ii) notice before taking possession or control of any Collateral; (iii) any bond or security that might be required by a court before allowing Administrative Agent, LC Issuer or any Lender to exercise any rights or remedies under this Agreement or the other Loan Documents; (iv) notice of acceptance hereof or of any other Loan Document; (v) all rights to interpose any claims, deductions, rights of setoff, discounts, charge backs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the other Loan Documents, the Obligations, the Collateral, or any matter arising therefrom or relating hereto or thereto; and (vi) any claim under any law or equitable principle requiring Administrative Agent, LC Issuer or any Lender to marshal any assets in favor of any Loan Party or against any Obligations or otherwise attempt to realize upon any Collateral or collateral of any Loan Party, or any appraisement, evaluation, stay, extension, homestead, redemption, or exemption laws now or hereafter in force to prevent or hinder the enforcement of this Agreement. Each Loan Party acknowledges that the foregoing waivers are a material inducement to Administrative Agent, LC Issuer and the Lenders' entering into this Agreement and that Administrative Agent, LC Issuer and the Lenders are relying upon the foregoing in their dealings with Loan Parties.

(d) Acknowledgement of Waivers. Each Loan Party has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

16.18. **Limitation on Liability; Presumptions**

. None of Administrative Agent, LC Issuer nor the Lenders shall have any liability to any Loan Party (whether in tort, contract, equity, or otherwise) for losses suffered by such Person in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission, or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order by a court of competent jurisdiction binding on Administrative Agent, LC Issuer or such Lender that the losses were the result of acts or omissions constituting gross negligence, bad faith, or willful misconduct. Without limiting the generality of the foregoing, Administrative Agent shall have no responsibility to any Loan Party in any event for fire, catastrophe, computer, mechanical or electrical failures, failure of communications media, an act of God or any other circumstances beyond Administrative Agent's control. For purposes of this Section 16.18, circumstances beyond Administrative Agent's control include declared or undeclared war, revolution, bank holidays, asset freezes, currency fluctuations or revaluations, exchange controls, nationalization, confiscation, blockage, government interference, or any law, decree, moratorium or regulation of any governmental authority, domestic or foreign, de jure or de facto.

16.19. **PATRIOT Act Notice**

. Administrative Agent, LC Issuer and the Lenders hereby notify Loan Parties that pursuant to the requirements of the PATRIOT Act and other applicable Law, including the Beneficial Ownership Regulation, Administrative Agent, LC Issuer and the Lenders are required to obtain, verify, and record information that identifies each Loan Party, including its legal name, address, tax

ID number, and other information that will allow Administrative Agent, LC Issuer and the Lenders to identify it properly in accordance with the PATRIOT Act, the Beneficial Ownership Regulation and such other applicable Law. Administrative Agent, LC Issuer and the Lenders may also require information, documents and certifications regarding each Loan Party, if any, and may require information, documents and certifications regarding each Loan Parties management and owners, such as legal names, addresses, social security numbers, and dates of birth. in accordance with the PATRIOT Act, the Beneficial Ownership Regulation and such other applicable Law.

16.20. **Powers**

. All powers of attorney granted to Administrative Agent, LC Issuer or any Lender herein or in any other Loan Document are coupled with an interest and are irrevocable.

16.21. **No Tax Advice**

. Each Loan Party acknowledges and agrees that, with respect to all tax and accounting matters relating to this Agreement, the other Loan Documents, or the transactions contemplated herein and therein, it has not relied on any representations made, consultation provided by, or advice given or rendered by Administrative Agent, LC Issuer, or any Lender, or any of their representatives, agents, or employees, and, instead, such Loan Party has sought, and relied upon, the advice of its own tax and accounting professionals with respect to all such matters.

16.22. **Judgment Currency**

. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which, in accordance with normal banking procedures Administrative Agent could purchase the first currency with such other currency on the Business Day preceding the date on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to Administrative Agent, LC Issuer or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than the currency in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by Administrative Agent (for itself or on behalf of LC Issuer or a Lender) of any sum adjudged to be so due in the Judgment Currency, Administrative Agent may, in accordance with normal banking procedures, purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Administrative Agent, LC Issuer, or a Lender from any Loan Party in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Administrative Agent, LC Issuer, and each Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Administrative Agent, LC Issuer, or a Lender in such currency, Administrative Agent, LC Issuer, or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable Law).

16.23. **Survival of Representations and Warranties, etc**.

(a) All representations and warranties made by any Loan Party under this Agreement and the other Loan Documents shall survive, and not be waived by, the execution of this Agreement or any other Loan Document by Administrative Agent, LC Issuer or any Lender; any investigation or inquiry by Administrative Agent, LC Issuer or any Lender; or the making of any Loan or the issuance of any Letter of Credit under this Agreement.

(b) Without limiting the generality of the foregoing clause (a), all of the representations, warranties and indemnities of Section 8.18 shall survive the termination of this Agreement, Payment in Full of the Obligations, and the release of Administrative Agent's Lien on any Borrowers or Subsidiaries' properties, if any, and shall survive the transfer of any or all right, title, and interest in and to such properties by such Persons, whether or not the transferee thereof is an Affiliate of such Persons.

16.24. **Revival and Reinstatement of Obligations**

. If the incurrence or payment of the Obligations by or on behalf of any Loan Party or the transfer to Administrative Agent, LC Issuer, or any Lender of any property (including through setoff) should for any reason subsequently be declared to be void or voidable under any Debtor Relief Law, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if Administrative Agent, LC Issuer or any Lender, or any of them, is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that such Persons, or any of them, is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of such Persons related thereto, the liability of all affected Loan Parties automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

16.25. **Acknowledgement of 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 any such parties, each party hereto acknowledges that any liability of any Lender that is an 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 (a) 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 Lender that is an EEA Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, 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.

16.26. **Time is of the Essence**

. Time is of the essence in this Agreement and the other Loan Documents.

16.27. **Intercreditor Agreement**

. Notwithstanding anything to the contrary contained herein, Administrative Agent and each Lender hereby acknowledges that the Liens and security interests securing the obligations evidenced by the Security Documents, the exercise of any right or remedy by Administrative Agent thereunder or with respect thereto, and certain rights of the parties thereto are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of any the Intercreditor Agreement and the Security Documents, the terms of the Intercreditor Agreement shall govern and control.

16.28. **Section Headings**

. Section headings herein and in the other Loan Documents are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

16.29. **Release and Subordination Authorizations**

. Subject to Section 4.5, upon the written request of the Borrower Agent (accompanied by such certificates and other documentation as the Administrative Agent may reasonably request, including any certificate contemplated by Section 13.2), the Administrative Agent on behalf of the Secured Parties shall (and the Lenders hereby authorize the Administrative Agent to):

(a) (i) release any Collateral that becomes Excluded Property or any Collateral consisting of assets or equity interests sold or otherwise disposed of in a sale or other disposition or transfer permitted

under this Agreement (including under Section 10.4), (ii) release any Guarantor from its obligations under any Guaranty and the Security Documents if such Guarantor becomes a Non-Loan Party Subsidiary or ceases to be a Subsidiary pursuant to any sale, transfer, lease, disposition, merger or other transaction permitted by this Agreement, including, without limitation, in the event the ownership interests in such Guarantor are sold or otherwise disposed of or transferred to persons other than Loan Parties in a transaction permitted under this Agreement (including under Section 10.4), (iii) release its Liens upon the Collateral upon Payment in Full of the Obligations, and (iv) release each Loan Party from its obligations under the Loan Documents (other than those obligations that survive Payment in Full of the Obligations or termination of the applicable Loan Document) upon Payment in Full of the Obligations; provided that (x) any such release of a Lien or Loan Party shall be without recourse or warranty, and (y) solely with respect to clauses (i) and (ii), no such release shall in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Loan Parties in respect of) all interests retained by Loan Parties (other than, if applicable, any Guarantor expressly being released), including the proceeds of any sale, all of which shall continue to constitute part of the Collateral; and

(b) (i) subordinate its Liens or enter into non-disturbance agreements with respect to any Term Loan Priority Collateral in connection with any easements, permits, licenses, rights of way, surface leases or other surface rights or interests permitted to be granted hereunder (provided that any such non-disturbance agreements shall be in a form consented to by Administrative Agent, with such consent not to be unreasonably withheld, delayed or conditioned), and (ii) subordinate its Liens in any Collateral in favor of any other Lien that is expressly permitted to be prior to Administrative Agent's Lien on the Collateral.

16.30. **Qualified Financial Contracts**

. As used in this Section, the following terms have the following meanings: (i) "BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party; (ii) "Covered Entity" means any of the following: (A) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b); (B) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (C) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b); (iii) "Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and (iv) "QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D). To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support," and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the United States or any other State or other jurisdiction of the United States): In the event that a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in Property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in Property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if

the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[SIGNATURES ON FOLLOWING PAGES.]

[SIGNATURE PAGES INTENTIONALLY OMITTED.]

EIGHTH AMENDMENT TO THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT

THIS EIGHTH AMENDMENT TO THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT (this "Amendment"), dated as of February 8, 2024, is entered into among ARCH RECEIVABLE COMPANY, LLC (the "Seller"), ARCH COAL SALES COMPANY, INC. (the "Servicer"), the various financial institutions party to the Agreement (as defined below) as Conduit Purchasers (the "Conduit Purchasers"), as Related Committed Purchasers (the "Related Committed Purchasers"), as LC Participants (the "LC Participants"), and as Purchaser Agents (the "Purchaser Agents") and PNC BANK, NATIONAL ASSOCIATION ("PNC"), as Administrator (the "Administrator") and as LC Bank (the "LC Bank"; together with the Conduit Purchasers, the Related Committed Purchasers and the LC Participants, the "Purchasers").

RECITALS

1. The parties hereto are parties to the Third Amended and Restated Receivables Purchase Agreement, dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified through the date hereof, the "Agreement").

2. Concurrently herewith, the Seller, ACI, PNC, as administrative agent under the Original Term Loan Credit Agreement, and the Administrator are entering into that certain No Proceedings Letter Agreement (the "No Proceedings Letter"), dated as of the date hereof.

3. The parties hereto desire to amend the Agreement as hereinafter set forth.

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

SECTION 1. *Certain Defined Terms*. Capitalized terms that are used but not defined herein shall have the meanings set forth in the Agreement.

SECTION 2. *Amendments to the Agreement*. The Agreement is hereby amended to incorporate the changes shown on the marked pages of the Agreement attached hereto as Exhibit A.

SECTION 3. *Representations and Warranties*. Each of the Seller and the Servicer hereby represents and warrants to the Administrator, the Purchaser Agents and the Purchasers as follows:

(a) Representations and Warranties. The representations and warranties made by such Person in the Agreement and each of the other Transaction Documents are true and correct as of the date hereof (unless stated to relate solely to an earlier date, in which case such representations or warranties were true and correct as of such earlier date).

(b) Enforceability. The execution and delivery by such Person of this Amendment, and the performance of each of its obligations under this Amendment and the Agreement, as amended hereby, are within each of its organizational powers and have been duly authorized by all necessary action on its part. This Amendment and the Agreement, as amended

hereby, are such Person's valid and legally binding obligations, enforceable in accordance with their respective terms.

(c) No Default. Both before and immediately after giving effect to this Amendment and the transactions contemplated hereby, no Termination Event or Unmatured Termination Event exists or shall exist.

SECTION 4. *Effect of Amendment; Ratification*. All provisions of the Agreement, as expressly amended and modified by this Amendment, shall remain in full force and effect. After this Amendment becomes effective, all references in the Agreement (or in any other Transaction Document) to "the Receivables Purchase Agreement", "this Agreement", "hereof", "herein" or words of similar effect, in each case referring to the Agreement shall be deemed to be references to the Agreement as amended by this Amendment. This Amendment shall not be deemed, either expressly or impliedly, to waive, amend or supplement any provision of the Agreement other than as specifically set forth herein. The Agreement, as amended by this Amendment, is hereby ratified and confirmed in all respects.

SECTION 5. *Effectiveness*. This Amendment shall become effective as of the date hereof, upon receipt by the Administrator of duly executed counterparts of each of (a) this Amendment and (b) the No Proceedings Letter.

SECTION 6. *Counterparts*. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

SECTION 7. *Governing Law*. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York (including for such purposes Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York).

SECTION 8. *Section Headings*. The various headings of this Amendment are included for convenience only and shall not affect the meaning or interpretation of this Amendment, the Agreement or any provision hereof or thereof.

SECTION 9. *Successors and Assigns*. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 10. *Ratification*. After giving effect to this Amendment and the transactions contemplated by this Amendment, all of the provisions of the Performance Guaranty shall remain in full force and effect and the Performance Guarantor hereby ratifies and affirms the Performance Guaranty and acknowledges that the Performance Guaranty has continued and shall continue in full force and effect in accordance with its terms.

SECTION 11. *Transaction Document*. For the avoidance of doubt, each party hereto agrees that this Amendment constitutes a Transaction Document.

SECTION 12. *Severability*. Each provision of this Amendment shall be severable from every other provision of this Amendment for the purpose of determining the legal enforceability of any provision hereof, and the unenforceability of one or more provisions of this Amendment in one jurisdiction shall not have the effect of rendering such provision or provisions unenforceable in any other jurisdiction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

ARCH RECEIVABLE COMPANY, LLC,
as Seller

By: /s/ Matthew C. Giljum
Name: Matthew C. Giljum
Title: Treasuer and Vice President

ARCH COAL SALES COMPANY, INC.,
as Servicer

By: /s/ Matthew C. Giljum
Name: Matthew C. Giljum
Title: Treasuer and Vice President

ARCH RESOURCES, INC.,
as Performance Guarantor

By: /s/ Matthew C. Giljum
Name: Matthew C. Giljum
Title: Senior Vice President, Chief Financial Officer and Treasurer

PNC BANK, NATIONAL ASSOCIATION,
as Administrator

By: /s/ Deric Bradford
Name: Deric Bradford
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
as a Purchaser Agent

By:/s/ Deric Bradford
Name: Deric Bradford
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
as the LC Bank and as an LC Participant

By:/s/ Deric Bradford
Name: Deric Bradford
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
as a Related Committed Purchaser

By:/s/ Deric Bradford
Name: Deric Bradford
Title: Senior Vice President

REGIONS BANK,
as a Purchaser Agent

By: /s/ Steve McGreevy
Name: Steve McGreevy
Title: Managing Director

REGIONS BANK,
as a Related Committed Purchaser

By: /s/ Steve McGreevy
Name: Steve McGreevy
Title: Managing Director

REGIONS BANK,
as an LC Participant

By: /s/ Steve McGreevy
Name: Steve McGreevy
Title: Managing Director

[EXHIBIT A]

AMENDMENTS TO RECEIVABLES PURCHASE AGREEMENT

[ATTACHED]

THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT

DATED AS OF OCTOBER 5, 2016

BY AND AMONG

ARCH RECEIVABLE COMPANY, LLC,
as Seller,

ARCH COAL SALES COMPANY, INC.,
as initial Servicer,

THE VARIOUS CONDUIT PURCHASERS, RELATED COMMITTED PURCHASERS, LC PARTICIPANTS AND PURCHASER AGENTS FROM TIME TO TIME PARTY HERETO,

AND

PNC BANK, NATIONAL ASSOCIATION,
as Administrator and as LC Bank

"interest component" will equal the amount of interest accruing on such Notes through maturity) or (b) any other rate designated as the "CP Rate" for such Conduit Purchaser in an Assumption Agreement or Transfer Supplement or other document pursuant to which such Person becomes a party as a Conduit Purchaser to this Agreement, or any other writing or agreement provided by such Conduit Purchaser to the Seller, the Servicer and the applicable Purchaser Agent from time to time. The "CP Rate" for any day while a Termination Event or an Unmatured Termination Event exists shall be an interest rate equal to the greater of (a) 3.0% per annum above the Base Rate as in effect on such day and (b) the Alternate Rate as calculated in the definition thereof.

"Credit Agreement" means (i) that certain Term Loan Credit Agreement, dated as of ~~March 7~~February 8, ~~2017~~2024 (as extended, renewed, amended, amended and restated, supplemented or otherwise modified, the "Original Term Loan Credit Agreement"), by and among ACI, ~~the other borrowers~~PNC Capital Markets LLC, as sole lead arranger and sole bookrunner, the lenders from time to time party thereto, ~~the lenders from to time party thereto, and Credit Suisse AG, Cayman Islands Branch~~and PNC, as administrative agent ~~and collateral agent~~ (in such capacities, together with its successors, the "Original Term Loan Agent" and, together with the administrative agent or collateral agent under any other agreement referred to in clause (iii) below, the "Term Loan Agent"), (ii) that certain Credit Agreement, dated as of April 27, 2017 (as extended, renewed, amended, amended and restated, supplemented or otherwise modified, the "Original ABL Credit Agreement"), by and among ACI, the lenders from to time party thereto, and Regions Bank, as administrative agent (in such capacity, together with its successors, the "Original ABL Agent" and, together with the administrative agent or collateral agent under any other agreement referred to in clause (iii) below, the "ABL Agent"; the ABL Agent together with the Term Loan Agent, the "Agents"), or (iii) any other loan agreement, credit agreement, indenture or other agreement from time to time entered into by ACI, any Originator and/or any Affiliate thereof in connection with the incurrence or issuance of Debt (or commitments in respect thereof) in exchange or replacement for or to refinance the Original Term Loan Credit Agreement or the Original ABL Credit Agreement, in each case, in whole or in part, whether or not with the same or different lenders, arrangers, agents or other investors and whether with a larger or smaller aggregate principal amount and/or a longer or shorter maturity, that provides for or is secured by, in whole or in part, among other things, a mortgage, security interest or other Adverse Claim on any interest in real property or as-extracted collateral (or any proceeds thereof) of any Originator related to such Originator's mining operations or a minehead.

"Credit and Collection Policy" means, as the context may require, those receivables credit and collection policies and practices of the Originators and the Transferor in effect on the Closing Date and described in Schedule I to the Agreement, as modified in compliance with the Agreement.

"Credit Insurance Policy" means a credit insurance policy naming the Seller as insured and the Administrator as an additional insured or a loss payee, which policy insures the payment of Pool Receivables owing by one or more Obligors.

"Credit Insurer" means each insurance company that provides a Credit Insurance Policy to the Seller.

interest and any bonus bid and royalty payments thereunder, and Bonding Subsidiaries shall mean, collectively, each and every Bonding Subsidiary.

"Foreign Subsidiaries" means, for any Person, each Subsidiary (other than a Loan Party) of such Person that is (a) a "controlled foreign corporation" (a "CFC") within the meaning of Section 957 of the Internal Revenue Code of 1986, (b) a Subsidiary of a CFC or (c) a Subsidiary substantially all of the assets of which constitute equity interests (or equity interests and indebtedness) of CFCs or of Subsidiaries described in this clause (c).

"Securitization Subsidiary" means a Subsidiary of ACI (all of the outstanding equity interests of which, other than de minimis preferred stock and director's qualifying shares, if any, are owned, directly or indirectly, by ACI) that is established for the limited purpose of acquiring and financing accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by ACI or any Subsidiary of ACI and interests therein of ACI or any Subsidiary of ACI and engaging in activities ancillary thereto.

"Working Capital Facility" shall mean any revolving credit facility entered into by ACI for general working capital purposes, including the Original ABL Credit Agreement.

"Liquidity Agent" means any bank or other financial institution acting as agent for the various Liquidity Providers under each Liquidity Agreement.

"Liquidity Agreement" means any agreement entered into in connection with the Agreement pursuant to which a Liquidity Provider agrees to make purchases or advances to, or purchase assets from, any Conduit Purchaser in order to provide liquidity for such Conduit Purchaser's Purchases.

"Liquidity Provider" means each bank or other financial institution that provides liquidity support to any Conduit Purchaser pursuant to the terms of a Liquidity Agreement.

"LLC Agreement" means the limited liability company agreement of Seller.

"Loan Documents" has the meaning set forth in the Original Term Loan Credit Agreement.

"Lock-Box Account" means each account listed on Schedule II to this Agreement (in each case, in the name of the Seller and maintained at a Lock-Box Bank pursuant to a Lock-Box Agreement for the purpose of receiving Collections.

"Lock-Box Agreement" means each agreement, in form and substance reasonably satisfactory to the Administrator, among the Seller, the Servicer, the Administrator and a Lock-Box Bank, governing the terms of the related Lock-Box Accounts.

(e) the rights and remedies of any Secured Party under the Transaction Documents.

"Minimum Dilution Reserve" means, on any day, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such day, multiplied by (b)(i)the Minimum Dilution Reserve Percentage divided by
(ii) 100% minus the Minimum Dilution Reserve Percentage on such day.

"Minimum Dilution Reserve Percentage" means, on any day, the product of (a) the average of the Dilution Ratios for the twelve most recent calendar months multiplied by (b) the Dilution Horizon.

"Minimum Liquidity" means $275,000,000.

"Minimum Liquidity Period" means each period, if any, commencing on the date that the Liquidity is less than the Minimum Liquidity and ending on (but not including) the date, if any, that the Liquidity is no longer less than the Minimum Liquidity.

"Monthly Settlement Date" means the 21st day of each calendar month (or if such day is not a Business Day, the next occurring Business Day); provided, however, that on and after the occurrence and continuation of any Termination Event, the Monthly Settlement Date shall be the date selected as such by the Administrator (with the consent or at the direction of the Majority Purchaser Agents) from time to time (it being understood that the Administrator (with the consent or at the direction of the Majority Purchaser Agents) may select such Monthly Settlement Date to occur as frequently as daily) or, in the absence of any such selection, the date which would be the Monthly Settlement Date pursuant to this definition).

"Moody's" means Moody's Investors Service, Inc. and any successor thereto. "Mortgage" means a mortgage or

deed of trust in favor of any Person on any real property

of any Originator for which all, or any portion thereof, is a location of such Originator's mining operations or a minehead.

"Net Receivables Pool Balance" means, at any time: (a) the Outstanding Balance of Eligible Receivables then in the Receivables Pool, minus (b) the Excess Concentration.

"No Proceedings Agreement" means each of (a) that certain no proceedings letter agreement, dated as of ~~March 7~~February 8, ~~2017~~2024, among the Administrator, the Term Loan Agent, Seller and ACI, (b) that certain no proceedings letter agreement, dated as of April 27, 2017, among the Administrator, the ABL Agent, Seller and ACI and (c) any additional replacement or successor agreement consented to in writing by the Administrator in its reasonable discretion and entered into by the agent under any Credit Agreement and ACI.

"Notes" means short-term promissory notes issued, or to be issued, by any Conduit Purchaser to fund its investments in accounts receivable or other financial assets.

Exhibit 21.1

Subsidiaries of the Company

The following is a complete list of the direct and indirect subsidiaries of Arch Resources, Inc., a Delaware corporation, including their respective states of incorporation or organization, as of February 15, 2024:

Arch Coal Asia-Pacific PTE. LTD. (Singapore)	**100%**
Arch of Australia PTY LTD (Australia)	**100%**
Arch Coal Australia PTY LTD (Australia)	**100%**
Arch Coal Australia Holdings PTY LTD (Australia)	**100%**
Arch Coal Europe Limited (Europe)	**100%**
Arch Coal Operations LLC (Delaware)	**42.2%**
Catenary Coal Holdings LLC (Delaware)	**100%**
ICG East Kentucky, LLC (Delaware)	**100%**
ICG Eastern, LLC (Delaware)	**100%**
ICG Tygart Valley, LLC (Delaware)	**100%**
Shelby Run Mining Company, LLC (Delaware)	**100%**
Hunter Ridge LLC (Delaware)	**100%**
Bronco Mining Company LLC (West Virginia)	**100%**
Hawthorne Coal Company LLC (West Virginia)	**100%**
Hunter Ridge Coal LLC (Delaware)	**100%**
Juliana Mining Company LLC (West Virginia)	**100%**
King Knob Coal Co. LLC (West Virginia)	**100%**
Marine Coal Sales LLC (Delaware)	**100%**
Melrose Coal Company LLC (West Virginia)	**100%**
Patriot Mining Company LLC (West Virginia)	**100%**
Upshur Property LLC (Delaware)	**100%**
Vindex Energy LLC (West Virginia)	**100%**
White Wolf Energy LLC (Virginia)	**100%**
Wolf Run Mining LLC (West Virginia)	**100%**
The Sycamore Group, LLC (West Virginia)	**50%**
Mingo Logan Coal LLC (Delaware)	**100%**
Arch Coal Sales Company, Inc. (Delaware)	**100%**
Arch Energy Resources, LLC (Delaware)	**100%**
Maidsville Landing Terminal, LLC	**100%**
Arch Land LLC (Delaware)	**57.6%**
Ark Land LLC (Delaware)	**100%**
Western Energy Resources LLC (Delaware)	**100%**
Ark Land KH LLC (Delaware)	**100%**
Ark Land LT LLC (Delaware)	**100%**
Ark Land WR LLC (Delaware)	**100%**
Atlantic Holdings JV LLC (Delaware)	**100%**
Allegheny Land LLC (Delaware)	**100%**
Arch Coal West, LLC (Delaware)	**100%**
Arch Reclamation Services LLC (Delaware)	**100%**
CoalQuest Development LLC (Delaware)	**100%**
Energy Development LLC (Iowa)	**100%**
ICG Eastern Land, LLC (Delaware)	**100%**
ICG Natural Resources, LLC (Delaware)	**100%**
Mountain Gem Land LLC (West Virginia)	**100%**
Mountain Mining LLC (Delaware)	**100%**

Mountaineer Land LLC (Delaware)	**100%**
Otter Creek Coal, LLC (Delaware)	**100%**
Arch Purchasing LLC	**100%**
Arch Receivable Company, LLC (Delaware)	**100%**
Arch Western Acquisition Corporation (Delaware)	**100%**
Arch Western Acquisition, LLC (Delaware)	**100%**
Arch Western Resources, LLC (Delaware)	**.5%**
Arch Western Resources, LLC (Delaware)	**99.5%**
Arch of Wyoming, LLC (Delaware)	**100%**
Arch Western Bituminous Group, LLC (Delaware)	**100%**
Mountain Coal Company, L.L.C. (Delaware)	**100%**
Thunder Basin Coal Company, L.L.C. (Delaware)	**100%**
Triton Coal Company, LLC (Delaware)	**100%**
ACI Terminal, LLC (Delaware)	**100%**
Ashland Terminal, Inc. (Delaware)	**100%**
International Energy Group, LLC (Delaware)	**100%**
ICG, LLC (Delaware)	**100%**
Arch Coal Group, LLC (Delaware)	**100%**
Arch Coal Operations LLC (Delaware)	**56.8%**
Arch Land LLC (Delaware)	**1.4%**
ICG Beckley, LLC (Delaware)	**100%**
Arch Land LLC (Delaware)	**41%**
Hunter Ridge Holdings, Inc. (Delaware)	**100%**
Arch Coal Operations LLC (Delaware)	**1%**
Meadow Coal Holdings, LLC (Delaware)	**100%**
Prairie Holdings, Inc. (Delaware)	**100%**

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-214373) pertaining to the Arch Resources, Inc. Omnibus Incentive Plan of our reports dated February 15, 2024, with respect to the consolidated financial statements and schedule of Arch Resources, Inc. and subsidiaries, and the effectiveness of internal control over financial reporting of Arch Resources, Inc. and subsidiaries included in this Annual Report (Form 10-K) for the year ended December 31, 2023, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

St. Louis, Missouri

February 15, 2024

Exhibit 23.2

Weir International, Inc.
Mining, Geology and Energy Consultants

Executive Towers West I
1431 Opus Place, Suite 210
Downers Grove, Illinois 60515
USA

Tel: 630-968-5400
Fax: 630-968-5401
weir@weirintl.com

February 14, 2024
Project No. 6397.3
Via Email: SStewart@archrsc.com

Mr. Wm. Scott Stewart
Arch Resources, Inc.
1 CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Reference: Consent of Independent Experts

Dear Mr. Stewart:

We hereby consent to the reference to Weir International, Inc. in the Annual Report on Form 10-K of Arch Resources, Inc. for the year ended December 31, 2023.

We further wish to advise that Weir International, Inc. was not employed on a contingent basis and that at the time of preparation of our report, as well as at present, neither Weir International, Inc. nor any of its employees had, or now has, a substantial interest in Arch Resources, Inc. or any of its affiliates or subsidiaries.

Respectfully submitted,

Weir International, Inc.

Fran X. Taglia
President

582 Industrial Park Road, Bluefield, VA 24605-9364 ■ Phone 276.322.5467
www.mma1.com ■ info@mma1.com

CONSENT OF MARSHALL MILLER & ASSOCIATES, INC.

February 12, 2024

Via Email: SStewart@archrsc.com

Mr. Wm. Scott Stewart
Arch Resources, Inc.
1 CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Reference: Consent of Independent Experts

With respect to the SEC filings by Arch Resources, Inc., including but not limited to its Annual Report on Form 10-K for the year ended December 31, 2023, we hereby consent (i) to the use of the information contained the Technical Report Summary for Leer South (each, a "TRS"), (ii)) to the use of Marshall Miller & Associates, Inc.'s name, any quotation from or summarization of the TRS, and (iii) to the filing of the TRS as an exhibit.

We further wish to advise that Marshall Miller & Associates, Inc. was not employed on a contingent basis and that at the time of preparation of our report, as well as at present, neither Marshall Miller & Associates, Inc. nor any of its employees had, or now has, a substantial interest in Arch Resources, Inc. or any of its affiliates or subsidiaries.

Respectfully submitted,

By: /s/ Steven A. Keim
Name: Steven A. Keim
Title: President
Date: February 12, 2024

Exhibit 24.1

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That each of the undersigned directors and/or officers of Arch Resources, Inc., a Delaware corporation ("Arch Resources"), hereby constitutes and appoints Paul A. Lang, Matthew C. Giljum and Rosemary L. Klein, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power to act without the other, to sign Arch Resources' Annual Report on Form 10-K for the year ended December 31, 2023, to be filed with the Securities and Exchange Commission under the provisions of the Securities Exchange Act of 1934, as amended; to file such report and the exhibits thereto and any and all other documents in connection therewith, including without limitation, amendments thereto, with the Securities and Exchange Commission; and to do and perform any and all other acts and things requisite and necessary to be done in connection with the foregoing as fully as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, may lawfully do or cause to be done by virtue hereof.

DATED: February 9, 2024

/s/ Pamela R. Butcher
Pamela R. Butcher — Director

/s/ James N. Chapman
James N. Chapman — Director

/s/ John W. Eaves
John W. Eaves — Director

/s/ Holly Keller Koeppel
Holly Keller Koeppel — Director

/s/ Patrick A. Kriegshauser
Patrick A. Kriegshauser — Director

/s/ Paul A. Lang
Paul A. Lang — Director

/s/ Richard A. Navarre
Richard A. Navarre — Director

/s/ Peifang Zhang
Peifang (Molly) Zhang — Director

Exhibit 31.1

Certification

I, Paul A. Lang, certify that:

1. I have reviewed this annual report on Form 10-K of Arch Resources, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Paul A. Lang

Paul A. Lang

Chief Executive Officer, Director

February 15, 2024

Exhibit 31.2

Certification

I, Matthew C. Giljum, certify that:

1. I have reviewed this annual report on Form 10-K of Arch Resources, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Matthew C. Giljum

Matthew C. Giljum

Senior Vice President and Chief Financial Officer

February 15, 2024

Exhibit 32.1

Certification of Chief Executive Officer of Arch Resources, Inc. Pursuant to 18.U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Paul A. Lang, Chief Executive Officer of Arch Resources, Inc., certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Annual Report on Form 10-K for the year ended December 31, 2023 (the "Periodic Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of Arch Resources, Inc.

/s/ Paul A. Lang
Paul A. Lang
Chief Executive Officer, Director
February 15, 2024

Exhibit 32.2

Certification of Chief Financial Officer of Arch Resources, Inc. Pursuant to 18.U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Matthew C. Giljum, Senior Vice President and Chief Financial Officer of Arch Resources, Inc., certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Annual Report on Form 10-K for the year ended December 31, 2023 (the "Periodic Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of Arch Resources, Inc.

/s/ Matthew C. Giljum
Matthew C. Giljum
Senior Vice President and Chief Financial Officer
February 15, 2024

Mine Safety and Health Administration Safety Data

We believe that Arch Resources, Inc. (“Arch Resources”) is one of the safest coal mining companies in the world. Safety is a core value at Arch Resources and at our subsidiary operations. We have in place a comprehensive safety program that includes extensive health & safety training for all employees, site inspections, emergency response preparedness, crisis communications training, incident investigation, regulatory compliance training and process auditing, as well as an open dialogue between all levels of employees. The goals of our processes are to eliminate exposure to hazards in the workplace, ensure that we comply with all mine safety regulations, and support regulatory and industry efforts to improve the health and safety of our employees along with the industry as a whole.

The operation of our mines is subject to regulation by the Federal Mine Safety and Health Administration (MSHA) under the Federal Mine Safety and Health Act of 1977 (Mine Act). MSHA inspects our mines on a regular basis and issues various citations, orders and violations when it believes a violation has occurred under the Mine Act. We present information below regarding certain mining safety and health violations, orders and citations, issued by MSHA and related assessments and legal actions and mine-related fatalities with respect to our coal mining operations. In evaluating the above information regarding mine safety and health, investors should take into account factors such as: (i) the number of citations and orders will vary depending on the size of a coal mine, (ii) the number of citations issued will vary from inspector to inspector and mine to mine, and (iii) citations and orders can be contested and appealed, and in that process are often reduced in severity and amount, and are sometimes dismissed or vacated.

The table below sets forth for the twelve months ended December 31, 2023 for each active MSHA identification number of Arch Resources and its subsidiaries, the total number of: (i) violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Mine Act for which the operator received a citation from MSHA; (ii) orders issued under section 104(b) of the Mine Act; (iii) citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of the Mine Act; (iv) flagrant violations under section 110(b)(2) of the Mine Act; (v) imminent danger orders issued under section 107(a) of the Mine Act; (vi) proposed assessments from MHSA (regardless of whether Arch Resources has challenged or appealed the assessment); (vii) mining-related fatalities; (viii) notices from MSHA of a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of the Mine Act; (ix) notices from MSHA regarding the potential to have a pattern of violations as referenced in (viii) above; and (x) pending legal actions before the Federal Mine Safety and Health Review Commission (as of December 31, 2023) involving such coal or other mine, as well as the aggregate number of legal actions instituted and the aggregate number of legal actions resolved during the reporting period.

Mine or Operating Name / MSHA Identification Number	Section 104 S&S Citations (#)	Section 104(b) Orders (#)	Section 104(d) Citations and Orders (#)	Section 110(b)(2) Violations (#)	Section 107(a) Orders (#)	Total Dollar Value of MSHA Assessments Proposed (in thousands) ($)	Total Number of Mining Related Fatalities (#)	Received Notice of Pattern of Violations Under Section 104(e) (Yes/No)	Received Notice of Potential to Have Pattern of Violations Under Section 104(e) (Yes/No)	Legal Actions Initiated During Period (#)	Legal Actions Resolved During Period (#)	Legal Actions Pending as of Last Day of Period(1) (#)
Active Operations												
Beckley Pocahontas Mine / 46-05252	28	—	—	—	—	150.4	—	No	No	4	8	2
Beckley Pocahontas Plant / 46-09216	—	—	—	—	—	0.4	—	No	No	—	—	—
Leer South Mine / 46-04168	52	—	1	—	—	257.5	—	No	No	1	1	—
Leer South Prep Plant / 46-08777	1	—	—	—	—	1.6	—	No	No	—	—	—
Mingo Logan Mountaineer II / 46-09029	61	—	6	—	—	406.1	—	No	No	13	9	8
Mingo Logan Cardinal Prep Plant / 46-09046	2	1	—	—	—	2.0	—	No	No	—	—	—
Mingo Logan Daniel Hollow / 46-09047	—	—	—	—	—	—	—	No	No	—	—	—
Leer #1 Mine / 46-09192	25	—	—	—	—	69.0	—	No	No	—	—	—
Arch of Wyoming Elk Mountain / 48-01694	—	—	—	—	—	—	—	No	No	—	—	—
Black Thunder / 48-00977	16	—	—	—	—	86.8	—	No	No	1	1	1
Coal Creek / 48-01215	3	—	—	—	—	7.3	—	No	No	—	—	—
West Elk Mine / 05-03672	21	—	—	—	—	127.3	—	No	No	—	—	—
Leer #1 Prep Plant / 46-09191	—	—	—	—	—	0.9	—	No	No	—	—	—
Wolf Run Mining – Sawmill Run Prep Plant / 46-05544	—	—	—	—	—	—	—	No	No	—	—	—
Wolf Run – Upshur Complex / 04605823	—	—	—	—	—	0.4	—	No	No	—	—	—
Birch River Mine / 04607945	—	—	—	—	—	—	—	No	No	—	—	—
Wolf Run Mining – Imperial / 46-09115	—	—	—	—	—	—	—	No	No	—	—	—

(1) See table below for additional details regarding Legal Actions Pending as of December 31, 2023

Mine or Operating Name/MSHA Identification Number	Contests of Citations, Orders (as of December 31, 2023)	Contests of Proposed Penalties (as of December 31, 2023)	Complaints for Compensation (as of December 31, 2023)	Complaints of Discharge, Discrimination or Interference (as of December 31, 2023)	Applications for Temporary Relief (as of December 31, 2023)	Appeals of Judges' Decisions or Orders (as of December 31, 2023)
Beckley Pocahontas Mine / 46-05252	—	2	—	—	—	—
Mingo Logan Mountaineer II / 46-09029	—	8	—	—	—	—
Thunder Basin / Black Thunder / 48-00977	—	1	—	—	—	—

Arch Land, LLC and Arch Resources, Inc. (together "Arch")
Statement of Coal Resources and Reserves for the
Leer South Complex in Accordance with
United States SEC S-K1300 Standards as of December 31, 2023
Barbour, Harrison, and Taylor Counties,
West Virginia, USA

February 2024

Prepared for:
Arch Land, LLC and
Arch Resources, Inc. (together "Arch")
1 City Place Drive, Suite 300
Creve Coeur, MO 63141

Prepared by:
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582 Industrial Park Road
Bluefield, Virginia 24605
www.mma1.com

Statement of Use and Preparation

This Technical Report Summary (*TRS*) was prepared for the sole use of **Arch Land, LLC and Arch Resources, Inc. (together "Arch")** and its affiliated and subsidiary companies and advisors. Copies of or references to information in this report may not be used without the written permission of Arch.

The report provides a statement of coal resources and coal reserves for Arch, as defined under the **United States Securities and Exchange Commission (*SEC*)**.

The statement is based on information provided by Arch and reviewed by various professionals within **Marshall Miller & Associates, Inc. (*MM&A*)**.

MM&A professionals who contributed to the drafting of this report meet the definition of *Qualified Persons* (*QPs*), consistent with the requirements of the SEC.

The information in this TRS related to coal resources and reserves is based on, and fairly represents, information compiled by the QPs. At the time of reporting, MM&A's QPs have sufficient experience relevant to the style of mineralization and type of deposit under consideration and to the activity they are undertaking to qualify as a QP as defined by the SEC.

Marshall Miller & Associates, Inc. (*MM&A*) hereby consents (i) to the use of the information contained in this report dated December 31, 2023, relating to estimates of coal resources and coal reserves controlled by Arch, (ii) to the use of MM&A's name, any quotation from or summarization of this TRS in Arch's SEC filings, and (iii) to the filing of this TRS as an exhibit to Arch's SEC filings.

This report was prepared by:

Marshall Miller & Associates, Inc.

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Appendix

1 Executive Summary

1.1 Property Description

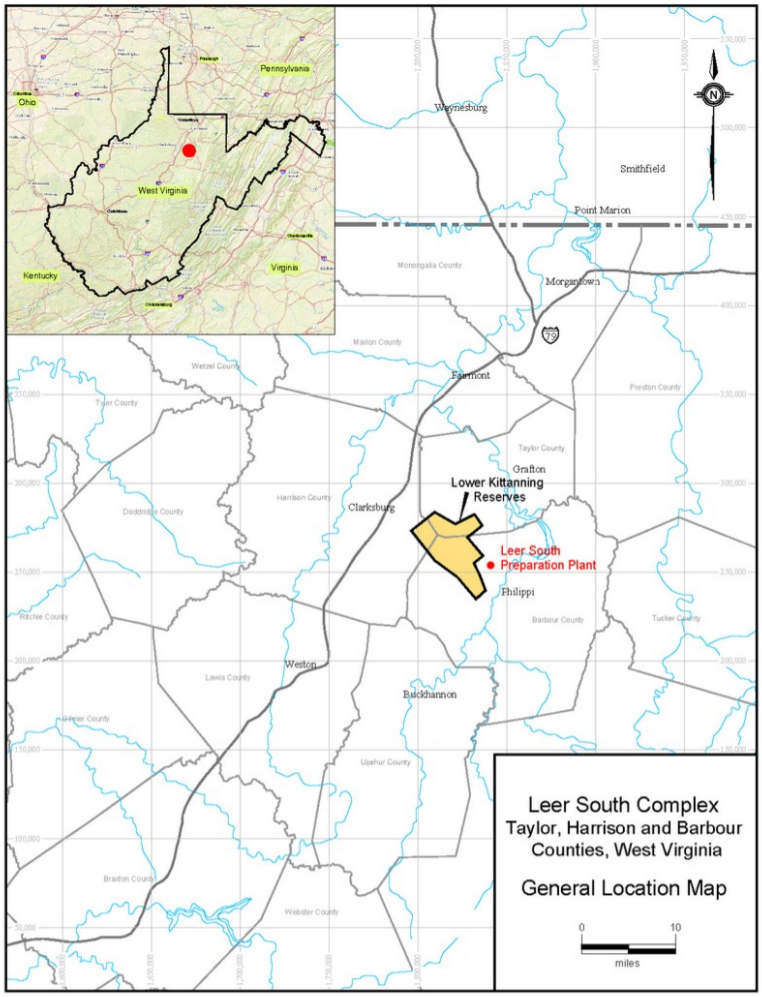
Arch Land, LLC and Arch Resources, Inc. (together "Arch") authorized **Marshall Miller & Associates, Inc. (*MM&A*)** to prepare this Technical Report Summary (*TRS*) of its controlled coal reserves and resources located at the **Leer South Operation (*Leer South*)** in Barbour, Harrison, and Taylor Counties, West Virginia (the *Property*). The report provides a statement of coal resources and coal reserves for Arch, as defined under the **United States Securities and Exchange Commission (*SEC*)** S-K1300 standards.

Coal resources and coal reserves are herein reported in the U.S. system of measurement and are rounded to millions of short tons (*Mt*).

The Leer South Complex is located in Barbour, Harrison, and Taylor Counties in West Virginia. The Leer South mine office is located north of the town of Philippi, the county seat of Barbour County, West Virginia. The nearest cities are Clarksburg and Bridgeport, approximately 17 miles to the northwest. The city of Buckhannon is located 26 miles to the south of the mine. Charleston, the state capital of West Virginia, is located approximately 136 miles southwest of the Property.

For the Lower Kittanning seam, the Property is composed of approximately 24,200 total acres controlled by Arch, of which approximately 84-percent is owned and 16 percent is leased.

Figure 1-1: Leer South Complex Property Location Map



1.2 Ownership

Since 1974, the Property has been controlled by various mining companies including (in chronological order: **Republic Steel Corporation**, **Old Ben Coal Company**, **Black Diamond Energy Inc.**, **Anker Mining Company (*Anker*)**, **International Coal Group (*ICG*)**, and **Arch Coal Inc. (*Arch*)** in 2011, prior to the current owner, **Arch Resources, Inc.** (name changed in 2020). Mine development in the Clarion seam was started by ICG in 2006, and expansion into the Lower Kittanning seam was begun by Arch in 2018.

1.3 Geology

Operations at the Leer South Complex extract coal from the Lower Kittanning seam by continuous miner and longwall mining methods. Strata of economic interest for this TRS belong to the Pennsylvanian-age Allegheny Formation. Due to the high value of these coals, the Lower Kittanning seam has been extensively mined in the region. The seam is situated below drainage throughout the Property and is accessed by existing mine slopes/shafts.

1.4 Exploration Status

The Property has been extensively explored, largely by drilling using continuous coring methods and rotary drilling, as well as obtaining coal measurements at mine exposures, ongoing drilling associated with degas activities, and by downhole geophysical methods. The majority of the data was acquired or generated by previous owners of the Property. These sources comprise the primary data used in the evaluation of the coal resources and coal reserves on the Property. MM&A examined the available data and incorporated all pertinent information into this TRS.

Ongoing exploration has been carried out by Arch since acquiring the Property, and Arch-acquired exploration data has been consistent with past drilling activities.

1.5 Operations and Development

Due to its coal reserve and seam characteristics, Leer South operates using longwall mining methods. Resource and reserve models were therefore generated with longwall mining constraints in mind for Leer South's underground resources. The mine produces coal that is suitable for the high-volatile metallurgical coal markets and also produces a middlings product for consumption in thermal markets.

Leer South underground infrastructure and its associated preparation plant are upgraded as needed to accommodate the production from the longwall. Processes are typical of those used in the coal industry and are in use at adjacent coal processing plants.

1.6 Mineral Resource

Mineral resources, representing in-situ coal in which a portion of reserves are derived, are presented below. A coal resource estimate, summarized in *Table 1-1*, was prepared as of December 31, 2023, for

property controlled by Arch. As reflected in the table below, no resources exclusive of reserves have been considered or analyzed in this TRS.

Table 1-1: Coal Resources Summary as of December 31, 2023

Seam	Coal Resource (Dry Tons, In Situ, Mt)			
	Measured	Indicated	Inferred	Total
Lower Kittanning Rider				
Inclusive of Reserve	2.34	0.15	0.00	2.49
Exclusive of Reserve	0.00	0.00	0.00	0.00
Total	**2.34**	**0.15**	**0.00**	**2.49**
Lower Kittanning				
Inclusive of Reserve	73.08	30.89	0.00	103.96
Exclusive of Reserve	0.00	0.00	0.00	0.00
Total	**73.08**	**30.89**	**0.00**	**103.96**
Grand Total				
Total	**75.41**	**31.04**	**0.00**	**106.45**

Note 1: Coal resources are reported on a dry basis. Surface moisture and inherent moisture are excluded.

1.7 Mineral Reserve

Reserve tonnage estimates provided herein report coal reserves derived from the in-situ resource tons presented in *Table 1-1* which are classified as "Inclusive of Reserve". Proven and probable coal reserves were derived from the defined coal resource considering relevant mining, processing, infrastructure, economic (including estimates of capital, revenue, and cost), marketing, legal, environmental, socio-economic and regulatory factors. The Resource estimate has been used as the basis for this Reserve calculation, which utilizes a reasonable Preliminary Feasibility Study, a Life-of Mine (*LOM*) Mine Plan and practical recovery factors. Production modeling was completed with an effective start date of October 1, 2023. It is important to note that the LOM plan is based on information provided by the company and does not contemplate development of contiguous reserves the company currently controls or could acquire in the future (neither of which have been assessed as part of this TRS), nor does it assume any improvements in productivity, technological innovations, or operating efficiencies that the company has achieved historically.

The Leer South property is unique in that it produces both a metallurgical coking coal product and a middling thermal blend product. As such, reserve tabulations include a breakdown of each respective product. It is of important note that qualities presented in *Table 1-3* which correspond which each respective market placement (metallurgical and thermal) are based upon exploration information at prescribed density cut points. These quality estimates should be viewed as predictive—actual produced quality will vary based upon a multitude of factors, including, but not limited to plant operating practices and associated efficiency; plant equipment circuitry; plant feed quality and size distribution; and contractual product specifications. Over the past 2 years, produced thermal based tonnages have had lower ash percentages than those projected in thermal reserve classifications herein. Further, the relative ratio of thermal tons to metallurgical tons produced at the operation has been lower than projected in this TRS. One can reasonably expect this ratio and quality parameters to vary in accordance with market demands. Thermal reserve tons make up a relatively small portion of the projected revenue stream expressed in this TRS and for the operation.

Factors that would typically preclude conversion of a coal resource to coal reserve, include the following: inferred resource classification; absence of coal quality; poor mine recovery; lack of access; geological encumbrances associated with overlying and underlying strata; seam thinning; structural complication; and insufficient exploration have all been considered. Reserve consideration excludes those portions of the resource area which exhibit the aforementioned-geological and operational encumbrances.

Proven and probable coal reserve were derived from the defined in-situ coal resource considering relevant processing, economic (including technical estimates of capital, revenue, and cost), marketing, legal, environmental, socioeconomic, and regulatory factors. The proven and probable coal reserves on the Property are summarized below in *Table 1-2*.

Table 1-2: Coal Reserves Summary (Dry Basis) as of December 31, 2023

Seam	Demonstrated Coal Reserves (Dry Tons, Washed or Direct Shipped, Mt)									LOM Wash Recovery (%)
	By Reliability Category			By Product		By Control Type				
	Proven	Probable	Total	Met ~1.50 Float SG**	Thermal ~1.50 x 1.70 SG**	Owned	Leased	Partially Owned	Partially Leased	
Lower Kittanning Rider	1.43	0.01	1.44	1.27	0.17	0.05	1.11	0.00	0.28	
Lower Kittanning	43.23	17.97	61.19	52.69	8.51	51.66	7.01	1.59	0.94	
Total	**44.66**	**17.98**	**62.63**	**53.95**	**8.68**	**51.70**	**8.12**	**1.59**	**1.22**	**44%**
Uncontrolled*	2.53	0.37	2.90	2.51	0.38					

*Uncontrolled tons are reported for informational purposes only and are not part of the reserves. Uncontrolled tonnages are contained within small mineral tracts which must be acquired for execution of the life-of-mine plan. As such, uncontrolled tonnages are included in the LOM financial model. See appendix for maps which show details of mineral control. Mine plan includes a total of 2.9 Mt of adverse tons and was adjusted for approximately 0.26 Mt of depletion.

**Metallurgical tonnages and thermal tonnages (and associated quality) are respectively based upon an approximate 1.50 float and 1.50 x 1.70 specific gravity, as this represented the most consistent coal quality data. In reality, Arch's actual plant operating gravities vary depending upon required product specifications. See "Mineral Processing and Metallurgical Testing" chapter of report for more detailed explanation on derivation of product yields. Exploration coal quality commonly varies from saleable product quality. Over the past 2 years, thermal ash and the ratio of thermal to met tons have been lower than projected in this TRS.

*** Coal Reserves are based upon sales assumptions provided to MM&A by Arch and were relied upon by MM&A. Financial modeling assumes sales prices of approximately $162.32 per ton (FOB-mine) in 2024, stabilizing to a long-term price of approximately $150.56/ton. See Chapter 16 for further details on marketing assumptions.

Table 1-3: Summary of Quality (dry basis)

Seam	Met				Thermal		
	Ash	Sulfur	Vol	Btu/lb.	Ash	Sulfur	Btu/lb.
Lower Kittanning Rider	8.3	1.3	35	14,240	31.9	4.3	10,184
Lower Kittanning	8.8	1.3	34	14,180	34.5	2.6	9,587
Total	**8.8**	**1.3**	**34**	**14,181**	**34.5**	**2.6**	**9,599**

*Metallurgical tonnages and thermal quality (and associated tonnages) are respectively based upon an approximate 1.50 float and 1.50 x 1.70 specific gravity, as this represented the most consistent coal quality data. See "Mineral Processing and Metallurgical Testing" chapter of report for more detailed explanation on derivation of product yields.

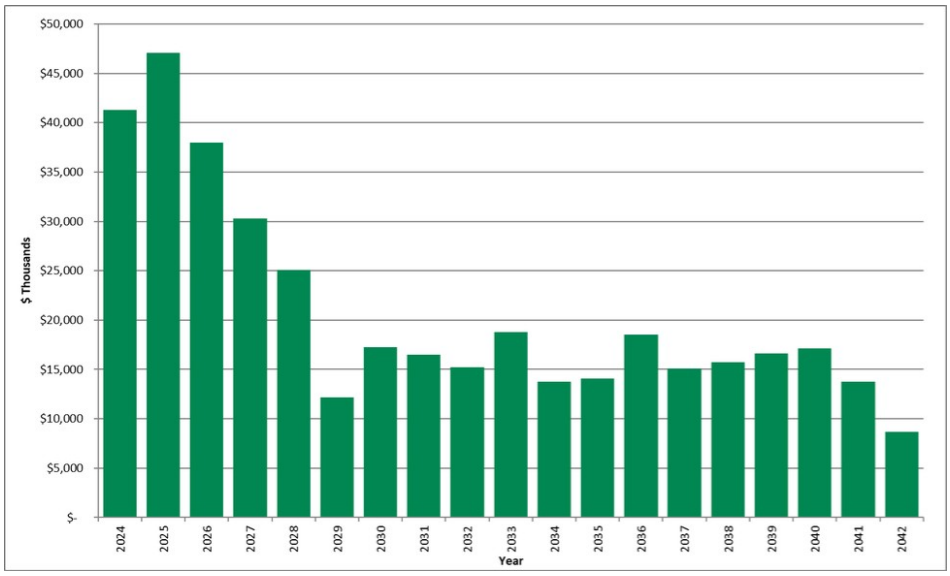
**Qualities presented which correspond with each respective market placement (metallurgical and thermal) are based upon exploration information at prescribed density cutpoints. These quality estimates should be viewed as predictive—actual produced quality will vary based upon a multitude of factors, including, but not limited to plant operating practices and associated efficiency; plant equipment circuitry; plant feed quality and size distribution; and contractual product specifications. Over the past 2 years, produced thermal ash percentages have been lower than projected in *Table 1-3.*

In summary, Arch controls a total of 62.6 Mt (dry basis) of marketable coal reserves, at Leer South, as of January 1, 2024. Of that total, 71 percent are proven, and 29 percent are probable. There are 51.7 Mt of owned coal reserves and 8.1 Mt of leased coal and 2.8 Mt of partial control reserves. Of the 62.6 Mt of marketable reserves, approximately 86-percent are associated with metallurgical coal markets, and all of the Leer South reserves are assigned to existing infrastructure.

1.8 Capital Summary

Arch provided MM&A with a detailed 5-year capital expenditure projection. MM&A reviewed this schedule and deemed it to be appropriate for financial modeling. MM&A extrapolated the provided capital schedule through end of mining operations. Capital forecasting by MM&A assumes that major equipment rebuilds occur over the course of each machine's remaining assumed operating life. Replacement equipment was scheduled based on MM&A's experience and knowledge of mining equipment and industry standards with respect to the useful life of such equipment. A summary of the estimated capital for the Property is provided in *Figure 1-2* below.

Figure 1-2: CAPEX



1.9 Operating Costs

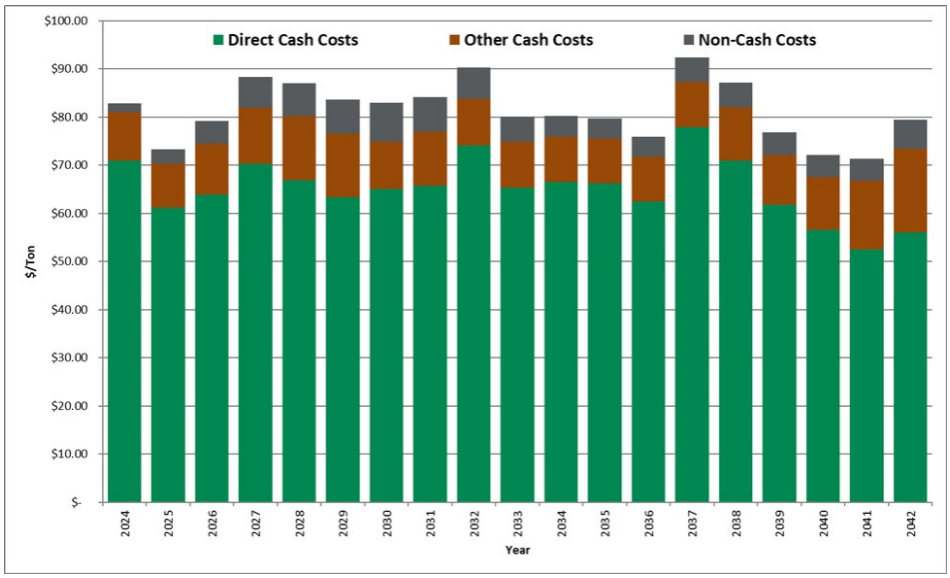
Arch provided historical and projections of operating costs for Leer South for MM&A's review. MM&A used the historical and/or budget cost information as a reference and developed personnel schedules for the mine and support facilities. Hourly labor rates and salaries were based upon information contained in Arch's financial summaries and MM&A's knowledge of regional labor rates. Fringe-benefit

costs were developed for vacation and holidays, federal and state unemployment insurance, retirement, workers' compensation and pneumoconiosis, casualty and life insurance, healthcare, and bonuses. A cost factor for mine supplies was developed that relates expenditures to mine advance rates for roof-control costs and other mine-supply costs at underground mines. Other factors were developed for maintenance and repair costs, rentals, mine power, outside services and other direct mining costs.

Operating costs factors were also developed for the coal preparation plant processing, refuse handling, coal loading, property taxes, and insurance and bonding. Appropriate royalty rates were assigned for production from leased coal lands, and sales taxes were calculated for state severance taxes, the federal black lung excise tax, and federal and state reclamation fees.

A summary of the projected operating costs for the Property is provided in *Figure 1-3*.

Figure 1-3: OPEX



1.10 Economic Evaluation

The pre-feasibility financial model prepared for this TRS was developed to test the economic viability of the coal resource area. The results of this financial model are not intended to represent a bankable feasibility study, required for financing of any current or future mining operations contemplated for the Arch properties, but are intended to establish the economic viability of the estimated coal reserves. Cash flows are simulated on an annual basis based on projected production from the coal reserves. The

discounted cash flow analysis presented herein is based on an effective date of December 31, 2023. On an un-levered basis, the NPV of the project cash flow after taxes represents the Enterprise Value of the project. The project cash flow, excluding debt service, is calculated by subtracting direct and indirect operating expenses and capital expenditures from revenue.

Cash flow after tax, but before debt service, generated over the life of the project was discounted to NPV at a 10% discount rate, which represents MM&A's estimate of the constant dollar, risk adjusted WACC for likely market participants if the subject reserves were offered for sale. On an un-levered basis, the NPV of the project cash flows represents the Enterprise Value of the project and amounts to $1.870 billion. The pre-feasibility financial model prepared for the TRS was developed to test the economic viability of each coal resource area. The NPV estimate was made for the purpose of confirming the economics for classification of coal reserves and not for purposes of valuing Arch or its Leer South assets. Mine plans were not optimized, and actual results of the operations may be different, but in all cases, the mine production plan assumes the properties are under competent management.

Table 1-4 shows LOM tonnage, P&L, and EBITDA for Leer South.

Table 1-4: Key Mine Statistics

	LOM Plan
ROM Tons Produced (x 1,000)	155,805
Clean Tons Produced, Moist Basis (x 1,000)[4]	72,803
Preparation Plant Yield (%)	47%
Coal Sales Realization ($/ton)[2]	$150.30
Direct Cash Costs ($/ton)	$65.07
Other Cash Costs ($/ton)	$10.92
Non-Cash Costs ($/ton)	$5.27
Total Costs of Sales ($/ton)	$81.26
Profit/(Loss)	$69.04
EBITDA	$74.31
CAPEX ($/ton)	$5.42

Note 1: The LOM Economic Model was developed based upon mine faces as of October 1, 2023, whereas reserves were calculated as of December 31, 2023. As such, the economic model includes a small portion of tonnages not included in the reserve estimate. Additionally, the LOM model includes tonnages contained within uncontrolled tracts which are not included in reserve estimates.

Note 2: Realized coal prices are based upon a combination of thermal (middlings) and high-volatile A coking coal products. Realized coal prices incorporate HCC indices, adjustments from metric tons to short tons, adjustments for transportation costs and assumed prices for thermal products.

Note 3: The LOM model and associated economic analysis is intended to prove the economic viability of the subject coal tonnage, allowing controlled tons to be classified as "reserve". The exercise should not be construed to represent a valuation of Arch's holdings. Long-term cash flows incorporate forward-looking market projections which are expected to vary over time based upon historic volatility of coal markets.

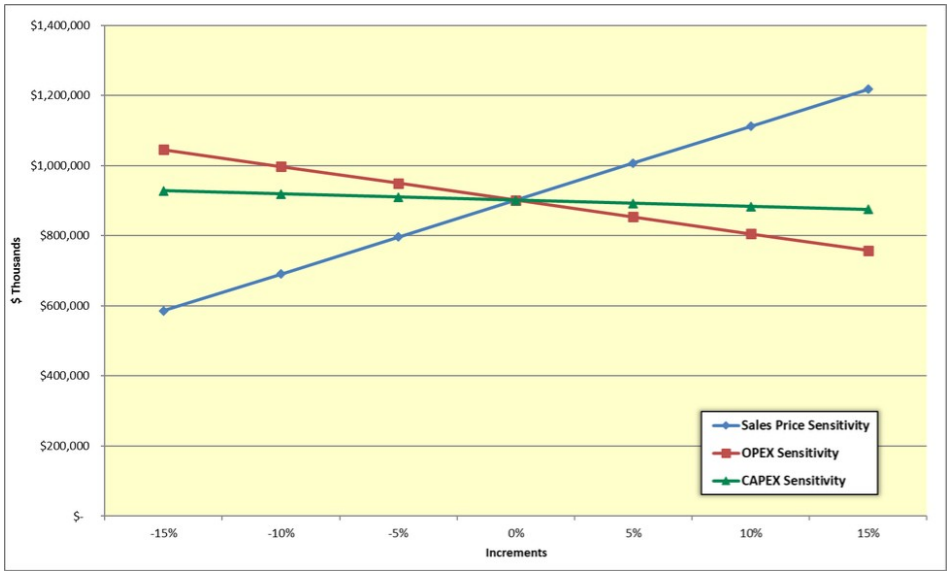
Note 4: LOM plan includes variances from reserves based on the LOM plan tons being 1) moist basis; 2) inclusion of non-reserve adverse tracts and 3) slight variances between production faces effective 12/31/23.

As shown in *Table 1-4,* the Leer South Mine shows a positive EBITDA. Overall, the Arch consolidated operations show positive P&L and EBITDA of $69.04 per ton and $74.31 per ton, respectively. A sensitivity analysis was completed by MM&A to determine the influence of changes to various assumptions in the financial model. Based on the results, the project is most sensitive to assumed sales price, followed by operating costs, and then capital estimates.

1.10.1 Sensitivity Analysis

Sensitivity of the NPV results to changes in the key drivers is presented in *Figure 1-4*. The sensitivity study shows the NPV at the 10% discount rate when Base Case sales prices, operating costs, production, plant yield and capital costs are increased and decreased +/- 10%. A critical case combining Sales price and operating cost was also done reflecting the combined effect of plus 10% operating cost with -10% sales price to -10% operating cost and +10% sales price.

Figure 1-4: Sensitivity of NPV



1.11 Permitting

Arch has obtained all mining and discharge permits to operate its mine and processing, loadout, and related support facilities; expansion of the underground mining boundary has been submitted and is currently being reviewed by the appropriate regulatory agencies. MM&A is unaware of any obvious or current Arch permitting issues that are expected to prevent the issuance of future permits. Leer South, along with all coal producers, is subject to a level of uncertainty regarding permits due to the **United States Environmental Protection Agency (*EPA*)** involvement with state programs.

1.12 Conclusion and Recommendations

Sufficient data have been obtained through various exploration and sampling programs and mining operations to support the geological interpretations of seam structure and thickness for coal horizons situated on the Leer South Property. The data are of sufficient quantity and reliability to reasonably support the coal resource and coal reserve estimates in this TRS.

The geological data and preliminary feasibility study, which consider mining plans, revenue, and operating and capital cost estimates are sufficient to support the classification of coal reserves provided herein.

This geologic evaluation conducted in conjunction with the preliminary feasibility study concludes that the 62.6 Mt of marketable underground coal reserves identified on the Property are economically mineable under reasonable expectations of market prices for metallurgical coal products, estimated operation costs, and capital expenditures. In order to successfully recover the aforementioned controlled reserves, additional properties must be acquired by Arch. Such properties contain an estimated additional 2.9 Mt of recoverable coal.

2 Introduction

2.1 Registrant and Terms of Reference

This report was prepared for the sole use of **Arch Land, LLC and Arch Resources, Inc. (together "Arch")** and its affiliated and subsidiary companies and advisors. The report provides a statement of coal resources and coal reserves for Arch, as defined under the **United States Securities and Exchange Commission (*SEC*)** SK-1300 standards.

The report provides a statement of coal reserves for Arch. Exploration results and Resource calculations were used as the basis for the mine planning and the preliminary feasibility study completed to determine the extent and viability of the reserve.

Coal resources and coal reserves are herein reported in the U.S. system of measurement and are rounded to millions of short tons.

2.2 Information Sources

The technical report is based on information provided by Arch and reviewed by professionals employed by Marshall Miller and Associates.

Arch engaged MM&A to conduct a coal reserve evaluation of the Arch coal properties as of December 31, 2023. For the evaluation, the following tasks were to be completed:

> Conduct site visits of the mines and mine infrastructure facilities, most recently in October 2020;

> Process the information supporting the estimation of coal resources and reserves into geological models;

> Develop *LOM* plans and financial models;

> Hold discussions with Arch company management; and

> Prepare and issue a TRS providing a statement of coal reserves which would include:

- A description of the mine and facilities.
- A description of the evaluation process.
- An estimation of coal reserves with compliance elements as stated under the SEC S-K 1300 standards.

MM&A reviewed pertinent exploration information provided by Arch, including a robust exploration and quality database. Additionally, mine plans and life-of-mine economic models were provided by Arch and reviewed by MM&A. Arch provided various property maps, permit maps, and additional ancillary data to MM&A for the engagement.

2.3 Personal Inspections

MM&A is very familiar with Leer South, having provided a variety of services in recent years, and the MM&A employees involved in the development this TRS have conducted site inspections, to both surface and underground facilities, in 2020.

Moreover, between 1998 and 2023, MM&A has had a presence on the Property through its geophysical logging division, GLS, having e-logged nearly 145 exploration holes for Arch and its predecessors. MM&A has also conducted numerous hydrogeological and geotechnical investigations at the subject property.

2.4 Updates to Previous TRS

This TRS serves as an update to a previously submitted TRS which had an effective December 31, 2021. Significant updates and revisions considered in the development of this TRS include:

1. **Exclusion of the Clarion Seam from Resource & Reserve Tabulations** as Arch is no longer producing coal form the Clarion horizon and does not have plans to re-engage Clarion operations.
2. **Updates to Property Control** including newly acquired leases and reconciliation of former leases.
3. **Updates to Geological Thickness and Quality Models** in accordance with newly acquired exploration data.
4. **Revisions to Life-of-Mine Plans** reflective of new mineability findings and various expansion areas.

5. **Updates to Cost Models** to reflect updated cost profiles and updated projections of revenue streams.

3 Property Description

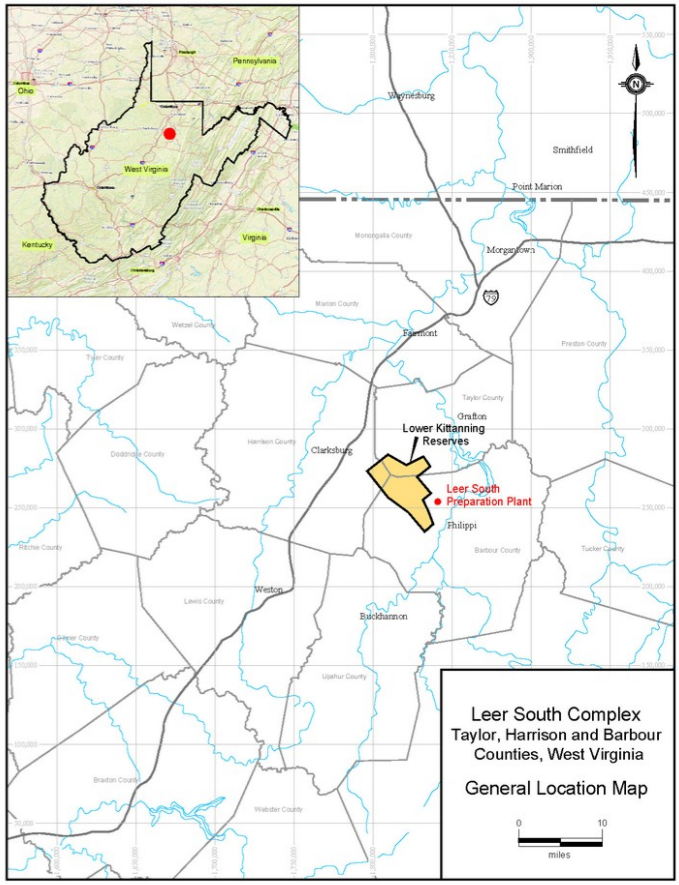
3.1 Location

The Leer South Mine Complex is located in Barbour, Harrison, and Taylor Counties, West Virginia (see *Figure 1-1*) approximately 3 miles northwest of Philippi, which is the county seat of Barbour County. Surface facilities for the mine are located adjacent to US Highway 119. The Leer South mine transports coal to the CSX railroad via the Appalachian and Ohio Railroad (A&O), and from there to Grafton, West Virginia.

The Property is located on portions of the following **United States Geological Survey (*USGS*)** 7.5-Minute Quadrangles: Brownton, Grafton, Philippi, and Rosemont, West Virginia. Current mining projections fall within the Brownton, Philippi, and Rosemont quadrangles (see *Figure 3-1*).

The coordinate system and datum used for the model of Leer South and subsequent maps were produced in the West Virginia State Plane North system, NAD 27.

Figure 3-1: Leer South Complex Property Location Map



3.2 Titles, Claims or Leases

For the Lower Kittanning seam, the Property is composed of approximately 24,200 total acres controlled by Arch, of which approximately 84 percent is partially (or fully) owned, and 16 percent is partially (or fully) leased.

Subject to Arch's exercising its renewal rights thereunder, all the leases expire upon exhaustion of the relevant coal reserves, which is expected to occur in 2042. MM&A has not carried out a separate title verification for the coal property and has not verified leases, deeds, surveys, or other property control

instruments pertinent to the subject resources. Arch has represented to MM&A that it controls the mining rights to the reserves as shown on its property maps, and MM&A has accepted these as being a true and accurate depiction of the mineral rights controlled by Arch. The TRS assumes the Property is developed under responsible and experienced management.

3.3 Mineral Rights

Arch supplied property control maps to MM&A related to properties for which mineral and/or surface property are controlled by Arch. While MM&A accepted these representations as being true and accurate, MM&A has no knowledge of past property boundary disputes or other concerns, through past knowledge of the Property, that would signal concern over future mining operations or development potential.

Property control in Appalachia is often intricate. Coal mining properties are typically composed of numerous property tracts which are owned and/or leased from both land-holding companies and private individuals or companies. It is common to encounter severed ownership, with different entities or individuals controlling the surface and mineral rights. Mineral control in the region is typically characterized by leases or ownership of larger tracts of land, interspersed with surface control generally comprised of smaller tracts, particularly in developed areas.

Legal mining rights may reflect a combination of fee or mineral ownership and fee or mineral leases of coal lands through various surface and mineral lease agreements. There is also a relatively small amount of area where the coal is partially owned and/or partially leased on a limited number of individual tracts.

Control of the surface property is necessary to conduct surface mining but is not necessary to conduct underground mining. Given that the Property has had active mining operations dating back to the 1970's, Arch, and its predecessors, have a successful history of obtaining any necessary rights and the associated permits to mine.

3.4 Encumbrances

No Title Encumbrances are known. By assignment, MM&A did not complete a query related to Title Encumbrances.

3.5 Other Risks

There is always risk involved in property control. Arch's land division and legal teams continually examine critical properties and associated deeds and title control in order to minimize the risk. MM&A is not aware of any historical property control challenges related to Leer South's operations.

4 Accessibility, Climate, Local Resources, Infrastructure and Physiography

4.1 Topography, Elevation, and Vegetation

The Leer South mine is located on the Appalachian plateau of northern West Virginia. The topography of the Property consists of rolling terrain with slopes rising from the Tygart River and associated tributaries. The Tygart River Valley extends from Pocahontas County, West Virginia, north through Randolph, Barbour, Taylor and Marion Counties. The Leer South mine is located to the west of the Tygart River northwest of the town of Philippi, West Virginia. The upper elevations consist of sinuous ridgelines of elevations rising up to 1,900 feet.

The terrain drops off from the higher elevations with steep slopes down to Foxgrape Run, Little Hackers Creek, Hackers Creek and Shooks Run to the south. The drainages of Stewart Run, Spaw Lick and Brushy Fork are found to the southwest. Pleasant Creek, Simpson Creek, Camp Run, Stillhouse Run, Bartlett Run and Beards Run are located to the north. There are scattered areas of relatively flat lying pastureland on the river and stream floodplain terraces. Maximum relief of the Property is approximately 900 feet. Elevation ranges from 1,000 feet on Simpson Creek to the north and up to 1,905 feet on a knob located between Stewart Run and the head of Simpson Creek.

The surface of the Leer South mine property consists mostly of unmanaged forestland and pastureland. The forestland consists of typical West Virginia Forest species with Oak/Hickory as the dominant forest-type group with a lesser percentage of Maple/Beech/ and Birch Forest.

4.2 Access and Transport

The Leer South mine office is located off of US Route 119, near the town of Philippi in Barbour County, West Virginia. The nearest cities are Clarksburg and Bridgeport, West Virginia, approximately 17 miles to the northwest. The city of Buckhannon, West Virginia is located 26 miles to the south of the mine. The property can be accessed from Clarksburg/Bridgeport via West Virginia Route 76 and US Route 50. The property can be accessed from Buckhannon via US Route 119 to Philippi.

The nearest airport to the mine is the North Central West Virginia Airport (*CKB*) which is located in Bridgeport, West Virginia. The North Central West Virginia Airport is 17 miles from the mine office. The Morgantown Municipal Airport (*MGW*) is located 43 miles to the north in Morgantown, West Virginia.

The Leer South mine transports coal to the **CSX Railroad (*CSX*)** via the **Appalachian and Ohio Railroad (*A&O*)**. A&O operates 158 miles of shortline from Cowen, West Virginia to Grafton, West Virginia. CSX operates the Mountain Subdivision from Cumberland, Maryland through Grafton, West Virginia. CSX operates a rail yard at Grafton, West Virginia.

4.3 Climate and Length of Operating Season

The climate of the Leer South mine property is classified as a humid continental climate. This entails hot, humid summers and moderately cold winters. Climate conditions vary greatly in the state of West Virginia due to the influence of rugged topography. Average high temperatures range from 82 to 87 degrees Fahrenheit in the summer with average ranges from 15 to 25 degrees Fahrenheit for the lows in winter. Average yearly rainfall measured in Philippi, West Virginia is 52 inches per year. The Leer South mine operates year-round.

4.4 Infrastructure

The Leer South Complex has sources of water, power, personnel, and supplies readily available for use. Personnel have historically been sourced from the surrounding communities in Barbour, Harrison, and Taylor counties, and have proven to be adequate in numbers to operate the mine. As mining is common in the surrounding areas, the workforce is generally familiar with mining practices, and many are experienced miners. Water is sourced locally from local streams overlying and proximal to Arch's property. The mine also utilizes ground water from an old, abandoned mine. Electricity is sourced from **MonPower**, a **First Energy Company**. Additionally, water is sourced from the toe of the refuse impoundment for various uses in the mine and plant. The service industry in the areas surrounding the mine complex has historically provided supplies, equipment repairs and fabrication, etc. The Arch-owned Leer South Preparation Plant services the mine via a slope conveyor system which transports extracted coal from an underground bunker to the surface facility. The Appalachian and Ohio rail line serves as the main means of transport from the mine.

5 History

5.1 Previous Operation

The area north of Philippi, West Virginia along the Tygart River has had mining in the Lower Kittanning seam since the early 1900's. The **West Virginia Geologic and Economic Survey (*WVGES*)** and the **West Virginia Department of Environmental Protection (*WVDEP*)** show the following companies and mines operating in the area along the Tygart River near the Leer South property:

- Midland Coal and Coke No. 1 Mine (1905)
- Bar-Jay Coal Company, Morral No. 1 and No. 2 Mines (1957)
- Ketchum Coal Company, Mine No. 1 (1964)
- Johnson Coal Company (1974)
- Pittston Coal Group / Badger Coal Company, Mines No. 13 and 14 (1974, 1984)

The Leer South mine property has had mining occur under a number of companies and mine names as listed below:

> Republic Steel Corporation / Kitt Energy Company, Kitt mine (1974 Initial development)
> Republic Steel Corporation / Kitt Energy Company, Kitt mine (1975 – 1982 production)
> Old Ben Coal Company, Kitt mine (1982 – 1987)
> Black Diamond Energy Inc., name changed to Diamond No. 1 Mine (1987 - 1990)
> Anker Group subsidiary Philippi Mining Company / Philippi Development, Inc., name changed to Sentinel Mine (1990)
> Philippi Development, Inc. changed name to Anker West Virginia Mining Company, Sentinel Mine (1998)
> Anker Mining Company, Sentinel Mine production transferred to Upper Kittanning seam (2000)
> Anker Mining Company / Wolf Run Mining Company, Sentinel Mine (2005)
> International Coal Group / Wolf Run Mining Company, Sentinel Mine (Lower Kittanning mining ended 2006)
> International Coal Group / Wolf Run Mining Company, Sentinel Mine (Clarion seam mining begins 2006)
> Arch Coal Inc. / Wolf Run Mining Company, Sentinel Mine (Clarion seam mining, 2011)
> Arch Coal Inc. / Wolf Run Mining Company, Sentinel Mine (Expansion into Lower Kittanning seam 2018)
> Arch Resources, Inc. /Sentinel Mine name changed to Leer South mine in 2020 mining both the Lower Kittanning, but operations in the Clarion seam since ceased operations as of the end of 2022.

A large number of deep and contour strip surface mines occurred in the area in the Pittsburgh and Redstone seams. This mining occurs approximately 800 feet above the Lower Kittanning seam.

5.2 Previous Exploration

Exploration work carried out by previous companies consists of continuous core drilling and e-logging of rotary drill holes. Previous to Arch Coal Inc./Arch Resources Inc. control of the Property there were 289 drill holes drilled within the area of the Leer South Lower Kittanning mine plans.

The following lists companies, number of drill holes drilled, laboratories used and dates of drilling.

Table 5-1: Summary of Previous Exploration

Company	No. of Drill Holes	Quality Lab	Years Drilled
Simpson Creek Collieries	1	None	1955
Badger Coal Company	4	None	1965
Island Creek Coal Company	1	Island Creek Co. Lab	1967
Badger Coal Company	3	Badger Coal Co. Lab	1968
Mountaineer Coal Company	3	None	1968
Badger Coal Company	3	Badger Coal Co. Lab	1969
Hillman Coal and Coke Company	4	None	1970
Badger Coal Company	8	Badger Coal Co. Lab	1970
Badger Coal Company	9	Badger Coal Co. Lab	1971
Hillman Coal and Coke Company	2	Unknown lab	1972
Hillman Coal and Coke Company	18	Unknown lab	1973
Republic Steel Corporation	1	None	1973
Tygart West Inc./Hillman Coal Co.	2	Unknown lab	1973
Tygart West Inc. /Hillman Coal Co.	4	Unknown lab	1974
Badger Coal Company	14	Pittston Coal Group Lab	1975
Bethlehem Mines Corporation	1	Bethlehem Mines Corp. Chemical Lab	1975
Badger Coal Company	23	Pittston Coal Group Lab	1976
Badger Coal Company	1	Pittston Coal Group Lab	1977
Consol Energy, Inc.	1	None	1977
Badger Coal Company	6	None	1978
Consol Energy, Inc.	1	None	1978
Republic Steel Corporation	32	Republic Steel Chemical Lab	1978
Petroleum Development Corp.	1	None	1979
Republic Steel Corporation	31	Republic Steel Chemical Lab	1979
Hillman Coal Company	10	Unknown Lab	1980
Republic Steel Corporation	3	Commercial Testing and Engineering Co.	1980
Hillman Coal Company	3	Unknown Lab	1981
Republic Steel Corporation	11	Commercial Testing and Engineering Co.	1981
Republic Steel Corporation	3	None	1982
Kitt Energy Corporation	9	None	1983
Kitt Energy Corporation	1	None	1983
Hillman Coal Company	3	None	1987
Anker Energy Corporation	2	None	1990
Anker Energy Corporation	3	Coal Operators Analytical Lab	1998
Anker Energy Corporation	2	None	1999
Anker Energy Corporation	1	None	2001
Anker Energy Corporation	2	None	2002
Ryanstone Coal Company	3	Standard Laboratories, Inc.	2002
CDX Gas, LLC	5	Unknown Lab	2004
Anker Energy Corporation	1	None	2005
CDX Gas, LLC	6	Unknown Lab	2005
CDX Gas, LLC	10	Unknown Lab	2006
International Coal Group, LLC	21	Coal Operators Analytical Lab	2006
CDX Gas, LLC	6	None	2007
CDX Gas, LLC	8	None	2008
International Coal Group, LLC	2	None	2009

Arch has continued ongoing exploration efforts on the Property with approximately 125 core holes drilled between 2011 and 2023; the most recent analytical testing has been conducted by Standard Laboratories, Inc. located in Belington, West Virginia.

6 Geological Setting, Mineralization and Deposit

6.1 Regional, Local and Property Geology

The strata of the Tygart Valley in Taylor and Barbour Counties, West Virginia consists of Pennsylvanian age sedimentary strata of the Monongahela Group, the Conemaugh Group, and the Allegheny Formation. The gently dipping layered strata consists of shale, sandstone, claystone, fireclay, and coal seams. At present, economic sedimentary deposits are limited to coal.

The Monongahela Group includes the Sewickley, Redstone, and Pittsburgh coal seams. The Pittsburgh seam has been heavily surface-mined and deep-mined at higher elevations in the Tygart region.

The Conemaugh group coal seams include the Elk Lick, Harlem, Bakerstown and Brush Creek coal seams. These seams are generally thin and discontinuous on the Leer South property. No known mining has taken place in the Conemaugh group coal seams in the Leer South mine area.

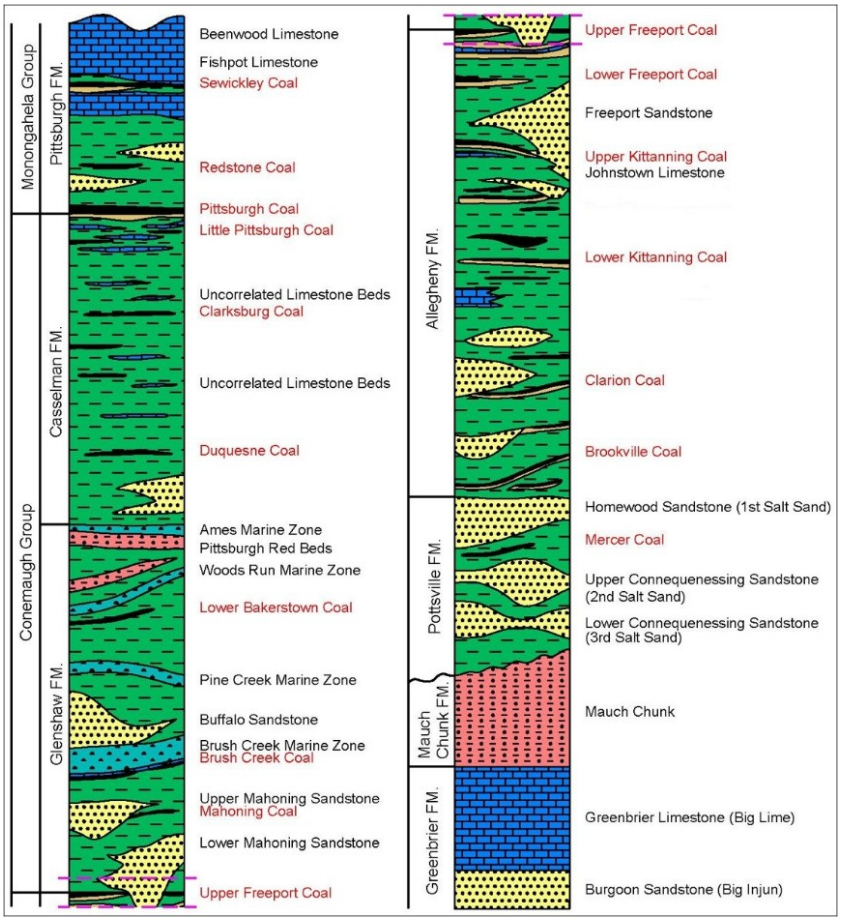
The Allegheny Formation includes the Upper and Lower Freeport coal seams, Johnstown Limestone, Upper and Lower Kittanning coal seams, the Clarion and Brookville coal seams. The Upper Kittanning, Lower Kittanning and Clarion seams have been deep mined in the Leer South area. All other coal seams of the Allegheny Formation in the area occur in limited areal extent and are of insufficient thickness for mining. The Upper Kittanning coal seam has had limited mining in the area, often hampered by soft floor strata and high sulfur content. Leer South is currently mining the Lower Kittanning seam. It should be noted that WVGES applies the name "Middle Kittanning", rather than "Lower Kittanning" to this coal bed within this area.

6.1.1 Lower Kittanning Seam Distribution

The Lower Kittanning seam has been extensively mined in the region, with mine operators and mine names changing over time. The Leer South Lower Kittanning reserve is situated near Philippi, West Virginia, in the south and extends north to Rosemont, West Virginia. The reserve extends from US Route 119 on the east side to Glade Run on the west side of the Property. The reserve is approximately 9.5 miles in length (northwest to southeast) and approximately 5.9 miles wide, (northeast to southwest).

The Lower Kittanning seam consists primarily of a dual-bench horizon (tagged as 4600) with a thin boney coal or carbonaceous shale parting between the two benches, (typically less than 1 foot in thickness). An overlying Rider seam (tagged as 4650) is present primarily within the southern portion of the mine plan that can add an additional 2.7 feet of coal to the Lower Kittanning seam. Drill holes show the seam thickness within the reserve boundary ranging from 0.0 to 6.6 feet, (10.9 feet including the rider). The Lower Kittanning seam thins to less than 3.0 feet to the west of the Leer South mine plan.

Figure 6-1: Generalized Stratigraphic Column for the Northern Appalachian Basin (not to scale)



6.2 Deposits

The coal produced at Leer South is typically High Volatile (>31% volatile matter) bituminous coal. Due to the historical value of the Lower Kittanning seams as high-volatile bituminous coal, it has been extensively mined in the region. Owing to relatively high sulfur and ash middling material, Leer South and its neighboring producers (including Arch's Leer property) produce two products: (1) a low-ash coking coal and (2) a high-ash, high-sulfur thermal blend product.

6.2.1 Lower Kittanning Seam

The 4650 (Rider) and 4600 (Main seam) benches are splits of the Lower Kittanning horizon present on the Property and within the projected mining areas. Due to variations in the splitting and merging characteristics of these coal beds, two mining configurations are present within the Lower Kittanning horizon.

1. Main seam only (4600 bench), ranging from 0.00 feet to a maximum of 9.00 feet, typically from 4.50 to 5.00 feet within the longwall panel areas. The Lower Kittanning seam consists primarily of a dual-bench horizon (tagged as 4600) with a thin boney coal or carbonaceous shale parting between the two benches, (typically less than 1 foot in thickness). Main seam only mining occurs where the Rider is either not present or is located above the assumed 7.00-foot average cutting height of the longwall shearer.
2. Main seam with overlying Rider seam (4600 + 4650), or Full seam. Mining of the two benches occurs where the Rider is located within the 7.00-foot average cutting height of the longwall shearer. Under this scenario, the parting between the two benches ranges typically from 1.00 to 2.00 feet, and the resulting maximum mining height (assuming that the full extent of the Rider seam is excavated) approaches 10.90 feet.

The Lower Kittanning seam is situated below drainage throughout the Property and is accessible by existing slopes and shafts. Within the current longwall mine plan area, overburden thicknesses range from approximately 425 feet to more than 1,300 feet.

Composition of the mine floor varies across the projected mine area, consisting primarily of shale, sandy shale, and occasionally shaley fireclay. The lithologic composition of the immediate roof strata exhibits greater variability due to the presence (or absence) of the Rider seam but consists primarily of dark gray to black shale which coarsens upward to sandy shale. As noted above, the Rider seam can locally occur within 1-foot of the top of the Main seam where it is included within the mineable section however, it may occur more than 15 feet above the Main bench elsewhere.

7 Exploration

7.1 Nature and Extent of Exploration

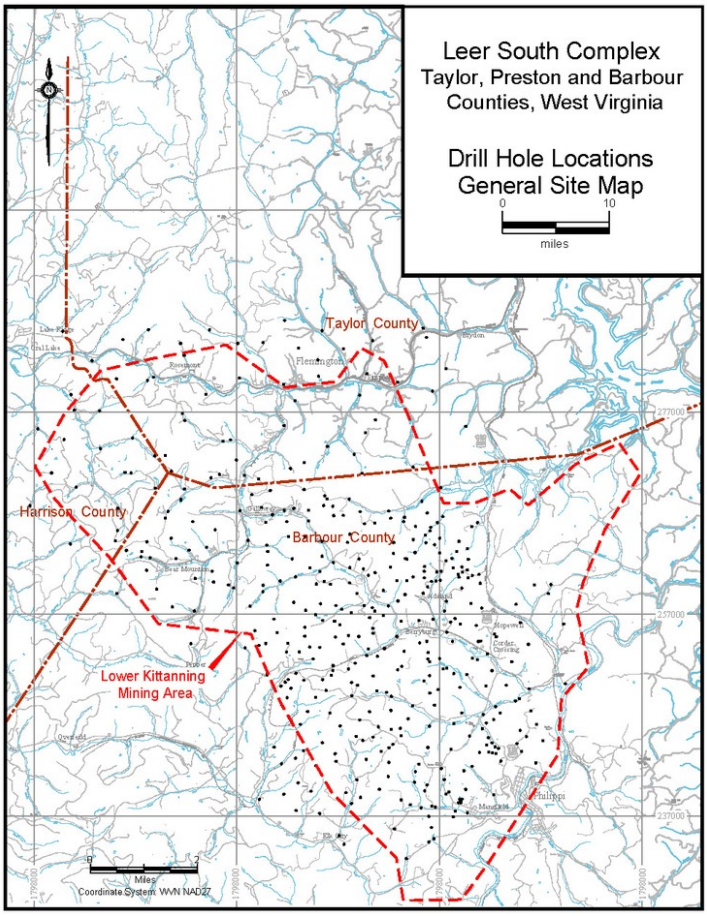
All Arch Resources exploration pertaining to long-range planning and reserve definition-based work consists of core drilling. No other forms of exploration have been carried out on the Leer South mine property, with the exception of channel sampling which is utilized for short term planning and quality projections.

Since 2011 Arch Coal Inc./Arch Resources Inc. has drilled approximately 130 core holes for the Lower Kittanning seam in the Leer South mine reserve. All drill holes are cored; coal samples typically are sent

to **Standard Laboratory Inc. (*Standard*)** for quality analyses; and roof and floor samples sent to **Appalachian Mining and Engineering, Inc. (*AME*)** for rock strength testing.

Extensive exploration in the form of subsurface drill efforts has been carried out on the Property by numerous entities, most of which were completed prior to the acquisition by Arch. Diamond core, and CBM drilling are the primary types of exploration on the Property. Data for correlation and mining conditions are derived from core descriptions and geophysical logging (e-logging). Coal quality analyses were also employed during the core exploration process. The Arch exploration database consists of a total of 1,823 data points of observation (drill holes and mine measurements), from which Lower Kittanning coal resources and reserves have been delineated. The location of the drilling is shown on the map shown below in *Figure 7-1.*

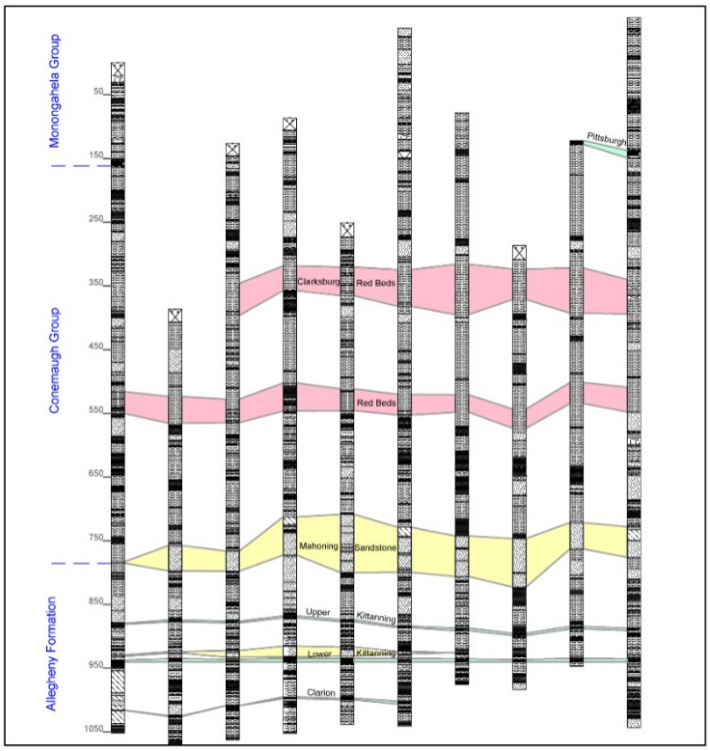
Figure 7-1: Drill Hole Location Map



The concentration of exploration varies slightly across the Property, with the proposed underground mining areas having the highest concentration of drill holes. Drilling on the Property is typically sufficient for delineation of potential underground mineable benches. Core logging is carried out by professional geologists for all drillholes. Geophysical logging (e-logging) techniques, by contrast, document specific details useful for geologic interpretation and mining conditions. Given the variability of data-gathering methods, definitive mapping of future mining conditions may not be possible, but projections and assumptions can be made within a reasonable degree of certainty and are supported by successful ongoing operations in the same horizons by Arch.

A significant effort was put into verifying the integrity of the database. After this was established, stratigraphic columnar sections were generated using cross-sectional analysis to establish or confirm coal seam correlations. MM&A encountered no correlation issues or concerns in the Arch-provided lithologic database. A generalized cross-section of the stratigraphy from the Pittsburgh seam through the Clarion seam is shown below in *Figure 7-2*.

Figure 7-2: Generalized Leer South Cross-Section



Due to the long history of exploration by various parties on the Property, a wide variety of survey techniques exist for documentation of data point locations. Older exploration drill holes may have been located by survey and more recently completed drill holes are often located by high-resolution Global Positioning System (*GPS*) units.

However, some older holes were evidently located using USGS topography maps or other methods which are less accurate. Therefore, discretion had to be used regarding the accuracy for the location and ground surface elevation of some of these older drill holes. In instances where a drill hole location (or associated coal seam elevations) appeared to be inconsistent with the overall structural trend (or

surface topography for surface-mineable areas), the data point was not honored for geological modeling. Others with apparently minor variances were adjusted and then utilized by MM&A.

Surveying of the underground and surface mined areas has been performed by the mine operators and/or their consulting surveyors. By assignment, MM&A did not verify the accuracy or completeness of supplied mine maps but accepted this information as being the work of responsible engineers and surveyors.

MM&A compiled comprehensive topographic map files by selecting the best available aerial mapping for each area and filling any gaps with digital USGS topographic mapping.

7.2 Non-Drilling Procedures and Parameters

Exploration work associated with long term mine planning predominantly consists of core drilling. Additionally, short term mine planning and quality projections utilize channel sampling obtained from existing mine workings. No other forms of exploration have been carried out on the Leer South mine property.

7.3 Drilling Procedures

Arch Land exploration consists of continuous core drilling using contract drilling companies. HQ core (3.76-inch diameter drill hole yielding 2.5-inch core samples) is normally used in the Leer South Mine property. Exploration drilling provides core samples of roof strata, the coal seam and floor strata. Roof and floor strata samples are typically sent for geotechnical strength testing. Coal seam cores are sent to certified laboratories for quality analyses; and some coal cores are placed in sealed canisters to determine gas content and gas composition. Upon completion of each site, the drill holes are geophysically logged where caliper, density, gamma, resistivity, and sonic logs are run. In accordance with Arch Land's procedures and standards for exploration, each drill site location is surveyed.

Geologic logs were provided to MM&A as part of a geological database. MM&A geologists were not involved in the production of original core logs but did perform a basic check of information within the provided database. Where geophysical logs for such holes are available, they were used by MM&A geologists to verify the coal thickness and core recovery of seams.

7.4 Hydrogeology

Mining in Leer South in the Lower Kittanning coal seam is below surface drainage. In general, the hydrogeologic system for Leer South is similar to that of longwall mining in the Leer Mine to the north (see Figure 6-1 above). As such, longwall mining in the Lower Kittanning seam in Leer South is expected to involve stream undermining, undermining of aquifers, and mining through coalbed methane wells. In addition, longwall mining in Leer South will occur beneath previous above-drainage mining in the Pittsburgh coal seam; however, with an average interburden thickness of approximately 800 feet

between the Lower Kittanning and the Pittsburgh seams, the potential for adverse interaction is not expected.

MM&A has provided predictive longwall subsidence modeling for Leer South to facilitate planning of post-mining hydrogeologic conditions. Based upon the successful history of the operation at Leer Mine, and the generally similar nature of hydrogeologic conditions at Leer Mine and Leer South, MM&A assumes that the Leer South engineering personnel have the knowledge and experience to minimize and mitigate any potential hydrogeologic issues.

7.5 Geotechnical Data

Mining plans for potential underground mines were developed by Arch and reviewed by MM&A for applicability to the resource. Pillar stability for longwall operations in the Lower Kittanning seam was checked by MM&A using the Analysis of Coal Pillar Stability (*ACPS*) program. ACPS integrates the older Analysis of Retreat Mining Pillar Stability (*ARMPS*), Analysis of Longwall Pillar Stability (*ALPS*), and Analysis of Multiple Seam Stability (*AMSS*) software packages (originally developed by the **National Institute for Occupational Safety and Health [*NIOSH*]**) into a single pillar design framework. MM&A reviewed the results from the ACPS analysis and considered them in the development of the LOM plan.

MM&A has conducted a mine visit in October 2020 to observe mine conditions. During the visit, MM&A observed conditions and in the main entries in the Lower Kittanning seam. Evidence of horizontal stress was noted in the mains and in the right rib of three working faces in the Lower Kittanning seam. The ground control system included steel wire mesh with eight-foot fully grouted bolts, cable bolts, truss bolts and rib bolts. MM&A verified appropriate orientations of the Leer South mine plans using Analysis of Horizontal Stress in Mining (*AHSM*).

7.5.1 Occurrence of Hard Roof and Floor Conditions

During the course of mine development, the mine has encountered roof and/or floor conditions that have adversely impacted longwall advance within areas where the combined thickness of cuttable roof, coal, and floor are less than 7 feet (average longwall cutting height); these are also referred to as "*pinch points*". Where distribution of this condition has occurred more broadly, panels have been shortened or left undeveloped.

Arch's engineering staff has addressed this issue through mapping the composition of the immediate roof and floor strata enclosing the Lower Kittanning seam. Through analysis of recently acquired (2023) geological logs and mine measurements, two general categories of immediate roof strata have been identified within the mine plan area: *cuttable* roof strata, consisting of soft, dark gray to black shales with an average compressive strength (UCS) of 5,800 pounds per square inch (*PSI*); and *uncuttable* hard sandy shale (10,900 PSI) to sandstone (16,600 PSI) strata.

Floor strata have been similarly categorized into two classes: *cuttable* soft fireclays (2,800 PSI); and *uncuttable* hard shales (4,200 PSI) or sandy fireclays (9,700 PSI).

The mapped distribution of pinch points (less than 6 to 6.5 feet of cuttable strata including the Lower Kittanning seam) is utilized by Arch's engineering staff as a tool for mine planning purposes, as noted, through shortening panels or not developing them. Where longwall panels are planned by Arch to mine through more localized pinch points, MM&A has applied a 50 percent reduction in mine recovery within those areas to account for potentially reduced coal recovery.

8 Sample Preparation Analyses and Security

8.1 Prior to Sending to the Lab

Prior to Arch's acquisition of the Property, the protocol for preparing and testing samples varied over time and has not been fully documented for the older holes drilled. Typical core-drilling sampling methods for coal in the United States involves drilling through the seam, removing the core from the barrel, describing the lithology, wrapping the sample in a sealed plastic sleeve and placing it lengthwise into a covered core box, and carefully marking hole ID and depth intervals on each box and lid, allowing the core to be delivered to a laboratory in correct stratigraphic order, and with original moisture content. This process has been the norm for both historical and ongoing exploration activities at the Leer South Property.

This work is typically performed by the supervising driller, geologist, or company personnel. Samples are most often delivered to the company by the driller after each shift or acquired by company personnel or representatives. MM&A did not participate in the collection, sampling, or analysis of the core samples. However, it is reasonable to assume, given the consistency of quality from previous operators, that these samples were generally collected and processed under industry best practices. This assumption is based on MM&A's familiarity with the operating companies and the companies used to perform the analyses.

Subsequent to acquisition of the Property by Arch, routine exploration procedures have included the placement of target coal seams from the core barrel into a plastic lined wooden core box. The coal seam is then measured and described by the geologist. The coal sample is then covered in plastic with the wooden box sealed. Cardboard dividers and foam tubing are used to tightly pack and cushion the coal sample within the wooden box. The coal core boxes are transported to the Arch Land core storage shed at Tucker Run where they are locked in a secure building.

The Arch geologist's seam thickness measurements are checked against the geophysical logs for thickness accuracy and to confirm core recovery. Within two weeks of completion of the core hole, the coal samples are removed from the wooden core boxes and placed in sealed plastic bags. The samples are coded and labelled with sample identification numbers based on drill hole id (DT2001), sample sequence (A, B, C, etc..), and sample number, (1, 2, 3 etc..). (Example DT2001A1 = first sample of first seam in drill hole DT2001.)

8.2 Lab Procedures

Coal-quality testing has been performed over many years by operating companies using different laboratories and testing regimens. Some of the samples have raw analyses and washabilities on the full seam (with coal and rock parting layers co-mingled) and are mainly useful for characterizing the coal quality for projected production from underground mining. Other samples have coal and rock analyzed separately, the results of which can be manipulated to forecast underground mining quality. Care has been taken to use only those analyses that are representative of the coal quality parameters for the appropriate mining type for each sample. Unlike many Appalachian properties, Leer South has interest in only a single seam, the Lower Kittanning seam.

Standard procedure upon receipt of core samples by the testing laboratory is to: 1) log the depth and thickness of the sample; then 2) perform testing as specified by a representative of the operating company. Each sample is then analyzed in accordance with procedures defined under **American Society for Testing and Materials (*ASTM*)** standards including, but not limited to washability (ASTM D4371); ash (ASTM D3174); sulfur (ASTM D4239); Btu/lb. (ASTM D5865); volatile matter (ASTM D3175); Free Swell Index (*FSI*) (ASTM D720).

Subsequent to acquisition of the Property by Arch, quality samples were bagged and labelled, and samples were initially delivered to Standard for quality analyses. Quality samples go to Standard Lab in Bellington, West Virginia for sample preparation (crushing, splitting, and sizing), Proximate, Washability, Ash Fusion, Ultimate, Ash Mineral Analyses, Dilatometer and Plastometer (coking) analyses and Trace Elements analyses. Standard then ships splits of the samples to the **SGS North America Inc. (*SGS*)** lab in Sophia, West Virginia for petrographic analyses.

Standard and SGS are contracted for performing quality analyses for Arch Resources; each of these is a certified coal quality testing facility.

According to Arch's protocols, quality control procedures are followed by its geologists to protect sample integrity and to ensure core samples are always under their control. Once core samples have been analyzed, field geologists scrutinize the resulting quality data for accuracy; when satisfied that the data reports are accurate, the quality analyses are entered into a CoalAccess database. Upon data entry completion, Arch's modelling geologist exports the data and inspects the data for variance from expected norms. If any data shows outside the norm for the Property, the data is checked against lab results to ensure proper data entry. Quality data is gridded by Arch's in-house staff and mapped; and anomalous data (or "bullseyes") in the data mapping is investigated. If the anomalous data is accurate, those items are brought to the attention of the mine engineers and sales staff.

Arch Land procedures for quality analyses provide a full range of coal quality analyses so that engineers and sales staff working with the data have a complete listing of the coal seam quality for each drill hole completed by Arch Land.

Companies engaged in coal mining typically have their own parameters for coal core quality analyses. Many of these tailor their quality analyses procedures for specific coal seams, properties, and preparation plants. Arch Land's analytical testing is designed to provide its engineers and sales staff with an extensive catalog of coal quality analyses.

8.3 Opinion of Qualified Person

Based upon the consistency of quality information derived from multiple historical and ongoing exploration campaigns, MM&A finds the security protocols of past an ongoing exploration to be sufficient for resource and reserve documentation. Arch's geology staff reports that it currently manages all exploration-based logistics, including core/channel sampling logging, transportation of material to the requisite laboratories, and the population/security of samples and appropriate laboratory forms. Currently, **Standard Lab** and **SGS North America Inc.** handle the majority of coal analytical procedures related to exploration.

Procedures utilized by Arch are aligned with typical protocols used in the coal industry.

9 Data Verification

9.1 Procedures of Qualified Person

All data generating procedures undertaken by Arch Land geologists have redundant data processing steps designed to ensure all data generated and used is checked and cross checked for accuracy.

Drill hole locations are surveyed to ensure accurate locations. Drill holes are e-logged to ensure seam thickness and interburden thickness recorded by drillers and geologists are accurate. All original drill hole, survey, geologic, geophysical, and quality data are scanned and stored on Arch's server so it can be accessed and checked by any Arch engineering or Sales personnel against the database, modeling and mapping.

MM&A reviewed the Arch supplied digital geologic databases. The database consists of data records, which include drill hole information for holes that lie within and adjacent to the Property and records for numerous supplemental coal seam thickness measurements. Upon completion of the database verification, copies of a subset of records were printed on a test-case basis, and cross referenced to the original document for verification. Once the initial integrity of the database was established, stratigraphic columnar sections were generated using cross-sectional analysis to establish or confirm coal-seam correlations. Geophysical logs were used wherever available to assist in confirming the seam correlation and to verify proper seam thickness measurements and recovery of coal samples.

After establishing and/or verifying proper seam correlation, seam data-control maps and geological cross-sections were generated and again used to verify seam correlations and data integrity. Once the

database was fully vetted, seam thickness, base-of-seam elevation, roof and floor lithologic information, and overburden maps were independently generated for use in the mine planning process.

9.2 Limitations

As with any exploration program, localized anomalies cannot always be discovered. The greater the density of the samples taken, the less the risk. Once an area is identified as being of interest for inclusion in the mine plan, additional samples are taken to reduce the risk in those specific areas. In general, provision is made in the mine planning portion of the study to allow for localized anomalies that are typically classed more as a nuisance than a hinderance.

9.3 Opinion of Qualified Person

Sufficient data have been obtained through various exploration and sampling programs and mining operations to support the geological interpretations of seam structure and thickness for coal horizons situated on the Leer South Property. The data are of sufficient quantity and reliability to reasonably support the coal resource and coal reserve estimates in this TRS.

10 Mineral Processing and Metallurgical Testing

10.1 Testing Procedures

Coal core samples generated by Arch Land drilling and channel samples taken within the Leer South mine are subjected to metallurgical testing at Standard and SGS. Metallurgical testing consists of ultimate, sulfur forms, ash mineral analyses, trace element analyses, Gieseler and Arnu (coking analyses) and petrographic analyses.

Arch Land procedures for metallurgical quality analyses include a wide range of coal quality analyses. This provides Leer South mine engineers and Arch sales staff working with the mine a complete listing of the coal quality for each drill hole and channel samples taken by Arch Land.

Separate tabulations have been compiled for basic chemical analyses (both raw and washed quality), petrographic data, rheological data and chlorine, ash, ultimate and sulfur analysis are maintained in MM&A's files to the extent that such data has been provided.

Available coal-quality data were tabulated by resource area in Microsoft® EXCEL workbooks provided by Arch, and the details of that work are maintained on file at the offices of Arch and MM&A. These tables also provide basic statistical analyses of the coal quality data sets, including average value; maximum and minimum values, and the number of samples available to represent each quality parameter of the seam. Coal samples that were deemed by MM&A geologists to be unrepresentative were not used for statistical analysis of coal quality, as documented in the tabulations.

The projected mine plans presented for the Lower Kittanning seams were examined and quality borings were selected for examination in order to accurately characterize the coal resources. Sampled interval information from the float sink analyses of each selected sample was correlated against MM&A developed geologic strip logs. This process determined what geologic strata was sampled in each analysis. Samples were individual analyzed, or as combinations of the Lower Kittanning Rider, the parting, and the Lower Kittanning seam.

Once the type of sampled material was determined for each float sink analysis, composites were calculated for the metallurgical and thermal products. When the sample material was unsized, by zero, a cumulative float 1.50 specific gravity (*SG*) product was used to represent the metallurgical product. When a sample contained multiple size classes, a cumulative float 1.50 SG product was used for the coarse and intermediate material. Data for the fine material was generally reported at a cumulative float 1.30 or 1.35 SG product. Appropriate weight percentages were applied to each size class in order to calculate the combined metallurgical product.

A SG cut point of 1.70 was used for determining the thermal product, although the produced quality may vary depending upon specific contract specifications. The incremental data was calculated between the cumulative 1.50 and 1.70 SG products and this information, along with proper weight percentages for each size class, was used to calculate the combined thermal product. When multiple size classes were present, no fine material was included in the thermal product, as is the case for current production and processing at the operation.

10.1.1 Lower Kittanning Product Compositing

A minimum cutting height of 7 feet is used when considering the product for the Lower Kittanning seam. Generally, this resulted in only the metallurgical and thermal product characteristics for the Lower Kittanning seam being reported. Although, in some select areas primarily in the South, the parting between the Lower Kittanning Rider and Lower Kittanning narrows, and a minimum cutting height of 7 feet would begin to intrude on the Lower Kittanning Rider. In these instances, metallurgical and thermal product characteristics for the Lower Kittanning Rider have also been reported.

With few exceptions, coal samples are more often reported on a coal only basis; unsampled parting or rock material have not been added back into the calculations in order to modify the yield.

The amount and areal extent of coal sampling for geological data is generally sufficient to represent the quality characteristics of the coal horizons and allow for proper market placement of the subject coal seams. For some portions of the Property there is an abundance of laboratory data from core samples that are representative of the full extent of the resource area; whereas, for others more limited data is available to represent the resource area. For example, in the active mining area, there may be limited quality data from core holes; however, in those cases the core sampling data is supplemented with channel samples representative of the resource area.

10.2 Relationship of Tests to the Whole

The extensive sampling and testing procedures followed by Arch typically result in a strong correlation between sample quality and marketable product. Shipped analyses of the coal from Leer South mine were reviewed to verify that the coal quality and characteristics were as anticipated from core hole data.

Table 10-1 below compares the metallurgical quality characteristics from: (1) core samples within the central reserve area where longwall mining is currently being conducted, and: (2) Leer South coal shipments during the years 2022 and 2023. Three quality parameters are compared: clean Ash, Sulfur, and Volatile Matter. Variances between the theoretical (cores) and actual produced coal shipments may be attributable to contract specifications that target specific qualities, such as lower ash and lower sulfur content.

Table 10-1: Comparison of Core Hole and Shipped Quality (Metallurgical Market)

	Ash %	Sulfur %	Volatile Matter %
Core Samples (~1.50 Float)	8.5	1.23	33.82
Variance from Core Sample Quality % Range			
Shipments (2022)	9%	12%	6%
Shipments (2023)	20%	14%	3%

Note: Dry Basis

10.3 Lab Information

Core and channel sample quality samples are bagged and labelled; the samples are delivered to Standard for quality analyses. Quality samples go to Standard Labs in Bellington, West Virginia for sample preparation (crushing, splitting, and sizing), Proximate, Washability, Ash Fusion, Ultimate, Ash Mineral Analyses, Dilatometer and Plastometer (Gieseler and Arnu coking) analyses and Trace Elements analyses. Standard Labs ships splits of the samples to the SGS lab in Sophia, West Virginia for petrographic analyses.

Standard and SGS are contracted to perform quality analyses for Arch, both of which are certified analytical testing laboratories.

Each sample is reportedly analyzed in accordance with procedures defined under ASTM standards including, but not limited to the following (Note: not all analytical tests identified in this list have been run on each sample):

> ***ASTM D 4371*** – Test Method for Determining Washability Characteristics of Coal

> ***ASTM D 3174*** – Method for Ash in the Analysis Sample of Coal and Coke

> ***ASTM D 4239*** – Test Methods for Sulphur in the Analysis Sample of Coal and Coke Using High-Temperature Tube Furnace Combustion Methods

- ***ASTM D 5865*** – Test Method for Gross Calorific Value of Coal and Coke
- ***ASTM D 3175*** – Test Method for Volatile Matter in the Analysis Sample of Coal and Coke
- ***ASTM D 3176*** – Standard Practice for Ultimate Analysis of Coal and Coke
- ***ASTM D 3178*** - Test Method for Carbon and Hydrogen in Coal and Coke
- ***ASTM D 3179*** - Test Method for Nitrogen in Coal and Coke
- ***ASTM D 720*** – Test Method for Free-Swelling Index (*FSI*) of Coal
- ***ASTM D 5515*** - Test Method for Determination of the Swelling Properties of Bituminous Coal Using a Dilatometer (Arnu)
- ***ASTM D 2639*** – Test Method for Plastic Properties of Coal (Gieseler)
- ***ASTM D 3683*** – Trace Elements in Coal and Coke Ash by the Atomic Absorption Method
- ***ASTM D 1857*** – Standard Test Method for Fusibility of Coal and Coke Ash
- ***ASTM D 2798*** – Microscopical Determination of the Reflectance of Vitrinite in a Polished Specimen of Coal

10.4 Relevant Results

Coal seam recovery estimates are based on washability analyses performed on coal cores and channel samples. Ash, sulfur, volatile matter, and yield data from multiple washability fractions are modelled and mapped. Grids and mapping from Arch's in-house staff are provided to Leer South mine engineers for calculation of mine recovery. Mine recovery takes into account washability yield, mining method and preparation plant performance.

10.5 Opinion of the Qualified Person

Wash recovery factors estimates on a LOM basis are included, reflective of dilution material, are summarized in the table below.

Table 10-2: Summary of Wash Recovery Assumptions

Seam	Wash Recovery
Lower Kittanning LOM	44%

The Qualified Persons finds that the metallurgical and mineral processing information derived from historical and ongoing exploration campaigns is adequate to document mineral resources and reserves presented herein. The distribution of quality information has been considered in measured and indicated resource status, and subsequently in probable and proven reserve status. Arch's ongoing drilling campaigns are addressing short-term and long-term quality projections.

11 Mineral Resource Estimates

MM&A independently created a geologic model to define the coal resources at Leer South. Coal resources were estimated as of December 31, 2023.

11.1 Assumptions, Parameters and Methodology

Geological data are imported into Carlson Mining® (formerly SurvCADD®) geological modelling software in the form of Microsoft® Excel files incorporating drill hole collars, seam and thickness picks, bottom seam elevations and raw and washed coal quality. These data files were validated prior to importing into the software. Once imported, a geologic model was created, reviewed and verified- with a key element being a gridded model of coal seam thickness. Resource tons were estimated by using the MM&A seam thickness grid based on each valid point of observation and by defining resource confidence arcs around the points of observation. Points of observation for Measured and Indicated confidence arcs were defined for all valid drill holes that intersected the seam using standards deemed acceptable by MM&A based on a detailed geologic evaluation and a statistical analysis of all drill holes within the projected reserve areas as described in *Section 11.1.1*. The geological evaluation incorporated an analysis of seam thickness related to depositional environments, adjacent roof and floor lithologies, and structural influences.

After validating coal seam data and establishing correlations, the thickness and elevation for seams of economic interest were used to generate a geologic model. Due to the relative structural simplicity of the deposits and the reasonable continuity of the tabular coal beds, the principal geological interpretation necessary to define the geometry of the coal deposits is the proper modeling of their thickness and elevation. Both coal thickness and quality data are deemed by MM&A to be reasonably sufficient within the resource areas. Therefore, there is a reasonable level of confidence in the geologic interpretations required for coal resource determination based on the available data and the techniques applied to the data.

Table 11-1 below provides the geological mapping and coal tonnage estimation criteria used for the coal resource and reserve evaluation. These cut-off parameters have been developed by MM&A based on its experience with the Arch property and are typical of mining operations in the Central Appalachian coal basin. This experience includes technical and economic evaluations of numerous properties in the region for the purposes of determining the economic viability of the subject coal reserves.

Table 11-1: General Reserve and Resource Criteria

Item	Parameters	Technical Notes and Exceptions*
• **General Reserve Criteria**		
Reserve Classification	Reserve and Resource	
Reliability Categories	Resource (Measured, Indicated, and Inferred) Reserve (Proven and Probable)	To better reflect geological conditions of the coal deposits, distance between points of observation is standard USGS (in feet), respectively, for measured and indicated.
Effective Date of Resource Estimate	December 31, 2023	
Effective Date of Reserve Estimate	December 31, 2023	Financial modeling was conducted based off of mine faces as of October 1, 2023
Seam Density	Variable, dependent upon seam characteristics (based on available drill hole quality).	
• **Underground-Mineable Criteria**		
Map Thickness	Total seam thickness	
Minimum Seam Thickness (Resource)	3.0 feet or 50% Estimated Visual Recovery	
Minimum Seam Thickness (Reserve)	3.0 feet for the Lower Kittanning Seam	
Minimum Mining Thickness	7.0 feet for the Lower Kittanning Seam	
Minimum In-Seam Wash Recovery	50 percent	
Wash Recovery Applied to Coal Reserves	Based on average yield for drill holes within specified reserve areas.	
Out-of-Seam Dilution Thickness for Run-of-Mine Tons Applied to Coal Reserves	Based upon the delta between seam height and minimum mining criteria.	2.3 SG used for dilution tonnage estimate
Mine Barrier	Not applicable	
Adjustments Applied to Coal Reserves	No moisture addition for coal reserves—reserves reported as dry basis.	

Note: Exceptions for application of these criteria to reserve estimation are made as warranted and demonstrated by either actual mining experience or detailed data that allows for empirical evaluation of mining conditions. Final classification of coal reserve is made based on the pre-feasibility evaluation.

1 – Face locations of 10/1/2023 used in production modeling. Depletion for Q4 2023 was backed out of the production forecast for financial modeling and any difference between actual and forecasted production for this period is considered incidental.

11.1.1 Geostatistical Analysis for Classification

In 2022, MM&A completed a geostatistical analysis on drill holes within the reserve boundaries to determine the applicability of the common United States classification system for measured and indicated coal resources. As exploration data has not materially changed resource or reserve delineation, results of the 2022 geostatistical analysis are reported herein. Historically, the United States has assumed that coal within ¼-mile of a point of observation represents a measured resource whereas coal between ¼-mile and ¾-mile from a point of observation is classified as indicated. Inferred resources are commonly assumed to be located between ¾-mile and 3 miles from a point of observation. Per SEC regulations, only measured and indicated resources may be considered for reserve classification, respectively as proven and probable reserves.

MM&A performed a geostatistical analysis test of the Leer South data set using the Drill Hole Spacing Analysis (*DHSA*) method. This method attempts to quantify the uncertainty of applying a measurement from a central location to increasingly larger square blocks and provides recommendations for determining the distances between drill holes for measured, indicated, and inferred resources.

To perform DHSA the data set was processed to remove any erroneous data points, clustered data points, as well as directional trends. This was achieved through the use of histograms, as seen in *Figure*

11-1, color coded scatter plots showing the geospatial positioning of the borings, *Figure 11-2*, and trend analysis.

Figure 11-1: Histogram of the Total Coal Thickness for the Lower Kittanning Seam Present in the Leer South Complex

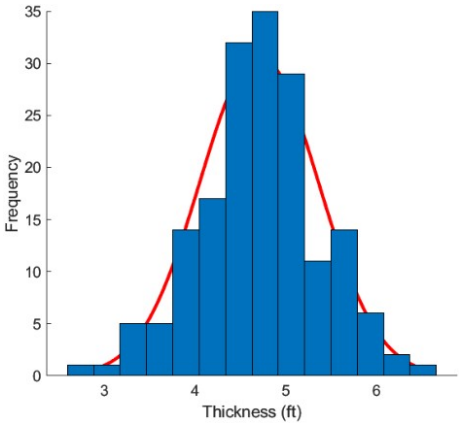
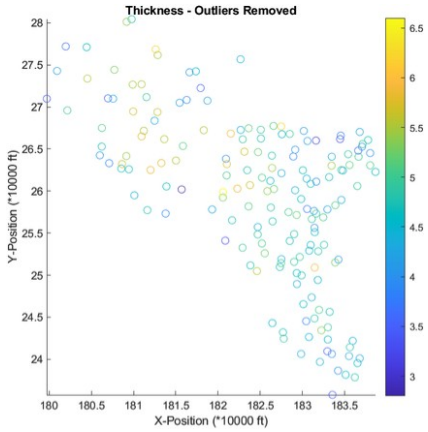
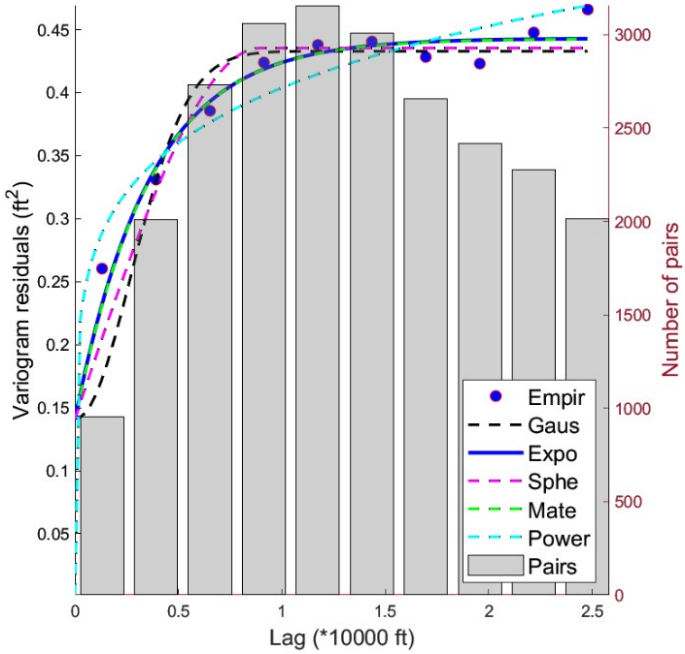


Figure 11-2: Scatter plot of the Total Coal Thickness for the Lower Kittanning Seam Present in the Leer South Complex



Following the completion of data processing, a variogram of the data set was created, *Figure 11-3*. The variogram plots average square difference against the separation distance between the data pairs. The separation distance is broken up into separate bins defined by a uniform lag distance (e.g., for a lag distance of 500 feet the bins would be 0 – 500 feet, 501 – 1,000 feet, etc.). Each pair of data points that are less than one lag distance apart are reported in the first bin. If the data pair is further apart than one lag distance but less than two lag distances apart, then the variance is reported in the second bin. The numerical average for differences reported for each bin is then plotted on the variogram. Care was taken to define the lag distance in such a way as to not overestimate any nugget effect present in the data set. Lastly, modeled equations, often spherical, gaussian, or exponential, are applied to the variogram in order to represent the data set across a continuous spectrum.

Figure 11-3: Variogram of the Total Coal Thickness for the Lower Kittanning Seam Present in the Leer South Complex



The estimation variance is then calculated using information from the modeled variogram as well as charts published by Journel and Huijbregts (1978). This value estimates the variance from applying a single central measurement to increasingly larger square blocks. Care was taken to ensure any nugget effect present was added back into the data. This process was repeated for each test block size.

The final step of the process is to calculate the global estimation variance. In this step the number square blocks that would fit inside the selected study area is determined for each block size that was investigated in the previous step. The estimation variance is then divided by the number of blocks that would fit inside the study area for each test block size. Following this determination, the data is then transformed back to represent the relative error in the 95th-percentile range.

Figure 11-4 shows the results of the DHSA performed on the Lower Kittanning seam data for the Leer South Complex. DHSA provides hole to hole spacing values, these distances need to be converted to radius from a central point in order to compare to the historical standards. A summary of the radius data is shown in *Table 11-3*. DHSA prescribes measured, indicated, and inferred drill hole spacings be determined at the 10-percent, 20-percent, and 50-percent levels of relative error, respectively.

Figure 11-4: Result of DHSA for the Lower Kittanning Seam Present in the Leer South Complex

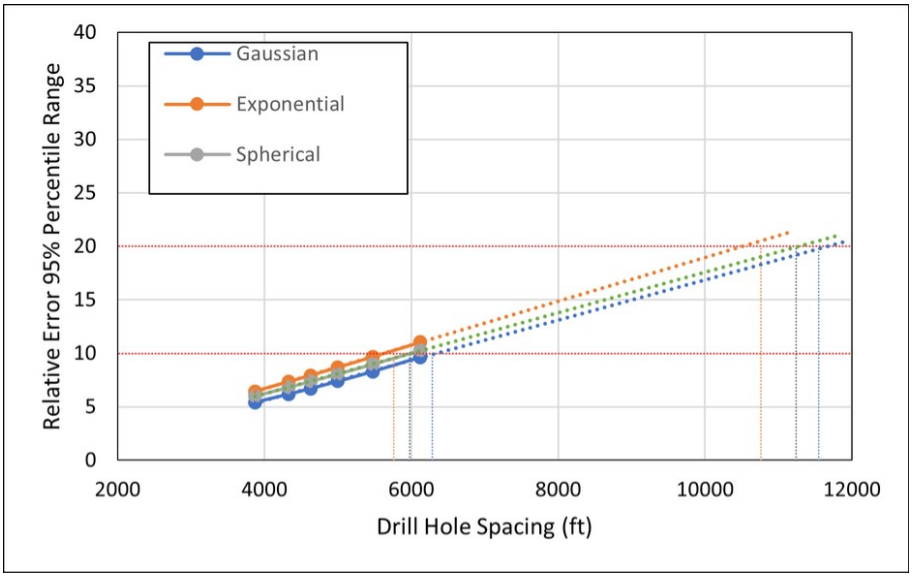


Table 11-2: DHSA Results Summary for Radius from a Central Point

Model:	Measured Radial Distance (10% Relative Error) (Miles)	Indicated Radial Distance (20% Relative Error) (Miles)	Inferred Radial Distance (50% Relative Error) (Miles)
Gaussian:	0.60	1.09	2.59
Spherical:	0.57	1.06	2.56
Exponential:	0.55	1.02	2.44

Comparing the results of the DHSA to the historical standards, it is evident that the historical standards are more conservative than even the most conservative DHSA model with regards to determining measured resources. The Exponential model recommends using a radius of 0.55 miles for measured resources compared to the historical value of 0.25 miles.

With respect to indicated resources, historical standards are once again more conservative than the DHSA recommendations. The Exponential model recommends using a radius of 1.02 miles, while the Gaussian and Spherical models recommend a radius of 1.09 and 1.06 miles, respectively. These values exceed the historical radius of 0.75 miles. These results have led the QP's to report the data following the historical classification standards, rather than use the results of the DHSA.

11.2 Qualified Person's Estimates

Mineral resources, representing in-situ coal in which a portion of reserves are derived, are presented below. Based on the work described and detailed modelling of the areas considering all the parameters defined, a coal resource estimate, summarized in *Table 11-3*, was prepared as of December 31, 2023, for property controlled by Arch.

Pricing data as provided by Arch is described in *Section 16.2*. The pricing data assumes a weighted average domestic and international FOB-mine price of approximately $162 per ton for calendar year 2024. The weighted-average price stabilizes at approximately $151 per ton over the LOM.

Table 11-3: Coal Resources Summary as of December 31, 2023

Seam	Coal Resource (Dry Tons, In Situ, Mt)			
	Measured	Indicated	Inferred	Total
Lower Kittanning Rider				
Inclusive of Reserve	2.34	0.15	0.00	2.49
Exclusive of Reserve	0.00	0.00	0.00	0.00
Total	**2.34**	**0.15**	**0.00**	**2.49**
Lower Kittanning				
Inclusive of Reserve	73.08	30.89	0.00	103.96
Exclusive of Reserve	0.00	0.00	0.00	0.00
Total	**73.08**	**30.89**	**0.00**	**103.96**
Grand Total				
Total	**75.41**	**31.04**	**0.00**	**106.45**

Note 1: Coal resources are reported on a dry basis. Surface moisture and inherent moisture are excluded.

11.3 Qualified Person's Opinion

While there is some level of stratigraphically controlled seam-thickness variability the Lower Kittanning coal seam at Leer South demonstrate reasonable thickness consistency according to the classification system of **measured** (0 – 0.25 miles), **indicated** (0.25 to 0.75 miles), and **inferred** (0.75 to 3.0 miles). MM&A geologists and engineers modeled the deposit and delineated mineable regions to reflect the nature of the seam and the practicality of mining constraints. Based on MM&A's geostatistical analysis, it would be possible to extend the measured arcs slightly beyond historically accepted practices due to consistent geological settings. These results have led the QP's to report the data following the historical classification standards, rather than use the results of the DHSA.

Based on the data review, the attendant work done to verify the data integrity and the creation of an independent geologic model, MM&A believes this is a fair and accurate representation of the Leer South coal resources.

12 Mineral Reserve Estimates

12.1 Assumptions, Parameters and Methodology

Coal Reserves are classified as *proven* or *probable* considering "modifying factors" including mining, metallurgical, economic, marketing, legal, environmental, social, and governmental factors.

- **Proven Coal Reserves** are the economically mineable part of a measured coal resource, adjusted for diluting materials and allowances for losses when the material is mined. It is based on appropriate assessment and studies in consideration of and adjusted for reasonably assumed modifying factors. These assessments demonstrate that extraction could be reasonably justified at the time of reporting.
- **Probable Coal Reserves** are the economically mineable part of an indicated coal resource, and in some circumstances a measured coal resource, adjusted for diluting materials and allowances for losses when the material is mined. It is based on appropriate assessment and studies in consideration of and adjusted for reasonably assumed modifying factors. These assessments demonstrate that extraction could be reasonably justified at the time of reporting.

Upon completion of delineation and calculation of coal resources, MM&A confirmed the applicability of the LOM plan for Leer South. The footprint of the LOM plan is shown on the resource map in *Appendix C*. The Mine plan was generated based on the forecast mine plan and permit plan provided by Arch with modifications by MM&A where necessary due to current property control limits, modifications to geologic mapping, or other factors determined during the evaluation.

Carlson Mining software was used to generate the LOM plan for Leer South. The mine plan was sequenced based on productivity schedules provided by Arch. MM&A judged the productivity estimates and plans to be reasonable based on experience and current industry practice.

At the Leer South Mine, a minimum mining height of 7 feet was used due to the longwall mining method being employed. For coal seams thinner than the assigned mining height, the difference between the coal seam height and assigned mining height is out-of-seam (OSD). Mine recovery is generally 40 percent for continuous mining areas, and 100 percent for longwall. Plant recovery is a function of in-seam recovery, OSD and plant efficiency factor, which is set at 95 percent.

Raw, ROM production data outputs from LOM plan sequencing were processed into Microsoft® EXCEL spreadsheets and summarized on an annual basis for processing into the economic model. Average seam densities were estimated to determine raw coal tons produced from the LOM plan. Average mine recovery and wash recovery factors were applied to determine coal reserve tons.

Coal reserve tons in this evaluation are reported as a dry product, exclusive of inherent and surface moisture.

Pricing data as provided by Arch and is described in *Section 16.2*. The pricing data assumes a thermal sales realization (FOB-mine) of approximately $51 to $54 per ton and a coking coal sales realization of approximately $146 to $162 per ton. Realized coal prices are based upon a combination of thermal (middlings) and high-volatile A coking coal products. Realized coal prices incorporate HCC indices, adjustments from metric tons to short tons, and adjustments for transportation costs and assumed prices for thermal products. Based on projections provided by Arch, both coking and thermal products are expected to stabilize via a short-term decline.

The coal resource mapping and estimation process, described in the report, was used as a basis for the coal reserve estimate. Proven and probable coal reserves were derived from the defined coal resource considering relevant processing, economic (including technical estimates of capital, revenue, and cost), marketing, legal, environmental, socio-economic, and regulatory factors and are presented on a moist, recoverable basis.

As is customary in the US, the categories for proven and probable coal reserves are based on the distances from valid points of measurement as determined by the QP for the area under consideration. For this evaluation, measured resource, which may convert to a proven reserve, is based on a 0.25-mile radius from a valid point of observation.

Points of observation include exploration drill holes, degas holes, and mine measurements which have been fully vetted and processed into a geologic model. The geologic model is based on seam depositional modeling, the interrelationship of overlying and underlying strata on seam mineability, seam thickness trends, the impact of seam structure, intra-seam characteristics, etc. Once the geologic model was completed, a statistical analysis, described in *Section 11.1.1* was conducted and a 0.25-mileradius from a valid point of observation was selected to define Measured Resources.

Likewise, the distance between 0.25 and 0.75 of a mile radius was selected to define Indicated Resources. Indicated Resources may convert to Probable Reserves.

There are negligible Inferred Resources (greater than a 0.75-mile radius from a valid point of observation) at Leer South.

12.2 Qualified Person's Estimates

The reserve tonnage estimates provided herein report coal reserves derived from the in-situ resource tons presented in *Table 11-3*, and not in addition to coal resources. Proven and probable coal reserves were derived from the defined coal resource considering relevant mining, processing, infrastructure, economic (including estimates of capital, revenue, and cost), marketing, legal, environmental, socio-economic and regulatory factors. The coal reserves, as shown in *Table 12-1*, are based on a technical evaluation of the geology and a preliminary feasibility study of the coal deposits. The extent to which the coal reserves may be affected by any known environmental, permitting, legal, title, socio-economic, marketing, political, or other relevant issues has been reviewed rigorously. Similarly, the extent to

which the estimates of coal reserves may be materially affected by mining, metallurgical, infrastructure and other relevant factors has also been considered.

Table 12-1: Coal Reserves Summary (Dry Basis) as of December 31, 2023

Seam	Demonstrated Coal Reserves (Dry Tons, Washed or Direct Shipped, Mt)									LOM Wash Recovery (%)
	By Reliability Category			By Product		By Control Type				
	Proven	Probable	Total	Met ~1.50 Float SG**	Thermal ~1.50 x 1.70 SG**	Owned	Leased	Partially Owned	Partially Leased	
Lower Kittanning Rider	1.43	0.01	1.44	1.27	0.17	0.05	1.11	0.00	0.28	
Lower Kittanning	43.23	17.97	61.19	52.69	8.51	51.66	7.01	1.59	0.94	
Total	**44.66**	**17.98**	**62.63**	**53.95**	**8.68**	**51.70**	**8.12**	**1.59**	**1.22**	**44%**
Uncontrolled*	2.53	0.37	2.90	2.51	0.38					

*Uncontrolled tons are reported for informational purposes only and are not part of the reserves. Uncontrolled tonnages are contained within small mineral tracts which must be acquired for execution of the life-of-mine plan. As such, uncontrolled tonnages are included in the LOM financial model. See appendix for maps which show details of mineral control. Mine plan includes a total of 2.9 Mt of adverse tons and was adjusted for approximately 0.26 Mt of depletion.

**Metallurgical tonnages and thermal tonnages (and associated quality) are respectively based upon an approximate 1.50 float and 1.50 x 1.70 specific gravity, as this represented the most consistent coal quality data. In reality, Arch's actual plant operating gravities vary depending upon required product specifications. See "Mineral Processing and Metallurgical Testing" chapter of report for more detailed explanation on derivation of product yields. Exploration coal quality commonly varies from saleable product quality. Over the past 2 years, thermal ash and the ratio of thermal to met tons have been lower than projected in this TRS.

*** Coal Reserves are based upon sales assumptions provided to MM&A by Arch and were relied upon by MM&A. Financial modeling assumes sales prices of approximately $162.32 per ton (FOB-mine) in 2024, stabilizing to a long-term price of approximately $150.56/ton. See Chapter 16 for further details on marketing assumptions.

Table 12-2: Summary of Quality (dry basis)

Seam	Met				Thermal		
	Ash	Sulfur	Vol	Btu/lb.	Ash	Sulfur	Btu/lb.
Lower Kittanning Rider	8.3	1.3	35	14,240	31.9	4.3	10,184
Lower Kittanning	8.8	1.3	34	14,180	34.5	2.6	9,587
Total	**8.8**	**1.3**	**34**	**14,181**	**34.5**	**2.6**	**9,599**

*Metallurgical tonnages and thermal quality (and associated tonnages) are respectively based upon an approximate 1.50 float and 1.50 x 1.70 specific gravity, as this represented the most consistent coal quality data. See "Mineral Processing and Metallurgical Testing" chapter of report for more detailed explanation on derivation of product yields.

**Qualities presented which correspond with each respective market placement (metallurgical and thermal) are based upon exploration information at prescribed density cutpoints. These quality estimates should be viewed as predictive—actual produced quality will vary based upon a multitude of factors, including, but not limited to plant operating practices and associated efficiency; plant equipment circuitry; plant feed quality and size distribution; and contractual product specifications. Over the past 2 years, produced thermal ash percentages have been lower than projected in *Table 12-2*.

The results of this TRS define an estimated total of 62.6 Mt (dry basis) of marketable coal reserves, at Leer South, as of January 1, 2024. Of that total, 71 percent are proven, and 29 percent are probable. There are 51.7 Mt of owned coal reserves and 8.1 Mt of leased coal and 2.8 Mt of partial control reserves. Of the 62.6 Mt of marketable reserves, approximately 86-percent are associated with metallurgical coal markets, and all of the Leer South reserves are assigned to existing infrastructure.

12.3 Qualified Person's Opinion

The estimate of coal reserves was determined in accordance with the SEC S-K1300 standards.

The LOM mining plan for Leer South was prepared to the level of preliminary feasibility. Mine projections were prepared with a timing schedule to match production with coal seam characteristics. Production timing was carried out from current locations to depletion of the coal reserve area. Coal reserve estimates could be materially affected by the risk factors described in *Section 22.2*.

Based on the preliminary feasibility study and the attendant economic review, MM&A believes this is a fair and accurate calculation of the Leer South coal reserves.

13 Mining Methods

13.1 Geotech and Hydrogeology

The hydrogeologic conditions to be encountered by mining at Leer South are expected to be generally similar to those at other Leer operations. The Leer South mine is located below drainage and involves the undermining of surface streams and groundwater aquifers. The Leer South mine is also undermining previous above-drainage mine workings in the Pittsburgh coal seam; however, with the average interburden between the Lower Kittanning and the Pittsburgh seams being approximately 800 feet, the potential for interaction is considered minimal. MM&A did not observe any adverse hydrogeologic conditions in the existing portion of Leer South during an October 2020 mine visit. In addition, MM&A completed predictive longwall subsidence modeling for the Leer South mine in December 2023 to continue to assist Arch with planning for post-mining hydrogeologic conditions.

The mine plans for Leer South were developed by Arch and reviewed by MM&A. Pillar stability in the Lower Kittanning seam was checked by MM&A using the ACPS program, which integrates the original NIOSH-developed ARMPS, ALPS, and AMSS software packages into a single pillar design framework. MM&A also utilized AHSM (developed by NIOSH) to check the orientation of the proposed mining in relation to available principal horizontal stress directions for the region. Historical knowledge of mining in the area and observations from an October 2020 mine visit by MM&A indicate that horizontal stress conditions are likely to be present during mining in Leer South. As observed by MM&A, current Leer South operations are taking steps to mitigate the horizontal stress, including enhanced ground control measures and strategic mine layout orientation.

13.2 Production Rates

The Leer South mine is active with six continuous mining sections and one longwall section currently operating in the Lower Kittanning Seam. Longwall Mining began producing at Leer South in 2021. The mine plan and productivity expectations reflect historical performance and efforts have been made to adjust the plan to reflect future conditions. MM&A is confident that the mine plan is reasonably representative to provide an accurate estimation of coal reserves. Mine development and operation have not been optimized within the TRS.

Longwall production is scheduled for approximately 343 to 363 days each year, which represents production on seven days per week with allowances for holidays and longwall moves. On each day, the continuous mining sections and longwall produce coal on two shifts with an idle maintenance shift. The sections are configured as regular sections with one continuous miner available for production on each section. During mains development, two production units are brought together to work as a Super Section arrangement (two CM units operating on the same conveyor belt feeder). Productivity is planned at the rate of 100 feet of advance per shift of operation for the single continuous miner sections, 180 feet of advance per shift of operation for the Super Section miner sections and 50 feet per day of longwall retreat. Productivities are expected to increase moderately over time and reasonable ramp up expectations to increase productivity are included in the Arch model.

Carlson Mining software was used by Arch and reviewed by MM&A to generate mine plans for the underground mineable coal seam. Mine plans were sequenced based on productivity schedules provided by Arch, which were based on historically achieved productivity levels. All production forecasting ties assumed production rates to geological models as constructed by MM&A's team of geologists and mining engineers.

As shown in *Table 13-1*, the areas planned for underground production continue until 2042. Clean coal production varies directly with coal thickness and the number of continuous miner units operating during a calendar year.

Table 13-1: Leer South Summary of Production by Year (Moist Tons x 1,000)

Mine Name	2024	2025	2026	2027	2028	2029	2030	2031
Kittanning Deep Mine (LW)	3,625	4,518	3,978	3,672	3,965	4,057	3,848	3,862
Mine Name	**2032**	**2033**	**2034**	**2035**	**2036**	**2037**	**2038**	**2039**
Kittanning Deep Mine (LW)	3,550	3,978	4,169	4,015	4,270	3,395	3,426	3,823
Mine Name	**2040**	**2041**	**2042**	**2043**	**2044**	**2045**	**2046**	**2047**
Kittanning Deep Mine (LW)	3,857	3,914	2,882	0	0	0	0	0

13.3 Mining Related Requirements

Although the Continuous Miner Sections are significantly more expensive to operate on a cost-per-ton basis, they are necessary to develop areas of the mine for longwall production. At the time of this study Leer South had six (6) operating continuous miner stations that were used to develop main entries and gate roads in preparation for the longwall operations in the Lower Kittanning Seam. As the mine develops, this number will reduce as CM development gains on the longwall move times.

13.4 Required Equipment and Personnel

The Leer South Mine is an operating longwall mine in the Lower Kittanning seam. Equipment for the longwall mining unit has been acquired and the continuous miner units will provide longwall panels for the longwall unit to mine.

The longwall shearing machine is used for extraction of coal at the production face. A chain conveyor is used to remove coal from the longwall face for discharge onto the conveyor belt which then ultimately delivers it to an underground storage bunker. Development for the longwall is conducted by the extraction of coal from the production faces using continuous miners and haulage using shuttle cars to a feeder-breaker located at the tail of the section conveyor belt. The feeder-breaker crushes large pieces of coal and rock and regulates coal feed onto the mine conveyor. Roof-bolting machines are used to support the roof on the development sections of the longwall mines. Roof-bolting machines are used to install roof bolts, and battery scoops are available to clean the mine entries and assist in delivery of mine supplies to work areas. Other supplemental equipment such as personnel carriers, supply vehicles, etc., are also used daily.

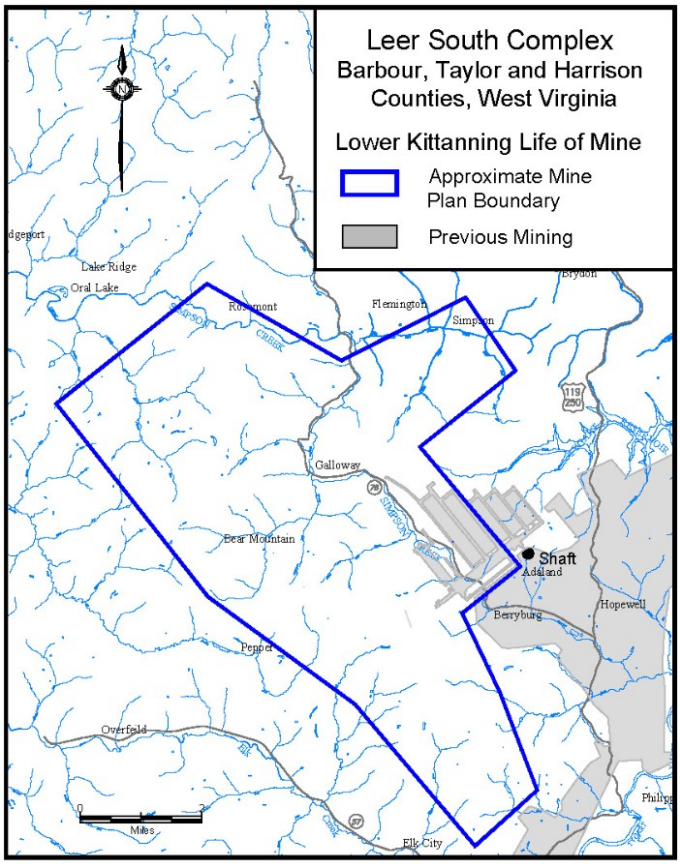
Mine conveyors typically range in width from 42 inches to 72 inches. Multiple belt flights are arranged in series to deliver raw coal to the underground storage. Along the main and sub-main entries and panels, a travel way is provided for personnel and materials by rubber-tired equipment or on rail. Leer South utilizes a slope belt in order to transport ROM coal from the Lower Kittanning seam level underground storage bunker through a haulage slope to the underlying Clarion Seam workings and then through the Clarion Seam slope to the surface where the coal may be sampled, crushed and washed in the preparation plant and stockpiled to await shipment.

Surface ventilation fans are installed as needed to provide a sufficient volume of air to ventilate production sections, coal haulage and transport entries, battery charging stations, and transformers in accordance with approved plans. High-voltage cables deliver power throughout the mine where transformers reduce voltage for specific equipment requirements. *The Mine Improvement and New Emergency Response Act of 2006* (*MINER Act*) requires that carbon monoxide detection systems be installed along mine conveyor belts and that electronic two-way tracking and communications systems be installed throughout underground mines. Water is required to control dust at production sections and along conveyor belts, and to cool electric motors. Water is available from nearby sources and is distributed within the mine by pipelines as required. A maximum total of 556 salary and hourly employees will be assigned to the Lower Kittanning Seam operation.

13.5 Life of Mine Plan Maps

Figure 13-1 below depicts the approximate LOM boundary utilized for mine planning in the Lower Kittanning seam.

Figure 13-1: Lower Kittanning LOM Map



* Uncontrolled tonnages are contained within small mineral tracts which must be acquired for execution of the life-of-mine plan depicted in *Figure 13-1*. While the report authors anticipate that Arch will successfully acquire such mining rights, it is important to note their importance to the mining plan presented in this document. Such tons are labeled as "Uncontrolled" in summary tables provided with this document and are not included in reserve totals. More detailed mapping files are retained in Arch and MM&A's files. Such information is available at the request of the SEC.

14 Processing and Recovery Methods

14.1 Description or Flowsheet

Arch currently operates a coal preparation plant at Leer South. The Leer South Plant operates at a feed rate of approximately 1,600 raw tons per hour (*tph*). Run of mine (*ROM*) coal is sent from the slope to

the Raw Coal #1 stacking tube. From that point, it is reclaimed, and processing begins with the ROM material being screened at 3 inches. Oversized material is run through a rotary breaker. The rotary breaker rejects are discarded as refuse products. Material passing the screen and rotary breaker is sent to the Raw Coal #2 stacking tube for further processing.

The material from the Raw Coal #2 stacking tube is reclaimed and sent to the processing plant where it is screened and washed based on relative sizes. Cleaning circuitry includes a heavy media vessel (plus ½ inch material), heavy media cyclone (1/2 inch by 1-mm material), spirals (1-mm by 100-mesh), and column flotation (100-mesh by 325-mesh). All vessel and cyclone materials are initially washed at a high gravity to initially discard high ash rock. This material is then re-washed at a low gravity in a heavy media cyclone to make a metallurgical product and a secondary middlings thermal product.

Figure 14-1: Leer South Preparation Plant as Viewed from Coarse Refuse Conveyor

14.2 Requirements for Energy, Water, Material and Personnel

Personnel have historically been sourced from the surrounding communities in Barbour, Upshur, Harrison and Marion Counties, and have proven to be adequate in numbers to operate the mine. As mining is common in the surrounding areas, the workforce is generally familiar with mining practices, and many are experienced miners.

The Leer South Complex has sources of water, power, personnel, and supplies readily available for use. Water is sourced locally from a nearby abandoned underground mine and proximal overlying streams. Additionally, water is sourced from the toe of the refuse impoundment for various uses in the mine and

plant. Electricity is sourced from MonPower. The service industry in the areas surrounding the mine complex has historically provided supplies, equipment repairs and fabrication, etc.

15 Infrastructure

The Arch-owned Leer South Preparation Plant services the mine via a slope conveyor system which transports extracted coal from an underground bunker to the surface facility. The Appalachian and Ohio rail line serves as the main means of transport from the mine.

As an active operation, the necessary support infrastructure for Leer South is in place. In addition to the plant and loadout, there are also portal facilities, including personnel access to the mine, ventilation fans and a haulage slope. A photo of the existing facilities is *Figure 15-1*.

Figure 15-1: Leer South Surface Facilities

16 Market Studies

16.1 Market Description

Arch markets its primary coal product from Leer South into high volatile A coking markets. In order to meet sulfur specifications, Leer's plant operates at relatively lower gravity cut points, allowing Arch to

make a secondary, high ash product for thermal market consumption. Quality data from exploration supports assumed market placement.

High volatile coking coal is currently in high demand. Favorable market conditions for coking coal are expected in the near and long term.

Sales of high-ash, high-sulfur thermal blend coals represent a smaller portion of Leer South's revenue stream. Market influence from neighboring producers has the potential to oversupply markets for such a product. High ash, high sulfur coals are generally not consumed on a stand-alone basis, and require premium quality, low-ash, low-sulfur coals for blending to meet market specifications. Current typical met quality specifications for Leer South products are as shown in *Table 16-1*.

Table 16-1: Average Product Quality

	Leer South
Moisture (%)	7.26%
Ash (%, dry basis)	8.49%
Sulfur (%, dry basis)	1.17%
Volatile Matter (%, dry basis)	33.97%

16.2 Price Forecasts

Arch provided MM&A with price forecasts for the Leer South operation. Arch's price outlook incorporates in-house knowledge of applicable rail transportation charges, ocean freight charges and port charges. Concurrent with the active operation, Leer South's production is assumed to enter coking and thermal coal markets. Pricing provided by Arch assumes applicable quality adjustments.

Realized coal prices are based upon a combination of thermal (middlings) and high-volatile A coking coal products. Realized coal prices incorporate HCC indices, adjustments from metric tons to short tons, adjustments for transportation costs and assumed prices for thermal products.

Short-term forecasts for thermal blend products assume FOB-mine prices of approximately $38 per ton, increasing to $54 per ton in the short term, and stabilizing around $51 per ton over the long term. Short term forecasts for coking products assume prices of approximately $170 per ton, decreasing to $157 per ton over the long term. Long-term blended (combined thermal and metallurgical) realizations are equivalent to approximately $151 per ton.

Forecasts provided by Arch are largely aligned with typical coal industry expectations of coking coal markets. In comparison to short term spot markets, Arch's estimations of realizations are somewhat conservative. Long term forecasting of metallurgical coal prices is difficult to predict. Arch's assumed long range metallurgical prices are largely aligned with typical historical averages.

16.3 Contract Requirements

Some contracts are necessary for successful marketing of coal. For Leer South, since all mining, preparation and marketing is done in-house, the remaining contracts required are:

- **Transportation** – The Mine contracts with the Appalachian and Ohio Railway and CSX Transportation to transport the coal to either the domestic customers or to the Curtis Bay or DTA export terminal for overseas shipment.
- **Handling** – Contracts for loading vessels for export sales are necessary. These are typically handled by annual negotiations based on projected shipments.
- **Sales** – Sales contracts are a mix of spot and contract sales. With the volatility of the market, long-term contracts are not typically written.

17 Environmental Studies, Permitting and Plans, Negotiations or Agreements with Local Individuals

17.1 Results of Studies

MM&A has not conducted environmental studies on the subject property. Based upon our understanding of Arch's practices, MM&A assumes that Leer South generally has a record consistent with industry standards regarding compliance with applicable mining, water quality, and environmental laws. Estimated costs for mine closure, including water quality monitoring during site reclamation, are included in the financial models.

17.2 Requirements and Plans for Waste Disposal

Leer South has developed a slurry impoundment south of the preparation plant. Plans are in place to increase the dam crest elevation and work has been progressing on downslope areas. Arch has purchased property and has completed permitting downstream for the construction of a slurry impoundment. Based on projected recovery rates, Arch reports that the impoundment will be sufficient to contain life-of-mine capacity requirements.

A conveyor belt system has been constructed that brings coarse refuse material to the impoundment crest area. The existing coarse refuse facility northwest of the preparation plant was described as being completed during the October 2020 mine visit. *Table 17-1* below shows the refuse facility capacities for the course refuse and fine refuse impoundment.

Table 17-1: Course and Fine Refuse Facility Capacities at Leer South

	MCY
Coarse Refuse	
Phase 1 (Side Hill Fill) Remaining	6.2
Phase 2 (Full Hollow Fill)	39.6
Optional (In-Hollow Fill Upstream)	0.6
Impoundment (Stage 15)	58.9
Abandonment (Final Config)	5.2
Total	**110.5**
Fine Refuse	
Fines (through Stage 7) Remaining	12.1
Additional (Stage 7-15)	10.1
Total	**22.2**

*Arch currently has permitted on the impoundment through Stage 7. They have received a conditional approval on the full hollow fill through WVDEP, however; they are still awaiting 404/401 permit and MSHA approval. Anticipate the 404/401 permit approval 07/2025 through 01/2026 and MSHA in 06/2024.

Figure 17-1: Downslope Coarse Refuse Placement on Leer South Impoundment (Photograph provided by Arch)

Figure 17-2: Coarse Refuse Stacker and Stockpile Area at Leer South (Photograph provided by Arch)

17.3 Permit Requirements and Status

All mining operations are subject to federal and state laws and must obtain permits to operate mines, coal preparation and related facilities, haul roads, and other incidental surface disturbances necessary for mining to occur. Permits generally require that the permittee post a performance bond in an amount established by the regulatory program to provide assurance that any disturbance or liability created during mining operations is properly restored to an approved post-mining land use and that all regulations and requirements of the permits are fully satisfied before the bond is returned to the permittee. Significant penalties exist for any permittee who fails to meet the obligations of the permits including cessation of mining operations, which can lead to potential forfeiture of the bond. Any company, and its directors, owners and officers, which are subject to bond forfeiture can be denied future permits under the program.[1]

New permits or permit revisions will occasionally be necessary to facilitate the expansion or addition of new mining areas on the properties, such as amendments to existing permits and new permits for mining of reserve areas. Exploration permits are also required. Property under lease includes provisions for exploration among the terms of the lease. New or modified mining permits are subject to a public advertisement process and comment period, and the public is provided an opportunity to raise objections to any proposed mining operation. MM&A is not aware of any specific prohibition of mining on the subject property and given sufficient time and planning, Arch should be able to secure

1 Monitored under the Applicant Violator System (AVS) by the Federal Office of Surface Mining.

new permits to maintain its planned mining operations within the context of current regulations. Necessary permits are in place to support current production on the Property, but future permits are required to maintain and expand production. Portions of the Property are located near local communities. Regulations prohibit mining activities within 300 feet of a residential dwelling, school, church, or similar structure unless written consent is first obtained from the owner of the structure. Where required, such consents have been obtained where mining is proposed beyond the regulatory limits.

Arch has obtained all mining and discharge permits to operate its mines and processing, loadout, or related facilities. MM&A is unaware of any obvious or current Arch permitting issues that are expected to prevent the issuance of future permits. Leer South, along with all coal producers, is subject to a level of uncertainty regarding future clean water permits due to **United States Environmental Protection Agency (*EPA*)** involvement with state programs.

The active Mining permits currently held by Leer South are shown in *Table 17-1.*

Table 17-2: Leer South Mining Permit

Type	Permit ID	Permit Name	$ Bond	Current Status	Issued Date	Expiration Date	Acres	NPDES No.
Reclamation	U-15-83	Leer South	$368,880	Active	8/11/1983	1/24/2027	193.6	WV0043273
Reclamation	O-113-83	Leer South Refuse	$1,199,900	Active	8/11/1983	6/28/2028	461.73	WV0043273

17.4 Local Plans, Negotiations or Agreements

MM&A found no indication of agreements beyond the scope of Federal or State Regulations.

17.5 Mine Closure Plans

Applicable regulations require that mines be properly closed, and reclamation commenced immediately upon abandonment. In general, site reclamation includes removal of structures, backfilling, regrading, and revegetation of disturbed areas. Sediment control is required during the establishment of vegetation, and bond release generally requires a minimum five-year period of site maintenance, water sampling, and sediment control following mine completion. This requirement is reduced to two years for certain operations involving re-mining. Reclamation of underground mines includes closure and sealing of mine openings such as portals and shafts in addition to the items listed above.

Estimated costs for mine closure, including water quality monitoring during site reclamation, are included in the financial model as provided by Arch. MM&A found ARO estimations to be reasonable. As with all mining companies, an accretion calculation is performed annually so the necessary Asset Retirement Obligations (*ARO*) can be shown as a Liability on the Balance Sheet.

17.6 Qualified Person's Opinion

The Leer South Mine is an operating facility; all necessary permits for current production have been obtained. MM&A knows of no reason that any permits revisions that may be required cannot be obtained.

Estimated expenditures for site closure and reclamation are included in the financial model for this site.

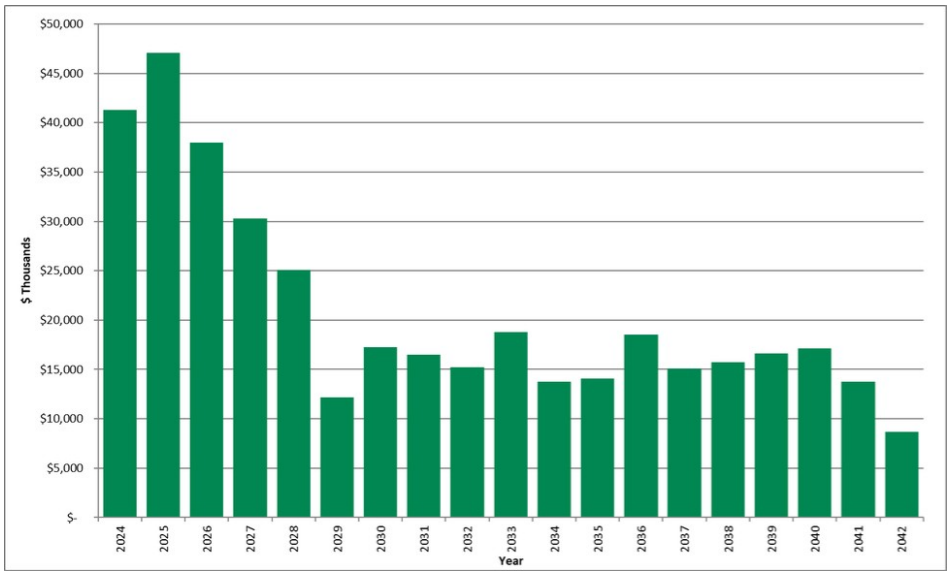
18 Capital and Operating Costs

18.1 Capital Cost Estimate

The production sequence selected for a property must consider the proximity of each reserve area to coal preparation plants, river docks and railroad loading points, along with suitability of production equipment to coal seam conditions. The in-place infrastructure was evaluated, and any future needs were planned to a level suitable for a Preliminary Feasibility Study and included in the Capital Forecast.

Arch provided MM&A with a detailed 5-year capital expenditure projection. MM&A reviewed this schedule and deemed it to be appropriate for financial modeling. MM&A extrapolated the provided capital schedule through end of mining operations. Capital forecasting by MM&A assumes that major equipment rebuilds occur over the course of each machine's remaining assumed operating life. Replacement equipment was scheduled based on MM&A's experience and knowledge of mining equipment and industry standards with respect to the useful life of such equipment. A summary of the estimated capital for the Property is provided in *Figure 18-1* below.

Figure 18-1: CAPEX



18.2 Operating Cost Estimate

Arch provided historical and projections of operating costs for MM&A's review. MM&A used the historical and/or budget cost information as a reference and developed a personnel schedule for the mine. Hourly labor rates and salaries were based upon information contained in Arch's financial summaries and MM&A's knowledge of regional labor rates. Fringe-benefit costs were developed for vacation and holidays, federal and state unemployment insurance, retirement, workers' compensation and pneumoconiosis, casualty and life insurance, healthcare, and bonuses. A cost factor for mine supplies was developed that relates expenditures to mine advance rates for roof-control costs and other mine-supply costs experienced at underground mines. Other factors were developed for maintenance and repair costs, rentals, mine power, outside services and other direct mining costs.

Other cost factors were developed for coal preparation plant processing, refuse handling, coal loading, property taxes, and insurance and bonding. Appropriate royalty rates were assigned for production from leased coal lands, and sales taxes were calculated for state severance taxes, the federal black lung excise tax, and federal and state reclamation fees.

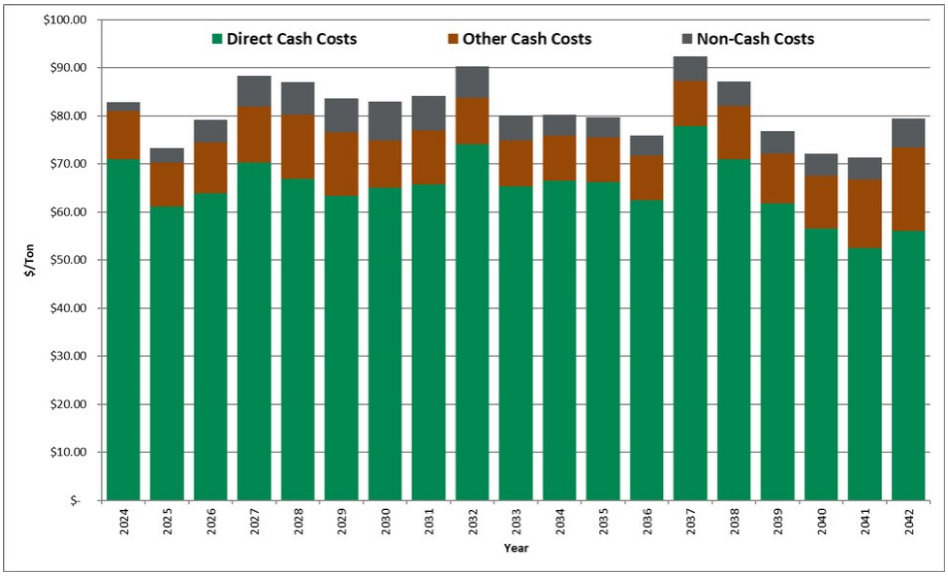
Mandated Sales Related Costs such as Black Lung Excise are summarized in *Table 18-1.*

Table 18-1: Estimated Coal Production Taxes and Sales Costs

Description of Tax or Sales Cost	Basis of Assessment	Cost
Federal Black Lung Excise Tax - Underground	Per Ton	$1.10
Federal Reclamation Fees – Underground	Per Ton	$0.12
West Virginia Reclamation Tax – Underground	Per Ton	$0.74
West Virginia Severance Tax	Percentage of Revenue	5.0%
West Virginia Severance Tax	Per Sold Ton	$0.02
Royalties	Percentage of Revenue	3.5%

Projected operating costs are shown below in *Figure 18-2.*

Figure 18-2: OPEX



As shown above, Leer South Mine's average cash cost ranges between approximately $60 and $65 per ton for most of the operating period.

19 Economic Analysis

19.1 Assumptions, Parameters and Methods

A pre-feasibility LOM plan was prepared by MM&A for the Leer South operations. MM&A prepared mine projections and production timing forecasts based on coal seam characteristics and incorporated Arch's LOM projections with adjustments to reflect current property constraints and geological

interpretations. Production timing was carried out from 2024 to depletion (exhaustion) of the coal reserve areas, which is projected for the year 2042. All costs and prices are based on 2024 constant United States dollars.

The Mine plan, productivity expectations and cost estimates generally reflect historical performance by Arch and efforts have been made to adjust plans and costs to reflect future conditions. MM&A is confident that the mine plan and financial model are reasonably representative to provide an accurate estimation of coal reserves.

Capital schedules were developed by MM&A for mine development, infrastructure, and on-going capital requirements for the life of the mine. Staffing levels were prepared, and operating costs estimated by MM&A. MM&A utilized historical cost data provided by Arch and its own knowledge and experience to estimate direct and indirect operating costs.

The preliminary feasibility financial model, prepared for this TRS, was developed to test the economic viability of the coal reserve area. The results of this financial model are not intended to represent a bankable feasibility study, required for financing of any current or future mining operations, but are intended to prove the economic viability of the estimated coal reserves. All costs and prices are based on 2023 constant United States dollars.

On an unlevered basis, the NPV of the project cash flows after taxes was estimated for the purpose of classifying coal reserves. The project cash flows, excluding debt service, are calculated by subtracting direct and indirect operating expenses and capital expenditures from revenue. Direct costs include labor, drilling and blasting, operating supplies, maintenance and repairs, facilities costs for materials handling, coal preparation, refuse disposal, coal loading, sampling and analysis services, reclamation and general and administrative costs. Indirect costs include statutory and legally agreed upon fees related to direct extraction of the mineral. The indirect costs are the Federal black lung tax, Federal and State reclamation taxes, property taxes, local transportation prior to delivery at rail or barge loading sites, coal production royalties, sales and use taxes, income taxes and State severance taxes. Arch's historical costs provided a useful reference for MM&A's cost estimates.

Sales revenue is based on the metallurgical coal price information provided to MM&A by Arch.

Projected debt service is excluded from the P&L and cash flow model in order to determine Enterprise Value.

The financial model expresses coal sales prices, operating costs, and capital expenditures in current day dollars without adjustment for inflation. Capital expenditures and reclamation costs are included based on engineering estimates for each mine by year. The Arch division's existing allocations of administrative costs are continued in the future projections.

Arch will pay royalties for the various current and projected operations. The royalty rates vary by mining method and location. The royalty rates for Leer South are estimated to be 3.5% of the sales revenue.

The projection model also includes consolidated income tax calculations at the Arch level, incorporating statutory depletion calculations, as well as state income taxes, and a federal tax rate of 21%. To the extent the mine generates net operating losses for tax purposes, the losses are carried over to offset future taxable income. The terms "cash flows" and "project cash flows" used in this report refer to after tax cash flows.

Consolidated cash flows are driven by annual sales tonnage, which at steady-state level ranges from a peak of 4.5 million tons in 2025 to a low of 3.4 million in 2037. Projected consolidated revenue ranges from $643 million to $511 million at a steady state. Revenue totals $10.9 billion for the project's life.

Consolidated cash flow from operations is positive throughout the projected operating period, with the exception of post-production years, due to end-of-mine reclamation spending. Consolidated cash flow from operations peaks at $266 million in 2036 and totals $4.2 billion over the project life. Capital expenditures total $395 million over the project's life.

Coal price forecasts for coal products were prepared by Arch for its active operations. Such prices were used for the revenue input into the financial model. Sales variable costs such as production royalties and severance taxes were based upon the revenue input.

19.2 Results

The pre-feasibility financial model, prepared by MM&A for this TRS, was developed to test the economic viability of each coal resource area. The results of this financial model are not intended to represent a bankable feasibility study, as may be required for financing of any current or future mining operations contemplated but are intended to prove the economic viability of the estimated coal reserves. Optimization of the LOM plan was outside the scope of the engagement.

Table 19-1 shows LOM tonnage, P&L, and EBITDA for Leer South.

Table 19-1: Life-of-Mine Tonnage, P&L before Tax, and EBITDA

(000s)	LOM Tonnage	LOM Pre-Tax P&L	P&L Per Ton	LOM EBITDA	EBITDA Per Ton
Kittanning Deep Mine (LW)	72,803	$5,026,181	$69.04	$5,410,192	$74.31

Note 1: The LOM Economic Model was developed based upon mine faces as of October 1, 2023, whereas reserves were calculated as of December 31, 2023. As such, the economic model includes a small portion of tonnages not included in the reserve estimate. Additionally, the LOM model includes tonnages contained within uncontrolled tracts which are not included in reserve estimates.

Note 2: Realized coal prices are based upon a combination of thermal (middlings) and high-volatile A coking coal products. Realized coal prices incorporate HCC indices, adjustments from metric tons to short tons, adjustments for transportation costs and assumed prices for thermal products.

Note 3: The LOM model and associated economic analysis is intended to prove the economic viability of the subject coal tonnage, allowing controlled tons to be classified as "reserve". The exercise should not be construed to represent a valuation of Arch's holdings. Long-term cash flows incorporate forward-looking market projections which are expected to vary over time based upon historic volatility of coal markets.

Note 4: LOM plan includes variances from reserves based on the LOM plan tons being 1) moist basis; 2) inclusion of non-reserve adverse tracts and 3) slight variances between production faces effective 12/31/23.

As shown in *Table 19-2,* the Leer South Mine shows a positive EBITDA. Overall, the Arch consolidated operations show positive LOM P&L and EBITDA of $69.04 per ton and $74.31 per ton, respectively. After Tax Cash Flows were developed in order to calculate the NPV for this Property. The NPV is estimated to be $1,870 million at a discount rate of 10%. A summary of the Leer South after-tax cash flow is shown in *Table 19-2*.

Table 19-2: Leer South After-tax Cash Flow Summary ($000)*

	Total	YE 12/31 2024	YE 12/31 2025	YE 12/31 2026	YE 12/31 2027	YE 12/31 2028	YE 12/31 2029
Production & Sales tons	72,803	3,625	4,518	3,978	3,672	3,965	4,057
Total Revenue	$10,942,415	$588,484	$657,402	$602,368	$552,856	$597,065	$610,770
EBITDA	$5,410,192	$294,921	$339,904	$306,358	$252,062	$279,102	$300,212
Net Income	$3,937,222	$236,705	$255,547	$225,767	$181,064	$198,252	$212,045
Net Cash Provided by Operating Activities	$4,321,233	$244,538	$203,127	$251,778	$214,490	$221,125	$238,242
Purchases of Property, Plant, and Equipment	($394,952)	($41,296)	($47,058)	($38,007)	($30,260)	($25,069)	($12,197)
Net Cash Flow	$3,926,281	$203,243	$156,069	$213,771	$184,230	$196,056	$226,045

	YE 12/31 2030	YE 12/31 2031	YE 12/31 2032	YE 12/31 2033	YE 12/31 2034	YE 12/31 2035	YE 12/31 2036
Production & Sales tons	3,848	3,862	3,550	3,978	4,169	4,015	4,270
Total Revenue	$579,415	$581,378	$534,505	$598,845	$627,668	$604,550	$642,848
EBITDA	$291,415	$284,127	$237,157	$301,139	$311,374	$301,408	$336,719
Net Income	$202,288	$200,159	$168,363	$219,048	$229,082	$222,245	$248,025
Net Cash Provided by Operating Activities	$236,520	$230,119	$200,950	$229,795	$246,594	$242,436	$261,149
Purchases of Property, Plant, and Equipment	($17,250)	($16,515)	($15,241)	($18,787)	($13,729)	($14,073)	($18,512)
Net Cash Flow	$219,270	$213,604	$185,710	$211,008	$232,866	$228,363	$242,637

	YE 12/31 2037	YE 12/31 2038	YE 12/31 2039	YE 12/31 2040	YE 12/31 2041	YE 12/31 2042	YE 12/31 2043
Production & Sales tons	3,395	3,426	3,823	3,857	3,914	2,882	0
Total Revenue	$511,082	$515,848	$575,546	$580,674	$589,246	$391,866	$0
EBITDA	$215,045	$234,937	$299,801	$320,183	$328,041	$180,142	($1,994)
Net Income	$155,735	$170,322	$219,189	$234,422	$239,923	$126,754	($3,988)
Net Cash Provided by Operating Activities	$196,189	$186,434	$227,747	$250,878	$258,521	$207,914	($11,446)
Purchases of Property, Plant, and Equipment	($15,098)	($15,745)	($16,622)	($17,103)	($13,744)	($8,646)	$0
Net Cash Flow	$181,091	$170,689	$211,125	$233,775	$244,776	$199,268	($11,446)

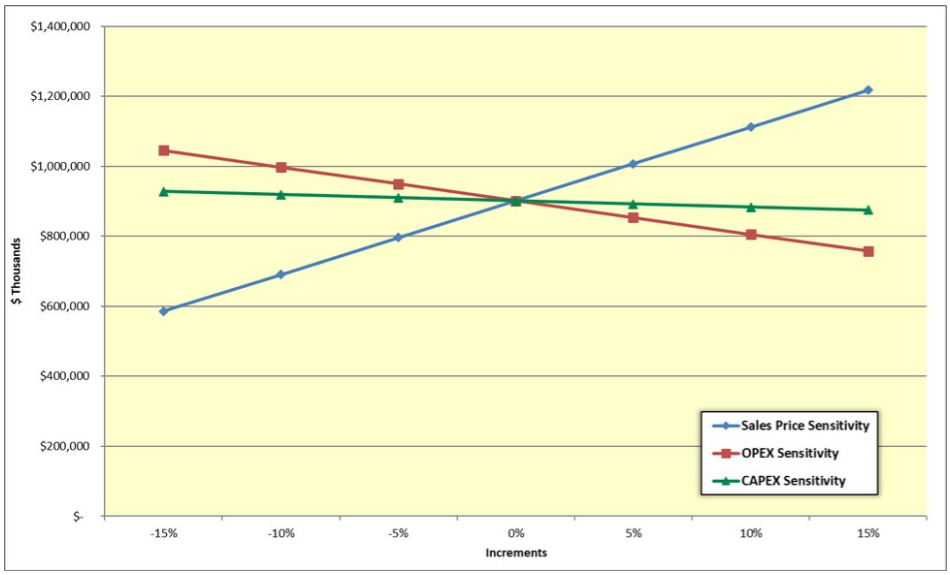
	YE 12/31 2044	YE 12/31 2045	YE 12/31 2046	YE 12/31 2047	YE 12/31 2048	YE 12/31 2049	YE 12/31 2050
Production & Sales tons	0	0	0	0	0	0	0
Total Revenue	$0	$0	$0	$0	$0	$0	$0
EBITDA	($1,191)	($264)	($199)	($126)	($55)	($27)	($0)
Net Income	($2,381)	($527)	($398)	($253)	($109)	($54)	($0)
Net Cash Provided by Operating Activities	($12,096)	($1,022)	($1,055)	($969)	($380)	($345)	$0
Purchases of Property, Plant, and Equipment	$0	$0	$0	$0	$0	$0	$0
Net Cash Flow	($12,096)	($1,022)	($1,055)	($969)	($380)	($345)	$0

* The LOM model and associated economic analysis is intended to prove the economic viability of the subject coal tonnage, allowing controlled tons to be classified as "reserve". The exercise should not be construed to represent a valuation of Arch's holdings. Long-term cash flows incorporate forward-looking market projections which are expected to vary over time based upon historic volatility of coal markets.

19.3 Sensitivity

Sensitivity of the NPV results to changes in the key drivers is presented in the chart below. The sensitivity study shows the NPV at the 10% discount rate when Base Case sales prices, operating costs, and capital costs are increased and decreased in increments of 5% within a +/- 15% range.

Figure 19-1: Sensitivity of NPV



As shown, NPV is quite sensitive to changes in sales price and operating cost estimates, and slightly sensitive to changes in capital cost estimates.

20 Adjacent Properties

20.1 Information Used

No Proprietary information associated with neighboring properties was used as part of this study.

21 Other Relevant Data and Information

No other data was utilized as part of this study.

22 Interpretation and Conclusions

22.1 Conclusion

Sufficient data have been obtained through various exploration and sampling programs and mining operations to support the geological interpretations of seam structure and thickness for coal horizons situated on the Leer South Property. The data are of sufficient quantity and reliability to reasonably support the coal resource and coal reserve estimates in this TRS.

The geological data and preliminary feasibility study, which consider mining plans, revenue, and operating and capital cost estimates are sufficient to support the classification of coal reserves provided herein.

This geologic evaluation conducted conjunction with the preliminary feasibility study is sufficient to conclude that the 62.6 Mt of marketable underground coal reserves identified on the Property are economically mineable under reasonable expectations of market prices for metallurgical coal products, estimated operation costs, and capital expenditures.

22.2 Risk Factors

Risks have been identified for operational, technical and administrative subjects addressed in the Pre-Feasibility Study. A risk matrix has been constructed to present the risk levels for all the risk factors identified and quantified in the risk assessment process. The risk matrix and risk assessment process are modelled according to the Australian and New Zealand Standard on Risk Management (AS/NZS 4360).

The purpose of the characterization of the project risk components is to inform the project stakeholders of key aspects of the Arch projects that can be impacted by events whose consequences can affect the success of the venture. The significance of an impacted aspect of the operation is directly related to both the probability of occurrence and the severity of the consequences. The initial risk for a risk factor is herein defined as the risk level after the potential impact of the risk factor is addressed by competent and prudent management utilizing control measures readily available. Residual risk for a risk factor is herein defined as the risk level following application of special mitigation measures if management determines that the initial risk level is unacceptable. Initial risk and residual risk can be quantified numerically, derived by the product of values assigned to probability and consequence ranging from very low risk to very high risk.

The probability and consequence parameters are subjective numerical estimates made by practiced mine engineers and managers. Both are assigned values from 1 to 5 for which the value 1 represents the lowest probability and least consequence, and the value 5 represents the highest probability and

greatest consequence. The products which define the Risk Level, are classified from very low to very high.

Risk Level Table (R = P x C)

Risk Level (R)
Very Low (1 to 2)
Low (3 to 5)
Moderate (6 to 11)
High (12 to 19)
Very High (20 to 25)

Risk aspects identified and evaluated during this assignment total 12. No residual risks are rated Very High. One (1) residual risk is rated High. Seven (7) of the risk aspects could be associated with Moderate residual risk. Four (4) of the risk aspects were attributed to Low or Very Low residual risks.

22.2.1 Governing Assumptions

The listing of the aspects is not presumed to be exhaustive. Instead that listing is presented based on the experiences of the contributors to the TRS.

1. The probability and consequence ratings are subjectively assigned, and it is assumed that this subjectivity reasonably reflects the condition of the active and projected mine operations.
2. The Control Measures shown in the matrices presented in this chapter are not exhaustive. They represent a condensed collection of activities that the author of the risk assessment section has observed to be effective in coal mining scenarios.
3. Mitigation Measures listed for each risk factor of the operation are not exhaustive. The measures listed, however, have been observed by the author to be effective.
4. The monetary values used in ranking the consequences are generally accepted quantities for the coal mining industry.

22.2.2 Limitations

The risk assessment proposed in this report is subject to the limitations of the information currently collected, tested, and interpreted at the time of the writing of the report.

22.2.3 Methodology

The numerical quantities (i.e., risk levels) attributable to either "initial" or "residual" risks are derived by the product of values assigned to probability and consequence ranging from very low risk to very high risk.

$$R = P \times C$$

Where: R = Risk Level
P = Probability of Occurrence
C = Consequence of Occurrence

The Probability (P) and Consequence (C) parameters recited in the formula are subjective numerical estimates made by practiced mine engineers and managers. Both P and C are assigned integer values ranging from 1 to 5 for which the value 1 represents the lowest probability and least consequence, and the value 5 represents the highest probability and greatest consequence. The products (R = P x C) which define the Risk Level, are thereafter classified from very low to very high.

Risk Level Table

Risk Level (R)
Very Low (1 to 2)
Low (3 to 5)
Moderate (6 to 11)
High (12 to 19)
Very High (20 to 25)

Very high initial risks are considered to be unacceptable and require corrective action well in advance of project development. In short, measures must be applied to reduce very high initial risks to a tolerable level.

As shown and discussed above, after taking into account the operational, technical, and administrative actions that have been applied or are available for action when required, the residual risk can be determined. The residual risk provides a basis for the management team to determine if the residual risk level is acceptable or tolerable. If the risk level is determined to be unacceptable, further actions should be considered to reduce the residual risk to acceptable or tolerable levels to provide justification for continuation of the proposed operation.

22.2.4 Development of the Risk Matrix

Risks have been identified for the technical, operational, and administrative subjects addressed in the TRS. The risk matrix and risk assessment process are modelled according to the Australian and New Zealand Standard on Risk Management (AS/NZS 4360).

22.2.4.1 Probability Level Table

Table 22-1: Probability Level Table

Category	Probability Level (P)		
1	Remote	Not likely to occur except in exceptional circumstances.	<10%
2	Unlikely	Not likely to occur; small in degree.	10 - 30%
3	Possible	Capable of occurring.	30 - 60%
4	Likely	High chance of occurring in most circumstances.	60 - 90%
5	Almost Certain	Event is expected under most circumstances; impossible to avoid.	>90%

The lowest rated probability of occurrence is assigned the value of 1 and described as remote, with a likelihood of occurrence of less than 2 percent. Increasing values are assigned to each higher probability of occurrence, culminating with the value of 5 assigned to incidents considered to be almost certain to occur.

22.2.4.2 Consequence Level Table

Table 22-2 lists the consequence levels.

Table 22-2: Consequence Level Table

Correlation of Events in Key Elements of the Project Program to Event Severity Category							
Category	**Severity of the Event**	**Financial Impact of the Event**	**Unplanned Loss of Production (Impact on Commercial Operations)**	**Events Impacting on the Environment**	**Events Affecting the Program's Social and Community Relations**	**Resultant Regulatory / Sovereign Risk**	**Events Affecting Occupational Health and Safety**
1	**Insignificant**	< USD $0.5 million	≤ 12 hours	Insignificant loss of habitat; no irreversible effects on water, soil and the environment.	Occasional nuisance impact on travel.	-	Event recurrence avoided by corrective action through established procedures (Engineering, guarding, training).
2	**Minor**	USD $0.5 million to $2.0 million	≤ 1 day	No significant change to species populations; short-term reversible perturbation to ecosystem function.	Persistent nuisance impact on travel. Transient adverse media coverage.	-	**First aid – lost time.** Event recurrence avoided by corrective action thought established procedures.
3	**Moderate**	USD $2.0 million to $10.0 million	≤ 1 week	Appreciable change to species population; medium-term (≤10 years) detriment to ecosystem function.	Measurable impact on travel and water/air quality. Significant adverse media coverage / transient public outrage.	Uncertainty securing or retaining essential approval / license. Change to regulations (tax; bonds; standards).	**Medical Treatment –** permanent incapacitation Avoiding event recurrence requires modification to established corrective action procedures**.**
4	**Major**	USD $10.0 million to $50.0 million	1 to 2 weeks	Change to species population threatening viability; long-term (>10 years) detriment to ecosystem function.	Long-term, serious impact on travel and use of water resources; degradation of air quality; sustained and effective public opposition.	Suspension / long-delay in securing essential approval / license. Change to laws (tax; bonds; standards).	**Fatality.** Avoiding event recurrence requires modification to established corrective action procedures and staff retraining.
5	**Critical**	>USD $50.0 million	>1 month	Species extinction; irreversible damage to ecosystem function.	Loss of social license.	Withdraw / failure to secure essential approval / license.	**Multiple fatalities.** Avoiding event recurrence requires major overhaul of policies and procedures.

The lowest rated consequence is assigned the value of 1 and is described as Insignificant Consequence parameters include non-reportable safety incidents with zero days lost accidents, no environmental damage, loss of production or systems for less than one week and cost of less than USD $0.5 million. Increasing values are assigned to each higher consequence, culminating with the value of 5 assigned to critical consequences, the parameters of which include multiple-fatality accidents, major environmental damage, and loss of production or systems for longer than six months and cost of greater than USD $50.0 million.

Composite Risk Matrix R = P x C and Color-Code Convention

The risk level, defined as the product of probability of occurrence and consequence, ranges in value from 1 (lowest possible risk) to 25 (maximum risk level). The values are color-coded to facilitate identification of the highest risk aspects.

Table 22-3: Risk Matrix

P x C = R			Consequence (C)				
			Insignificant	Minor	Moderate	Major	Critical
			1	2	3	4	5
Probability Level (P)	Remote	1	1	2	3	4	5
	Unlikely	2	2	4	6	8	10
	Possible	3	3	6	9	12	15
	Likely	4	4	8	12	16	20
	Almost Certain	5	5	10	15	20	25

22.2.5 Categorization of Risk Levels and Color Code Convention

Very high risks are considered to be unacceptable and require corrective action. Risk reduction measures must be applied to reduce very high risks to a tolerable level.

22.2.6 Description of the Coal Property

The Leer South Mine Complex is located in Barbour County, West Virginia and plans to begin operating a longwall section with the existing supporting continuous mining sections. Operations are projected to continue in the present mode until reserves are depleted in 2038.

22.2.7 Summary of Residual Risk Ratings

Each risk factor is numbered, and a risk level for each is determined by multiplying the assigned probability by the assigned consequence. The risk levels are plotted on a risk matrix to provide a composite view of the Arch risk profile. The average risk level is 7.5, which is defined as Moderate.

Table 22-4: Risk Assessment Matrix

Consequence		<10% Remote	10-30% Unlikely	30-60% Possible	60-90% Likely	>90% Almost Certain
Critical	>$50 MM	9, 10				
Major	$10-50MM			1,2	6	
Moderate	$2-10 MM	12	4	3	7	
Minor	$0.5-$2 MM			13	5	8
Low	<$0.5 MM			11		

22.2.8 Risk Factors

A high-level approach is utilized to characterize risk factors that are generally similar across a number of the active and proposed mining operations. Risk factors that are unique to a specific operation or are particularly noteworthy are addressed individually.

22.2.8.1 Geological and Coal Resource

Coal mining is accompanied by risk that, despite exploration efforts, mining areas will be encountered where geological conditions render extraction of the resource to be uneconomic, or that coal quality characteristics disqualify the product for sale into target markets.

Offsetting the geological and coal resource risk are the massive size of the controlled property which allows large areas to be mined in the preferred mine areas sufficiently away from areas where coal quality and mineability may be less favorable. This flexibility, combined with the extensive work done to define the reserve, reduces the risk at Leer South below that of other mine properties.

Table 22-5: Geological and Coal Resource Risk Assessment (Risks 1 and 2)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Recoverable coal tons recognized to be significantly less than previously estimated.	Reserve base is adequate to serve market commitments and respond to opportunities for many years. Local adverse conditions may increase frequency and cost of production unit relocations.	Previous and ongoing exploration and extensive regional mining history provide a high level of confidence of coal seam correlation, continuity of the coal seams, and coal resource tons.	4	5	**20**	Optimize mine plan to increase resource recovery; develop mine plan to provide readily available alternate mining locations to sustain expected production level.	3	4	**12**
Coal quality locally proves to be lower than initially projected.	If uncontrolled, production and sale of coal that is out of specification can result in rejection of deliveries, cancellation of coal sales agreements and damage to reputation.	Exploration and vast experience and history in local coal seams provide confidence in coal quality; limited excursions can be managed with careful product segregation and blending.	4	5	**20**	Develop mine plan to provide readily available alternate mining locations to sustain expected production level; modify coal sales agreements to reflect coal quality.	3	4	**12**

22.2.8.2 Environmental

Water quality and other permit requirements are subject to modification and such changes could have a material impact on the capability of the operator to meet modified standards or to receive new permits and modifications to existing permits. Permit protests may result in delays or denials to permit applications.

Environmental standards and permit requirements have evolved significantly over the past 50 years and to-date, mining operators and regulatory bodies have been able to adapt successfully to evolving environmental requirements.

Table 22-6: Environmental (Risks 3 and 4)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Environmental performance standards are modified in the future.	Delays in receiving new permits and modifications to existing permits; cost of testing and treatment of water and soils	Work with regulatory agencies to understand and influence final standards; implement testing, treatment and other actions to comply with new standards.	3	4	12	Modify mining and reclamation plans to improve compliance with new standards while reducing cost of compliance.	3	3	9
New permits and permit modifications are increasingly delayed or denied.	Interruption of production and delayed implementation of replacement production from new mining areas.	Comply quickly with testing, treatment and other actions required; continue excellent compliance performance within existing permits.	2	4	8	Establish and maintain close and constructive working relationships with regulatory agencies, local communities and community action groups. Prepare and submit permits well in advance of needs.	2	3	6

22.2.8.3 Regulatory Requirements

Federal and state health and safety regulatory agencies occasionally amend mine laws and regulations. The impact is industry wide. Mining operators and regulatory agencies have been able to adapt successfully to evolving health and safety requirements.

Table 22-7: Regulatory Requirements (Risk 5)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Federal and state mine safety and health regulatory agencies amend mine laws and regulations.	Cost of training, materials, supplies and equipment; modification of mine examination and production procedures; modification of mining plans.	Participate in hearings and workshops when possible, to facilitate understanding and implementation; work cooperatively with agencies and employees to facilitate implementation of new laws and regulations.	4	3	12	Familiarity and experience with new laws and regulations results in reduced impact to operations and productivity and improved supplies and equipment options.	4	2	8

22.2.8.4 Market and Transportation

Most of the current and future production is expected to be directed to domestic and international metallurgical markets. Historically the metallurgical markets have been cyclical and highly volatile. A secondary middlings product will be sent to the domestic power generation market. While this product could be considered as a byproduct with high ash and high sulfur, the economics indicate that selling the middlings product produces a minimal positive cash flow.

Table 22-8: Market and Transportation (Risk 6 & 7)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Volatile coal prices drop precipitously.	Loss of revenue adversely affects profitability; reduced cash flow may disrupt capital expenditures plan.	Cost control measures implemented; capital spending deferred.	4	5	20	High-cost operations closed, and employees temporarily furloughed.	4	4	16
Domestic middlings coal prices drop precipitously.	Loss of revenue adversely affects profitability; reduced cash flow may disrupt capital expenditures plan, product may require disposal in refuse area.	Cost control measures implemented.	4	3	12	High-cost operations closed, and employees temporarily furloughed.	4	3	12

Occasional delay or interruption of rail, river and terminals service may be expected. The operator can possibly minimize the impact of delays by being a preferred customer by fulfilling shipment obligations promptly and maintaining close working relationships.

Table 22-9: Market and Transportation (Risk 8)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Rail or river transport is delayed; storage and shipping access at river and ocean terminals is not available.	Fulfillment of coal sales agreements delayed; limited coal storage at mines may increase cost of rehandling; production may be temporarily idled.	Provide adequate storage capacity at mines; coordinate continuously with railroad and shipping companies to respond quickly and effectively to changing circumstances.	5	3	15	Provide back-up storage facility along with personnel, equipment and rehandle plan to sustain production and fulfill sales obligations timely.	5	2	10

22.2.8.5 Mining Plan

Occupational health and safety risks are inherent in mining operations. Comprehensive training and retraining programs, internal safety audits and examinations, regular mine inspections, safety meetings, along with support of trained fire brigades and mine-rescue teams are among activities that greatly reduce accident risks. Employee health-monitoring programs coupled with dust and noise monitoring and abatement reduce health risks to miners.

As underground mines are developed and extended, observation of geological, hydrogeological and geotechnical conditions leads to modification of mine plans and procedures to enable safe work within the mine environments.

Highlighted below are selected examples of safety and external factors relevant to Arch operations.

22.2.8.5.1 Methane Management

Coalbed methane is present in coal operations below drainage. Often the methane concentration in shallow coal seams is at such low levels that it can be readily managed with frequent testing and monitoring, vigilance, and routine mine ventilation. Very high methane concentrations may be present at greater depths. High methane concentrations may require degasification of the coal seam to assure safe mining. The adjacent Leer Mine has operated safely for many years in the same coal seam as Leer South without coal degasification issues. Thus, it is expected that Leer South Mine will experience similar conditions in terms of methane management. Additionally, the presence of multilaterally drilled horizontal wells to drain methane in the subject coal beds and favorably low gas content testing results increases the confidence associated with minimal methane issues.

Table 22-10: Methane Management (Risk 9)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Methane hazard is present in mines operating below drainage.	Injury or loss of life; possible ignition of gas and mine explosion; potential loss of mine and equipment temporarily or permanently; additional mine fan, mine power, ventilation, monitoring and examination requirements.	Low to moderate levels can be managed with frequent examinations, testing and monitoring within the mine ventilation system. Excellent rock dust maintenance minimizes explosion propagation risk should an ignition occur.	1	5	5	Very high-level methane concentrations may require coal seam degasification and gob degasification if longwall or pillar extraction methods are employed.	1	5	5

22.2.8.5.2 Mine Fires

Mine fires, once common at mine operations, are rare today. Most active coal miners have not encountered a mine fire. Vastly improved mine power and equipment electrical systems, along with safe mine practices, reduce mine fire risks. Crew training and fire brigade support and training improve response for containment and control if a fire occurs. Spontaneous combustion within coal mines, which is the source of most fires that occur today, is not expected to occur at Leer South.

Table 22-11: Mine Fires (Risk 10)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Mine fire at underground or surface mine operation.	Injury or loss of life; potential loss of mine temporarily or permanently; damage to equipment and mine infrastructure.	Inspection and maintenance of mine power, equipment and mine infrastructure; good housekeeping; frequent examination of conveyor belt entries; prompt removal of accumulations of combustible materials.	1	5	5	If spontaneous combustion conditions are present, enhanced monitoring and examination procedures will be implemented; mine design will incorporate features to facilitate isolation, containment and extinguishment of spontaneous combustion locations.	1	5	5

22.2.8.5.3 Availability of Supplies and Equipment

The industry has periodically experienced difficulty receiving timely delivery of mine supplies and equipment. Availability issues often accompanied boom periods for coal demand. Any future delivery of supplies and equipment delays are expected to be temporary with limited impact on production.

Table 22-12: Availability of Supplies and Equipment (Risk 11)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Disruption of availability for supplies and equipment.	Temporary interruption of production.	Force majeure provision in coal sales agreements to limit liability for delayed or lost sales.	3	2	6	Work closely with customers to assure delayed coal delivery rather than cancelled sales; monitor external conditions and increase inventory of critical supplies; accelerate delivery of equipment when possible.	3	1	3

22.2.8.5.4 Labor

Work stoppages due to labor protests are considered unlikely and are accompanied by limited impact should it occur. Excellent employee relations and communications limit the exposure to outside protesters. Loss of supervisors and skilled employees to retirement is inevitable; the impact can be lessened with succession planning and training and training and mentorship of new employees.

Table 22-13: Labor – Work Stoppage (Risk 12)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Work stoppage due to strikes, slowdowns or secondary boycott activity.	Loss of production and coal sales; damaged customer and employee relations; reputation loss.	Maintain excellent employee relations and communications; maintain frequent customer communications.	1	3	3	Develop plan for employee communications and legal support to minimize impact of secondary boycott activities.	1	3	3

Table 22-14: Labor – Retirement (Risk 13)

Aspect	Impact	Control Measures	Initial Risk Level			Mitigation Measures	Residual Risk Level		
			P	C	R		P	C	R
Retirement of supervisors and skilled employees.	Loss of leadership and critical skills to sustain high levels of safety, maintenance and productivity.	Monitor demographics closely and maintain communications with employees who are approaching retirement age; maintain employee selection and training programs.	3	3	9	Maintain selection of candidates and implementation of in-house or third-party training for electricians and mechanics; develop employee mentoring program.	3	2	6

23 Recommendations

MM&A recommends the implementation of all control and mitigating measures outlined in the risk analysis portion of this report to help minimize risk to the successful development of reserves outlined in this TRS.

24 References

1. Various sources of geological information, including a digital exploration database, coal quality laboratory information, drillers' logs, geologists' logs, and geophysical logs.
2. Various engineering, permitting and mine plans as presented to MM&A by Arch.
3. Various previous engineering and reserve reports conducted on behalf of Arch by MM&A.
4. Publicly available information from various State and Federal agencies.
5. Various sources of mapping information obtained via the public domain.

25 Reliance on Information Provided by Registrant

The qualified persons responsible for the development of this TRS have relied upon information provide by Arch, including:

1. **Marketing Information**, including sales forecasts coal and transportation costs.
2. **Legal Matters**, including mineral and surface-based land and tenure.
3. **Environmental Matters**, including permit information, permit status and refuse disposal plans and associated volumes.

APPENDIX

SUMMARY TABLE

Arch Land, LLC and Arch Resources, Inc.

PFS-Level 201 SEC-Compliant Resource & Reserve - Leer South Operations

Underground Mineable Coal Reserve and Resource (Short Tons) • Effective December 31, 2023

Summary Table

Appendix A - Table 1

			Coal Resource (Dry Tons, In-place)				Demonstrated Coal Reserves (Dry Tons, Washed or Direct Shipped)								
							By Reliability Category			By Prodcut		By Control Type			
	Seam	Mine Plan	Measured	Indicated	Inferred	Total	Proved	Probable	Total	Met	Thermal	Owned	Leased	Part Owned	Part Leased
Lower Kittanning Seam															
North	LKT	Inclusive of Reserve	38,509,700	29,135,300	0	67,645,000	22,824,400	16,880,300	39,704,700	33,894,400	5,810,300	37,472,200	720,700	1,511,800	0
Central	LKT Rider	Inclusive of Reserve	143,000	4,100	0	147,100	100,900	200	101,100	96,500	4,600	7,900	93,200	0	0
Central	LKT	Inclusive of Reserve	21,163,600	1,078,200	0	22,241,800	12,686,800	684,500	13,371,300	11,712,700	1,658,600	11,348,800	1,850,300	77,500	94,700
South	LKT Rider	Inclusive of Reserve	2,194,800	144,200	0	2,339,000	1,328,700	10,700	1,339,400	1,171,100	168,300	38,400	1,016,400	0	284,600
South	LKT	Inclusive of Reserve	13,403,000	674,700	0	14,077,700	7,715,000	402,500	8,117,500	7,079,100	1,038,400	2,833,900	4,440,200	0	843,400
			75,414,100	**31,036,500**	**0**	**106,450,600**	**44,655,800**	**17,978,200**	**62,634,000**	**53,953,800**	**8,680,200**	**51,701,200**	**8,120,800**	**1,589,300**	**1,222,700**
North	LKT	Exclusive of Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0
Central	LKT Rider	Exclusive of Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0
Central	LKT	Exclusive of Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0
South	LKT Rider	Exclusive of Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0
South	LKT	Exclusive of Reserve	0	0	0	0	0	0	0	0	0	0	0	0	0
			0	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
North	LKT	Uncontrolled	0	0	0	0	0	0	0	0	0	0	0	0	0
Central	LKT	Uncontrolled	632,000	13,300	0	645,300	286,100	7,900	294,000	257,500	36,500	0	0	0	0
South	LKT Rider	Uncontrolled	280,700	67,800	0	348,500	140,400	31,700	172,100	150,200	21,900	0	0	0	0
South	LKT	Uncontrolled	3,937,600	523,200	0	4,460,800	2,105,000	327,300	2,432,300	2,106,900	325,400	0	0	0	0
			4,850,300	**604,300**	**0**	**5,454,600**	**2,531,500**	**366,900**	**2,898,400**	**2,514,600**	**383,800**	**0**	**0**	**0**	**0**

Uncontrolled tons are reported for informational purposes only and are not part of the reserves. Uncontrolled tonnages are contained within small mineral tracts which must be acquired for execution of the life-of-mine plan. As such, Uncontrolled tonnages are included in the LOM financial model. See appendix for maps which show details of mineral control.

Grand Total															
Inclusive of Reserve			75,414,100	31,036,500	0	106,450,600	44,655,800	17,978,200	62,634,000	53,953,800	8,680,200	51,701,200	8,120,800	1,589,300	1,222,700
Exclusive of Reserve			0	0	0	0	0	0	0	0	0	0	0	0	0
Grand Total			**75,414,100**	**31,036,500**	**0**	**106,450,600**	**44,655,800**	**17,978,200**	**62,634,000**	**53,953,800**	**8,680,200**	**51,701,200**	**8,120,800**	**1,589,300**	**1,222,700**
Uncontrolled			4,850,300	604,300	0	5,454,600	2,531,500	366,900	2,898,400	2,514,600	383,800	0	0	0	0

Uncontrolled tons are reported for informational purposes only and are not part of the reserves. Uncontrolled tonnages are contained within small mineral tracts which must be acquired for execution of the life-of-mine plan. As such, Uncontrolled tonnages are included in the LOM financial model. See appendix for maps which show details of mineral control.

ARCH RESOURCES, INC.

AMENDED AND RESTATED COMPENSATION RECOUPMENT POLICY

Arch Resources, Inc. (the "***Company***") has adopted this Amended and Restated Compensation Recoupment Policy (the "***Policy***"), effective as of October 2, 2023 (the "***Effective Date***"), which Policy is an amendment and restatement of the Company's Compensation Recoupment Policy, dated as of February 26, 2015 (the "***Prior Policy***"). Capitalized terms used in this Policy but not otherwise defined herein are defined in Section 11.

1. **Persons Subject to Policy**

This Policy shall apply to current and former Officers of the Company. Each Officer will be asked to sign an Acknowledgment Agreement acknowledging the application of this Policy to such Officer's Incentive-Based Compensation; however, any Officer's failure to sign any such Acknowledgment Agreement shall not negate the application of this Policy to the Officer.

2. **Compensation Subject to Policy**

This Policy shall apply to Incentive-Based Compensation received on or after the Effective Date. For purposes of this Policy, the date on which Incentive-Based Compensation is "received" shall be determined under the Applicable Rules, which generally provide that Incentive-Based Compensation is "received" in the Company's fiscal period during which the relevant Financial Reporting Measure is attained or satisfied, without regard to whether the grant, vesting or payment of the Incentive-Based Compensation occurs after the end of that period.

3. **Recovery of Compensation**

In the event that the Company is required to prepare a Restatement, the Company shall recover, reasonably promptly and in accordance with Section 4 below, the portion of any Incentive-Based Compensation that is Erroneously Awarded Compensation, unless the Committee has determined that recovery from the relevant current or former Officer would be Impracticable. Recovery shall be required in accordance with the preceding sentence regardless of whether the applicable Officer engaged in misconduct or otherwise caused or contributed to the requirement for the Restatement and regardless of whether or when restated financial statements are filed by the Company.

4. **Manner of Recovery; Limitation on Duplicative Recovery**

The Committee shall, in its sole discretion, determine the manner and timing of recovery of any Erroneously Awarded Compensation, which may include, without limitation, reduction or cancellation by the Company or a subsidiary of the Company of Incentive-Based Compensation or Erroneously Awarded Compensation, reimbursement or repayment by any person subject to this Policy, and, to the extent permitted by law, an offset of the Erroneously Awarded Compensation against other compensation payable by the Company or a subsidiary of the Company to such person. Notwithstanding the foregoing, unless otherwise prohibited by the Applicable Rules, to the extent this

Policy provides for recovery of Erroneously Awarded Compensation already recovered by the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 or Other Recovery Arrangements, the amount of Erroneously Awarded Compensation already recovered by the Company from the recipient of such Erroneously Awarded Compensation may be credited to the amount of Erroneously Awarded Compensation required to be recovered pursuant to this Policy from such person.

5. **Administration**

This Policy shall be administered, interpreted and construed by the Committee, which is authorized to make all determinations necessary, appropriate or advisable for such purpose. The Board may re-vest in itself the authority to administer, interpret and construe this Policy in accordance with applicable law, and in such event references herein to the "Committee" shall be deemed to be references to the Board. Subject to any permitted review by the applicable national securities exchange or association pursuant to the Applicable Rules, all determinations and decisions made by the Committee pursuant to the provisions of this Policy shall be final, conclusive and binding on all persons, including the Company and its subsidiaries, stockholders and employees. The Committee may delegate administrative duties with respect to this Policy to one or more directors or employees of the Company, as permitted under applicable law, including any Applicable Rules.

6. **Interpretation**

This Policy shall be interpreted and applied in a manner that is consistent with the requirements of the Applicable Rules, and to the extent this Policy is inconsistent with such Applicable Rules, it shall be deemed amended to the minimum extent necessary to ensure compliance therewith.

7. **No Indemnification; No Liability**

The Company shall not indemnify or insure any person against the loss of any Erroneously Awarded Compensation pursuant to this Policy, nor shall the Company directly or indirectly pay or reimburse any person for any premiums for third-party insurance policies that such person may elect to purchase to fund such person's potential obligations under this Policy. None of the Company, a subsidiary of the Company, any member of the Committee or the Board or any individual implementing the policy shall have any liability to any person as a result of actions taken under this Policy.

8. **Application; Enforceability**

Effective as of the Effective Date, this Policy will supersede the Prior Policy in all respects. Except as otherwise determined by the Committee or the Board, the adoption of this Policy does not limit, and is intended to apply in addition to, any Other Recovery Arrangements. The remedy specified in this Policy shall not be exclusive and shall be in addition to every other right or remedy at law or in equity that may be available to the Company or a subsidiary of the Company or is otherwise required by applicable law and regulations.

9. **Severability**

The provisions in this Policy are intended to be applied to the fullest extent of the law; provided, however, to the extent that any provision of this Policy is found to be unenforceable or invalid under

any applicable law, such provision will be applied to the maximum extent permitted, and shall automatically be deemed amended in a manner consistent with its objectives to the extent necessary to conform to any limitations required under applicable law.

10. **Amendment and Termination**

The Board or the Committee may amend, modify or terminate this Policy in whole or in part at any time and from time to time in its sole discretion. This Policy will terminate automatically when the Company does not have a class of securities listed on a national securities exchange or association.

11. **Definitions**

"***Applicable Rules***" means Section 10D of the Exchange Act, Rule 10D-1 promulgated thereunder, the listing rules of the national securities exchange or association on which the Company's securities are listed, and any applicable rules, standards or other guidance adopted by the Securities and Exchange Commission or any national securities exchange or association on which the Company's securities are listed.

"***Board***" means the Board of Directors of the Company.

"***Committee***" means the Personnel and Compensation Committee of the Board.

"***Erroneously Awarded Compensation***" means the amount of Incentive-Based Compensation received by a current or former Officer that exceeds the amount of Incentive-Based Compensation that would have been received by such current or former Officer based on a restated Financial Reporting Measure, as determined on a pre-tax basis in accordance with the Applicable Rules.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Financial Reporting Measure***" means any measure determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures derived wholly or in part from such measures, including GAAP, IFRS and non-GAAP/IFRS financial measures, as well as stock price and total stockholder return.

"***GAAP***" means United States generally accepted accounting principles.

"***IFRS***" means international financial reporting standards as adopted by the International Accounting Standards Board.

"***Impracticable***" means (a) the direct expense paid to third parties to assist in enforcing recovery would exceed the Erroneously Awarded Compensation; provided that the Company has (i) made reasonable attempt(s) to recover the Erroneously Awarded Compensation, (ii) documented such reasonable attempt(s) and (iii) provided such documentation to the relevant listing exchange or association, (b) the recovery would violate the Company's home country laws adopted prior to November 28, 2022 pursuant to an opinion of home country counsel; provided that the Company has (i) obtained an opinion of home country counsel, acceptable to the relevant listing exchange or association, that recovery would result in such a violation and (ii) provided such opinion to the relevant listing exchange or association, or (c) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to

meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and the regulations thereunder.

"***Incentive-Based Compensation***" means, with respect to a Restatement, any compensation that is granted, earned, or vested based wholly or in part upon the attainment of one or more Financial Reporting Measures and received by a person: (a) after such person began service as an Officer; (b) who served as an Officer at any time during the performance period for that compensation; (c) while the Company has a class of securities listed on a national securities exchange or association; and (d) during the applicable Three-Year Period. Incentive-Based Compensation does not include compensation that is granted, earned or vested solely upon satisfying one or more strategic or operational measures, as opposed to one or more Financial Reporting Measures, or that is awarded solely on a discretionary basis.

"***Officer***" means each person who the Company determines serves as a Company officer, as defined in Section 16 of the Securities Exchange Act of 1934, as amended.

"***Other Recovery Arrangements***" means any clawback, recoupment, forfeiture or similar policies or provisions of the Company or its subsidiaries, including any such policies or provisions of such effect contained in any employment agreement, bonus plan, incentive plan, equity-based plan or award agreement thereunder or similar plan, program or agreement of the Company or a subsidiary or required under applicable law.

"***Restatement***" means an accounting restatement to correct the Company's material noncompliance with any financial reporting requirement under securities laws, including restatements that correct an error in previously issued financial statements (a) that is material to the previously issued financial statements or (b) that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

"***Three-Year Period***" means, with respect to a Restatement, the three completed fiscal years immediately preceding the date that the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare such Restatement, or, if earlier, the date on which a court, regulator or other legally authorized body directs the Company to prepare such Restatement. The "Three-Year Period" also includes any transition period (that results from a change in the Company's fiscal year) within or immediately following the three completed fiscal years identified in the preceding sentence. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months shall be deemed a completed fiscal year.

ACKNOWLEDGMENT AND CONSENT TO
AMENDED AND RESTATED COMPENSATION RECOUPMENT POLICY

The undersigned has received a copy of the Amended and Restated Compensation Recoupment Policy (the "Policy") adopted by Arch Resources, Inc. (the "Company"), and has read and understands the Policy. In addition, the undersigned acknowledges the existence of the Policy and understands and agrees that it applies to any Incentive-Based Compensation (as defined in the Policy) received on or after the Effective Date.

_____ _____

Date Signature

_____

Name

_____

Title