

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 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, 2022** OR
 TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number: 001-3473

“COAL KEEPS YOUR LIGHTS ON”



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HALLADOR ENERGY COMPANY
(www.halladorenergy.com)

Colorado
(State of incorporation)

84-1014610
(IRS Employer Identification No.)

1183 East Canvasback Drive, Terre Haute, Indiana
(Address of principal executive offices)

47802
(Zip Code)

Issuer's telephone number: 812.299.2800

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	HNRG	Nasdaq Capital Market

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 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 and 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, or a smaller reporting company, or an emerging growth company. See the definitions of "larger 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 Exchange Act). Yes No

The aggregate market value of the common stock held by non-affiliates (public float) on June 30, 2022 was \$116,685,277, based on the closing price reported that date by the NASDAQ of \$5.41 per share.

As of March 16, 2023, we had 32,982,605 shares outstanding. Our Annual Meeting of Shareholders will be held on June 1, 2023, in Terre Haute, IN.

FORWARD-LOOKING STATEMENTS

Certain statements and information in this Annual Report on Form 10-K may constitute “forward-looking statements.” These statements are based on our beliefs as well as assumptions made by, and information currently available to us. When used in this document, the words “anticipate,” “believe,” “continue,” “estimate,” “expect,” “forecast,” “may,” “project,” “will,” and similar expressions identify forward-looking statements. Without limiting the foregoing, all statements relating to our future outlook, anticipated capital expenditures, future cash flows and borrowings and sources of funding are forward-looking statements. These statements reflect our current views with respect to future events and are subject to numerous assumptions that we believe are open to a wide range of uncertainties and business risks, and actual results may differ materially from those discussed in these statements. Among the factors that could cause actual results to differ from those in the forward-looking statements are:

- changes in macroeconomic and market conditions and market volatility, and the impact of such changes and volatility on our financial position;
- the outcome or escalation of current hostilities in Ukraine;
- changes in competition in coal markets and our ability to respond to such changes;
- changes in coal prices, demand, and availability which could affect our operating results and cash flows;
- risks associated with the expansion of our operations and properties, including our recent acquisition of Hoosier Energy's Merom Generation Station;
- legislation, regulations, and court decisions and interpretations thereof, including those relating to the environment and the release of greenhouse gases, mining, miner health and safety, and health care;
- deregulation of the electric utility industry or the effects of any adverse change in the coal industry, electric utility industry, or general economic conditions;
- dependence on significant customer contracts, including renewing customer contracts upon expiration of existing contracts;
- changing global economic conditions or in industries in which our customers operate;
- investors', suppliers and other counterparties increasing attention to environmental, social, and governance ("ESG") matters;
- the effect of changes in taxes or tariffs and other trade measures;
- risks relating to inflation and increasing interest rates;
- liquidity constraints, including those resulting from any future unavailability of financing;
- customer bankruptcies, cancellations or breaches to existing contracts, or other failures to perform;
- customer delays, failure to take coal under contracts or defaults in making payments;
- adjustments made in price, volume or terms to existing coal supply agreements;
- our productivity levels and margins earned on our coal sales;
- changes in equipment, raw material, service or labor costs or availability, including due to inflationary pressures;
- changes in the availability of skilled labor;
- our ability to maintain satisfactory relations with our employees;
- increases in labor costs, adverse changes in work rules, or cash payments or projections associated with workers' compensation claims;
- increases in transportation costs and risk of transportation delays or interruptions;
- operational interruptions due to geologic, permitting, labor, weather-related or other factors;
- risks associated with major mine-related accidents, mine fires, mine floods or other interruptions;
- results of litigation, including claims not yet asserted;
- difficulty maintaining our surety bonds for mine reclamation;
- decline in or change in the coal industry's share of electricity generation, including as a result of environmental concerns related to coal mining and combustion and the cost and perceived benefits of other sources of electricity, such as natural gas, nuclear energy, and renewable fuels;
- difficulty in making accurate assumptions and projections regarding post-mine reclamation;
- uncertainties in estimating and replacing our coal reserves;
- the impact of current and potential changes to federal or state tax rules and regulations, including a loss or reduction of benefits from certain tax deductions and credits;
- difficulty obtaining commercial property insurance;
- evolving cybersecurity risks, such as those involving unauthorized access, denial-of-service attacks, malicious software, data privacy breaches by employees, insiders or others with authorized access, cyber or phishing-attacks, ransomware, malware, social engineering, physical breaches or other actions;

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- difficulty in making accurate assumptions and projections regarding future revenues and costs associated with equity investments in companies we do not control;
- the severity, magnitude and duration of any future pandemics, including impacts of the pandemic and of businesses' and governments' responses to the pandemic on our operations and personnel, and on demand for coal, the financial condition of our customers and suppliers, available liquidity and capital sources and broader economic disruptions; and
- other factors, including those discussed in “Item 1A. Risk Factors”.

If one or more of these or other risks or uncertainties materialize, or should underlying assumptions prove incorrect, our actual results may differ materially from those described in any forward-looking statement. When considering forward-looking statements, you should also keep in mind the risk factors described in “Item 1A. Risk Factors” below. The risk factors could also cause our actual results to differ materially from those contained in any forward-looking statement. We disclaim any obligation to update the above list or to announce publicly the result of any revisions to any of the forward-looking statements to reflect future events or developments, unless required by law.

You should consider the information above when reading any forward-looking statements contained in this Annual Report on Form 10-K; other reports filed by us with the U.S. Securities and Exchange Commission (“SEC”); our press releases; our website <http://www.halladorenergy.com> and written or oral statements made by us or any of our officers or other authorized persons acting on our behalf.

ITEM 1. BUSINESS.

See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of our business.

Regulation and Laws

The coal mining and electricity generation industries are subject to extensive regulation by federal, state and local authorities on matters such as:

- employee health and safety;
- mine permits and other licensing requirements;
- air quality standards;
- water quality standards;
- storage of petroleum products and substances that are regarded as hazardous under applicable laws or that, if spilled, could reach waterways or wetlands;
- plant and wildlife protection that could limit or prohibit mining or exploration;
- restricting the types, quantities and concentration of materials that can be released into the environment in the performance of mining or exploration and production activities;
- discharge of materials;
- storage and handling of explosives;
- wetlands protection;
- surface subsidence from underground mining; and
- the effects, if any, that mining has on groundwater quality and availability.

Failure to comply with environmental laws and regulations may result in the assessment of administrative, civil and criminal sanctions, including monetary penalties, the imposition of strict, joint and several liability, investigatory and remedial obligations, and the issuance of injunctions limiting or prohibiting some or all of the operations on our properties. The regulatory burden on fossil fuel industries increases the cost of doing business and consequently affects profitability. The trend in environmental regulation has been to place more restrictions and limitations on activities that may affect the environment, and thus, any changes in environmental laws and regulations or re-interpretation of enforcement policies that result in more stringent and costly obligations could increase our costs and adversely affect our performance. In addition, the utility industry is subject to extensive regulation regarding the environmental impact of its power generation activities, which has adversely affected demand for coal. It is possible that new legislation or regulations may be adopted, or that existing laws or regulations may be interpreted differently or more stringently enforced, any of which could have a significant impact on our mining operations or our customers’ ability to use coal. For more information, please see risk factors described in “Item 1A. Risk Factors” below.

We are committed to conducting mining operations in compliance with applicable federal, state and local laws and regulations. However, because of the extensive and detailed nature of these regulatory requirements, particularly the regulatory system of the Mine Safety and Health Administration (“MSHA”) where citations can be issued without regard to fault, and many of the standards include subjective elements, it is not reasonable to expect any coal mining company to be free of citations. When we receive a citation, we attempt to remediate any identified condition immediately. While we have not quantified all of the costs of compliance with applicable federal and state laws and associated regulations, those costs have been and are expected to continue to be significant. Compliance with these laws and regulations has substantially increased the cost of coal mining for domestic coal producers.

Expenditures for environmental matters have not been material in recent years. We have accrued for the present value of the estimated cost of asset retirement obligations and mine closings, including the cost of treating mine water discharge, when necessary. The accruals for asset retirement obligations and mine closing costs are based upon permit requirements and the estimated costs and timing of asset retirement obligations and mine closing procedures. Although management believes it has made adequate provisions for all expected reclamation and other costs associated with mine closures, future operating results would be adversely affected if these accruals were insufficient.

Mining Permits and Approvals

Numerous governmental permits or approvals are required for mining operations. Applications for permits require extensive engineering and data analysis and presentation and must address a variety of environmental, health and safety matters associated with a proposed mining operation. These matters include the manner and sequencing of coal extraction, the storage, use and disposal of waste and other substances and impacts on the environment, the construction of water containment areas, and reclamation of the area after coal extraction. Meeting all requirements imposed by any of these authorities may be costly and may delay or prevent commencement or continuation of mining operations.

The permitting process for certain mining operations can extend over several years and can be subject to administrative and judicial challenge, including by the public. Some required mining permits are becoming increasingly difficult to obtain in a timely manner, or at all. We cannot assure you that we will not experience difficulty or delays in obtaining mining permits in the future or that a current permit will not be revoked.

We are required to post bonds to secure performance under our permits. Under some circumstances, substantial fines and penalties, including revocation of mining permits, may be imposed under the laws and regulations described above. Monetary sanctions and, in severe circumstances, criminal sanctions may be imposed for failure to comply with these laws and regulations. Regulations also provide that a mining permit can be refused or revoked if the permit applicant or permittee owns or controls, directly or indirectly through other entities, mining operations that have outstanding environmental violations. Although like other coal companies, we have been cited for violations in the ordinary course of our business, we have never had a permit suspended or revoked because of any violation, and the penalties assessed for these violations have not been material.

Mine Health and Safety Laws

The Federal Mine Safety and Health Act of 1977 (“FMSHA”) and regulations adopted pursuant thereto, imposes extensive and detailed safety and health standards on numerous aspects of mining operations, including training of mine personnel, mining procedures, blasting, the equipment used in mining operations, and numerous other matters. MSHA monitors and rigorously enforces compliance with these federal laws and regulations. In addition, the states where we operate have state programs for mine safety and health regulation and enforcement. Federal and state safety and health regulations affecting the coal mining industry are perhaps the most comprehensive and rigorous system in the United States for the protection of employee safety and have a significant effect on our operating costs. Although many of the requirements primarily impact underground mining, our competitors in all of the areas in which we operate are subject to the same laws and regulations.

FMSHA has been construed as authorizing MSHA to issue citations and orders pursuant to the legal doctrine of strict liability or liability without fault, and FMSHA requires the imposition of a civil penalty for each cited violation. Negligence and gravity assessments, along with other factors can result in the issuance of various types of orders, including orders requiring withdrawal from the mine or the affected area, and some orders can also result in the imposition of civil penalties. FMSHA also contains criminal liability provisions. For example, criminal liability may be imposed upon corporate operators who knowingly and willfully authorize, order or carry out violations of the FMSHA or its mandatory health and safety standards.

The Federal Mine Improvement and New Emergency Response Act of 2006 (“MINER Act”) significantly amended the FMSHA, imposing more extensive and stringent compliance standards, increasing criminal penalties and establishing a maximum civil penalty for non-compliance, and expanding the scope of federal oversight, inspection, and enforcement activities. Following the passage of the MINER Act, MSHA has issued new or more stringent rules and policies on a variety of topics, including:

- sealing off abandoned areas of underground coal mines;
- mine safety equipment, training, and emergency reporting requirements;
- substantially increased civil penalties for regulatory violations;
- training and availability of mine rescue teams;
- underground “refuge alternatives” capable of sustaining trapped miners in the event of an emergency;
- flame-resistant conveyor belts, fire prevention and detection, and use of air from the belt entry; and
- post-accident two-way communications and electronic tracking systems.

MSHA continues to interpret and implement various provisions of the MINER Act, along with introducing new proposed regulations and standards.

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In 2014, MSHA began implementation of a finalized new regulation titled “Lowering Miner’s Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors.” The final rule implemented a reduction in the allowable respirable coal mine dust exposure limits, requires the use of sampling data taken from a single sample rather than an average of samples, and increases oversight by MSHA regarding coal mine dust and ventilation issues at each mine, including the approval process for ventilation plans at each mine, all of which increase mining costs. The second phase of the rule began in February 2016 and requires additional sampling for designated and other occupations using the new continuous personal dust monitor technology, which provides real-time dust exposure information to the miner. Phase three of the rule began in August 2016 and resulted in lowering the current respirable dust level of 2.0 milligrams per cubic meter to 1.5 milligrams per cubic meter of air. Compliance with these rules can result in increased costs on our operations, including, but not limited to, the purchasing of new equipment and the hiring of additional personnel to assist with monitoring, reporting, and recordkeeping obligations. MSHA published a request for information regarding engineering controls and best practices to lower miners’ exposure to respirable coal mine dust, and the comment period closed in July 2022. It is uncertain whether MSHA will present additional proposed rules, or revisions to the final rule, following the closing of the comment period.

MSHA has also published, and may continue to publish, various proposed rules or requests for information, which may result in additional rulemakings. For example, in June 2016, MSHA published a request for information on Exposure of Underground Miners to Diesel Exhaust. Following a comment period that closed in November 2016, MSHA received requests for MSHA and the National Institute for Occupational Safety and Health to hold a Diesel Exhaust Partnership to address the issues covered by MSHA's request for information. The comment period for the request for information closed in September 2020.

In August 2019, MSHA published a request for information regarding exposure to respirable crystalline silica, most commonly found in the mining environment through quartz. The request solicited information regarding best practices to protect miners' health from exposure to quartz, including examination of a new reduced permissible exposure limit, potential new or developing protective technologies, and/or technical and educational assistance. The comment period for the request for information closed in October 2019.

In November 2020, MSHA published a proposed rule to revise Testing, Evaluation, and Approval of Electric Motor-Driven Mine Equipment and Accessories within underground mining environments. The comment period for the proposed rule closed in December 2020.

In September 2021, MSHA published a proposed rule requiring that mine operators employing six or more miners develop and implement a written safety program for mobile and powered haulage equipment at surface mines and surface areas of underground mines (Safety Program for Surface Mobile Equipment). The comment period for the proposed rule closed in November 2021. However, MSHA reopened the rulemaking record for additional public comments. A virtual hearing was held in January 2022, and the comment period closed in February 2022.

It is uncertain whether MSHA will present a final rule addressing any of the above issues or any of the other various proposed rules or requests for information or whether any such rule would have material impacts on our operations or our costs of operation.

Subsequent to the passage of the MINER Act, Illinois, Kentucky, Pennsylvania, and West Virginia have enacted legislation addressing issues such as mine safety and accident reporting, increased civil and criminal penalties, and increased inspections and oversight. Additionally, state administrative agencies can promulgate administrative rules and regulations affecting our operations. Other states may pass similar legislation or administrative regulations in the future.

Some of the costs of complying with existing regulations and implementing new safety and health regulations may be passed on to our customers. Although we have not quantified the full impact, implementing and complying with these new federal and state safety laws and regulations have had, and are expected to continue to have, an adverse impact on our results of operations and financial position.

Black Lung Benefits Act

The Black Lung Benefits Act of 1977 and the Black Lung Benefits Reform Act of 1977, as amended in 1981 (“BLBA”), requires businesses that conduct current mining operations to make payments of black lung benefits to current and former coal miners with black lung disease, to some survivors of a miner who dies from this disease, and to a trust fund for the payment of benefits and medical expenses where no responsible coal mine operator has been identified for claims. As of January 1, 2022, the trust fund was funded by an excise tax on production of up to \$0.50 per ton for underground-mined coal and up to \$0.25 per ton for surface-mined coal, but not to exceed 2% of the applicable sales price. The Inflation Reduction Act of 2022 raised the excise tax, effective October 1, 2022, up to \$1.10 per ton of coal from underground mines and up to \$0.55 per ton of coal from surface mines, neither amount to exceed 4.4% of the gross sales price.

Workers' Compensation and Black Lung

We provide income replacement and medical treatment for work-related traumatic injury claims as required by applicable state laws. Workers' compensation laws also compensate survivors of workers who suffer employment-related deaths. We generally self-insure this potential expense using our actuary estimates of the cost of present and future claims. In addition, coal mining companies are subject to federal legislation and various state statutes for the payment of medical and disability benefits to eligible recipients related to coal workers' pneumoconiosis or black lung. We also provide for these claims through self-insurance programs. Our actuarial calculations are based on numerous assumptions, including disability incidence, medical costs, mortality, death benefits, dependents and discount rates.

The revised BLBA regulations took effect in January 2001, relaxing the stringent award criteria established under previous regulations and thus potentially allowing new federal claims to be awarded and allowing previously denied claimants to re-file under the revised criteria. These regulations may also increase black lung-related medical costs by broadening the scope of conditions for which medical costs are reimbursable and increase legal costs by shifting more of the burden of proof to the employer.

The Patient Protection and Affordable Care Act enacted in 2010 includes significant changes to the federal black lung program retroactive to 2005, including an automatic survivor benefit paid upon the death of a miner with an awarded black lung claim and establishes a rebuttable presumption with regard to pneumoconiosis among miners with 15 or more years of coal mine employment that are totally disabled by a respiratory condition. These changes could have a material impact on our costs expended in association with the federal black lung program.

Surface Mining Control and Reclamation Act

The Federal Surface Mining Control and Reclamation Act of 1977 ("SMCRA") and similar state statutes establish operational, reclamation and closure standards for all aspects of surface mining as well as many aspects of underground mining. Currently, ~96% of our production capacity involves underground room and pillar mining (no surface subsidence), and ~4% involves surface mining. We do not engage in either mountain top removal or long-wall mining. SMCRA nevertheless requires that comprehensive environmental protection and reclamation standards be met during the course of and upon completion of our mining activities.

SMCRA and similar state statutes require, among other things, that surface disturbance be restored in accordance with specified standards and approved reclamation plans. SMCRA requires us to restore affected surface areas to approximate the original contours as contemporaneously as practicable with the completion of surface mining operations. Federal law and some states impose on mine operators the responsibility for replacing certain water supplies damaged by mining operations and repairing or compensating for damage to certain structures occurring on the surface as a result of mine subsidence, a consequence of longwall mining and possibly other mining operations. We believe we are in compliance in all material respects with applicable regulations relating to reclamation.

In addition, the Abandoned Mine Lands Program, which is part of SMCRA, imposes a reclamation fee on all current mining operations, the proceeds of which are used to restore mines closed before 1977. The fee expired on September 30, 2021, and was reauthorized through September 30, 2034, under the Infrastructure Investment and Jobs Act which was signed on November 15, 2021. The fee, as reauthorized, for surface-mined and underground-mined coal is \$0.224 per ton and \$0.096 per ton, respectively, through September 30, 2034. We have accrued the estimated costs of reclamation and mine closing, including the cost of treating mine water discharge when necessary. In addition, states from time to time have increased and may continue to increase their fees and taxes to fund reclamation or orphaned mine sites and acid mine drainage control on a statewide basis.

Under SMCRA, responsibility for unabated violations, unpaid civil penalties and unpaid reclamation fees of independent contract mine operators and other third parties can be imputed to other companies that are deemed, according to the regulations, to have "owned" or "controlled" the third-party violator. Sanctions against the "owner" or "controller" are quite severe and can include being blocked from receiving new permits and having any permits revoked that were issued after the time of the violations or after the time civil penalties or reclamation fees became due. We are not aware of any currently pending or asserted claims against us relating to the "ownership" or "control" theories discussed above. However, we cannot assure you that such claims will not be asserted in the future.

In April 2015, the United States Environmental Protection Agency ("EPA") finalized rules on coal combustion residuals ("CCRs"); however, the final rule does not address the placement of CCRs in minefills or non-minefill uses of CCRs at coal mine sites. The Federal Office of Surface Mining ("OSM") has announced their intention to release a proposed rule to regulate placement and use of CCRs at coal mine sites, but to date, no further action has been taken. These actions by OSM potentially could result in additional delays and costs associated with obtaining permits, prohibitions or restrictions relating to mining activities, and additional enforcement actions.

Bonding Requirements

Federal and state laws require bonds to secure our obligations to reclaim lands used for mining, and to satisfy other miscellaneous obligations. These bonds are typically renewable on a yearly basis. It has become increasingly difficult for our competitors and us to secure new surety bonds without posting collateral, and in some cases, it is unclear what level of collateral will be required. In addition, surety bond costs have increased while the market terms of surety bonds have generally become less favorable to us. It is possible that surety bond issuers may refuse to renew bonds or may demand additional collateral upon those renewals. Our failure to maintain or inability to acquire surety bonds that are required by federal and state laws would have a material adverse effect on our ability to produce coal, which could affect our profitability and cash flow.

Air Emissions

The Clean Air Act ("CAA") and similar state and local laws and regulations regulate emissions into the air and affect coal mining operations. The CAA directly impacts our coal mining and processing operations by imposing permitting requirements and, in some cases, requirements to install certain emissions control equipment, achieve certain emissions standards, or implement certain work practices on sources that emit various air pollutants. The CAA also indirectly affects coal mining operations by extensively regulating the air emissions of coal-fired electric power generating plants and other coal-burning facilities. There have been a series of federal rulemakings focused on emissions from coal-fired electric generating facilities. Installation of additional emissions control technology and any additional measures required under applicable federal and state laws and regulations related to air emissions will make it more costly to operate coal-fired power plants and possibly other facilities that consume coal and, depending on the requirements of individual state implementation plans ("SIPs"), could make fossil fuels a less attractive fuel alternative in the planning and building of power plants in the future. A significant reduction in fossil fuels' share of power generating capacity could have a material adverse effect on our business, financial condition and results of operations.

In addition to the greenhouse gas ("GHG") issues discussed below, the air emissions programs that may affect our operations, directly or indirectly, include, but are not limited to, the following:

- The EPA's Acid Rain Program, provided in Title IV of the CAA, regulates emissions of sulfur dioxide from electric generating facilities. Sulfur dioxide is a by-product of coal combustion. Affected facilities purchase or are otherwise allocated sulfur dioxide emissions allowances, which must be surrendered annually in an amount equal to a facility's sulfur dioxide emissions in that year. Affected facilities may sell or trade excess allowances to other facilities that require additional allowances to offset their sulfur dioxide emissions. In addition to purchasing or trading for additional sulfur dioxide allowances, affected power facilities can satisfy the requirements of the EPA's Acid Rain Program by switching to lower-sulfur fuels, installing pollution control devices such as flue gas desulfurization systems, or "scrubbers," or by reducing electricity generating levels. These requirements would not be supplanted by a replacement rule for the Clean Air Interstate Rule ("CAIR"), discussed below.
- The CAIR calls for power plants in 28 states and Washington, D.C. to reduce emission levels of sulfur dioxide and nitrogen oxide pursuant to a cap-and-trade program similar to the system in effect for acid rain. In June 2011, the EPA finalized the Cross-State Air Pollution Rule ("CSAPR"), a replacement rule for CAIR, which would have required 28 states in the Midwest and eastern seaboard to reduce power plant emissions that cross state lines and contribute to ozone and/or fine particle pollution in other states. CSAPR has become increasingly irrelevant with continuing coal plant retirements making the nitrogen oxide ozone budget less stringent and lowering emission allowance prices to levels closer to average operating cost for many of our customers. The full impact of CSAPR is unknown at the present time due to the implementation of Mercury and Air Toxic Standards ("MATS"), discussed below, and the impact of the continuing coal plant retirements.
- In February 2012, the EPA adopted the MATS, which regulates the emission of mercury and other metals, fine particulates, and acid gases such as hydrogen chloride from coal and oil-fired power plants. In March 2013, the EPA finalized a reconsideration of the MATS rule as it pertains to new power plants, principally adjusting emissions limits to levels attainable by existing control technologies. In subsequent litigation, the U.S. Supreme Court struck down the MATS rule based on the EPA's failure to take costs into consideration. The D.C. Circuit Court allowed the current rule to stay in place until the EPA issued a new finding. In April 2016, the EPA issued a final supplemental finding upholding the rule and concluding that a cost analysis supports the MATS rule. In April 2017, the D.C. Circuit Court of Appeals granted the EPA's request to cancel oral arguments and ordered the case held in abeyance for an EPA review of the supplemental finding. In December 2018, the EPA issued a proposed Supplemental Cost Finding, as well as the CAA required "risk and technology review." In May 2020, EPA issued a final rule that reverses the Agency's prior determination from 2000 and 2016 that it was "appropriate and necessary" to regulate hazardous air pollutants ("HAP") from coal-fueled Electric Generating Units ("EGUs") under the MATS rule. However, in February 2022, EPA published a proposed rule proposing to revoke the May 2020 finding. The final rule remains pending. Although various issues surrounding the MATS rule remain subject to litigation in the D.C. Circuit, the MATS rule has forced generators to make capital investments to retrofit power plants and could lead to additional premature retirements of older coal-fired generating units.

The announced and possible additional retirements are likely to reduce the demand for coal. Apart from MATS, several states have enacted or proposed regulations requiring reductions in mercury emissions from coal-fired power plants, and federal legislation to reduce mercury emissions from power plants has been proposed. Regulation of mercury emissions by the EPA, states, or Congress may decrease the future demand for coal. We continue to evaluate the possible scenarios associated with CSAPR and MATS and the effects they may have on our business and our results of operations, financial condition or cash flows.

- The EPA is required by the CAA to periodically re-evaluate the available health effects information to determine whether the National Ambient Air Quality Standards (“NAAQS”) should be revised. Pursuant to this process, the EPA has adopted more stringent NAAQS for fine particulate matter (“PM”), ozone, nitrogen oxide, and sulfur dioxide. As a result, some states will be required to amend their existing SIPs to attain and maintain compliance with the new air quality standards and other states will be required to develop new SIPs for areas that were previously in “attainment” but do not attain the new standards. In addition, under the revised ozone NAAQS, significant additional emissions control expenditures may be required at coal-fired power plants. In March 2019, the EPA published a final rule that retained the current primary NAAQS for sulfur oxide. In December 2020, EPA published a final rule to retain the current NAAQS for both PM and ozone; however, various entities have filed litigation against one or both of these rulemakings, and the Biden Administration announced that it would reconsider and potentially revise the NAAQS. However, with respect to ozone, a draft assessment released in April 2022 indicates EPA staff have reached a preliminary conclusion that the December 2020 decision will stand, but uncertainty remains until a final decision is reached. New standards may impose additional emissions control requirements on new and expanded coal-fired power plants and industrial boilers. Because coal mining operations and coal-fired electric generating facilities emit particulate matter and sulfur dioxide, our mining operations and our customers could be affected when the new standards are implemented by the applicable states, and developments might indirectly reduce the demand for coal.
- The EPA’s regional haze program is designed to protect and improve visibility at and around national parks, national wilderness areas, and international parks. Under the program, states are required to develop SIPs to improve visibility. Typically, these plans call for reductions in sulfur dioxide and nitrogen oxide emissions from coal-fueled electric plants. In prior cases, the EPA has decided to negate the SIPs and impose stringent requirements through FIPs. The regional haze program, including particularly the EPA’s FIPs, and any future regulations may restrict the construction of new coal-fired power plants whose operation may impair visibility at and around federally protected areas and may require some existing coal-fired power plants to install additional control measures designed to limit haze-causing emissions. These requirements could limit the demand for coal in some locations. In September 2018, the EPA issued a memorandum that detailed plans to assist states as they develop their SIPs, which was followed by a supplemental memorandum in July 2021 for SIPs for the second implementation period.
- The EPA’s new source review (“NSR”) program under the CAA in certain circumstances requires existing coal-fired power plants, when modifications to those plants significantly increase emissions, to install more stringent air emissions control equipment. The Department of Justice, on behalf of the EPA, has filed lawsuits against a number of coal-fired electric generating facilities alleging violations of the NSR program. The EPA has alleged that certain modifications have been made to these facilities without first obtaining certain permits issued under the program. Several of these lawsuits have been settled, but others remain pending. In October 2020, the EPA finalized a rule to clarify the process for evaluating whether the NSR permitting program would apply to a proposed modification of a source of air emissions. The EPA has announced that it will review the NSR program. Depending on the ultimate resolution of the EPA’s litigation and review, demand for coal could be affected.

GHG Emissions

Combustion of fossil fuels, such as the coal we produce, results in the emission of GHGs, such as carbon dioxide and methane. Combustion of fuel for mining equipment used in coal production also emits GHGs. Future regulation of GHG emissions in the U.S. could occur pursuant to future U.S. treaty commitments, new domestic legislation or regulation by the EPA. Although no comprehensive climate change regulation has been adopted at the federal level in the United States, President Biden has announced that climate change will be a focus of his administration. For example, in January 2021, President Biden issued an executive order that commits to substantial action on climate change, calling for, among other things, the increased use of zero-emissions vehicles by the federal government, the elimination of subsidies provided to the fossil-fuel industry, a doubling of electricity generated by offshore wind by 2030, and increased emphasis on climate-related risks across governmental agencies and economic sectors. Internationally, the Paris Agreement requires member states to submit non-binding, individually-determined emissions reduction targets. These commitments could further reduce demand and prices for fossil fuels. Although the United States had withdrawn from the Paris Agreement, President Biden recommitted the United States in February 2021 and, in April 2021, announced a new, more rigorous nationally determined emissions reduction level of 50-52% reduction from 2005 levels in economy-wide net GHG emissions by 2030. The international community gathered again in Glasgow in November 2021 at the 26th Conference to the Parties (“COP26”) during which multiple announcements were made, including a call for parties to eliminate fossil fuel subsidies, among other measures.

Relatedly, the United States and European Union jointly announced at COP26 the launch of the Global Methane Pledge, an initiative committing to a collective goal of reducing global methane emissions by at least 30% from 2020 levels by 2030, including "all feasible reductions" in the energy sector. Also at COP26, more than forty countries pledged to phase out coal, although the United States did not sign the pledge. At COP27, countries reiterated the agreements from COP26 and were called upon to accelerate efforts toward the phase out of inefficient fossil fuel subsidies. The United States also announced, in conjunction with the European Union and other partner countries, that it would develop standards for monitoring and reporting methane emissions to help create a market for low methane-intensity natural gas. Although no firm commitment or timeline to phase out or phase down all fossil fuels was made at COP27, there can be no guarantees that countries will not seek to implement such a phase out in the future. The impact of these actions remains unclear at this time. Moreover, many states, regions, and governmental bodies have adopted GHG initiatives and have or are considering the imposition of fees or taxes based on the emission of GHGs by certain facilities, including coal-fired electric generating facilities. Others have announced their intent to increase the use of renewable energy sources, displacing coal and other fossil fuels. Depending on the particular regulatory program that may be enacted, at either the federal or state level, the demand for coal could be negatively impacted, which would have an adverse effect on our operations.

Even in the absence of new federal legislation, the EPA has begun to regulate GHG emissions under the CAA based on the U.S. Supreme Court's 2007 decision that the EPA has authority to regulate GHG emissions. Although the U.S. Supreme Court's holding did not expressly involve the EPA's authority to regulate GHG emissions from stationary sources, such as coal-fueled power plants, the EPA has determined on its own that it has the authority to regulate GHG emissions from power plants and issued a final rule which found that GHG emissions, including carbon dioxide and methane, endanger both the public health and welfare. Several rulemakings have been issued under the EPA's New Source Performance Standards ("NSPS") that constrain the GHG emissions of fossil-fuel-fired power plants. In January 2021, the EPA published a final significant contribution finding for purposes of regulating source category of GHG emissions, confirming that such power plants are a source category for such regulations. However, this finding also excludes several sectors and may, therefore, be subject to revision, and future implementation of the NSPS is uncertain at this time. The EPA is expected to publish a notice of proposed rulemaking in Spring 2023.

In August 2015, the EPA issued its final Clean Power Plan ("CPP") rules that establish carbon pollution standards for power plants, called CO2 emission performance rates. Judicial challenges led the U.S. Supreme Court to grant a stay in February 2016 of the implementation of the CPP before the United States Court of Appeals for the District of Columbia ("Circuit Court") even issued a decision. Then, in October 2017 the EPA proposed to repeal the CPP. The EPA subsequently proposed the Affordable Clean Energy ("ACE") rule to replace the CPP with a rule that utilizes heat rate improvement measures as the "best system of emission reduction." The ACE rule adopts new implementing regulations under the CAA to clarify the roles of the EPA and the states, including an extension of the deadline for state plans and EPA approvals; and the rule revises the NSR permitting program to provide EGUs the opportunity to make efficiency improvements without triggering NSR permit requirements. In June 2019, the EPA published the final repeal of the CPP and promulgation of the ACE rule. On January 19, 2021, the Circuit Court struck down the ACE rule and found the EPA's "repeal of the CPP rested critically on a mistaken reading of the CAA." On June 30, 2022, the Supreme Court of the United States reversed and remanded the Circuit Court's decision in *West Virginia v. EPA* and found that, in the promulgation of the CPP, the EPA had acted outside the bounds of the legal authority granted to the agency by Congress.

Notwithstanding the ACE rule, the CPP's requirements and impact during the pendency of the litigation led to premature retirements and could lead to additional premature retirements of coal-fired generating units and reduce the demand for coal. Congress has not currently adopted legislation to restrict carbon dioxide emissions from existing power plants and has not otherwise expanded the legal authority of the EPA following *West Virginia v. EPA*, including as it relates to authority to regulate carbon dioxide emissions from existing and modified power plants as proposed in the NSPS and CPP. We cannot predict whether such legislation will be signed into law in the future.

There have been numerous protests and challenges to the permitting of new fossil fuel infrastructure, including coal-fired power plants and pipelines, by environmental organizations and state regulators for concerns related to GHG emissions. For instance, various state regulatory authorities have rejected the construction of new coal-fueled power plants based on the uncertainty surrounding the potential costs associated with GHG emissions from these plants under future laws limiting the emissions of carbon dioxide. In addition, several permits issued to new coal-fueled power plants without limits on GHG emissions have been appealed to the EPA's Environmental Appeals Board. In addition, over thirty states have currently adopted "renewable energy standards" or "renewable portfolio standards," which encourage or require electric utilities to obtain a certain percentage of their electric generation portfolio from renewable resources by a certain date. Several states have announced their intent to have renewable energy comprise 100% of their electric generation portfolio. Other states may adopt similar requirements, and federal legislation is a possibility in this area. In December 2021, President Biden issued an executive order setting a goal for a carbon pollution-free electricity sector across the country by 2035. To the extent these requirements affect our current and prospective customers, they may reduce the demand for fossil fuel energy, and may affect long-term demand for our coal. Finally, while the U.S. Supreme Court has held that federal common law provides no basis for public nuisance claims against utilities due to their carbon dioxide emissions, the Court did not decide whether similar claims can be brought under state common law. As a result, despite this favorable ruling, tort-type liabilities remain a concern.

In addition, environmental advocacy groups have filed a variety of judicial challenges claiming that the environmental analyses conducted by federal agencies before granting permits and other approvals necessary for certain coal activities do not satisfy the requirements of the National Environmental Policy Act (“NEPA”). These groups assert that the environmental analyses in question do not adequately consider the climate change impacts of these particular projects. In April 2022, the Council on Environmental Quality (“CEQ”) issued a final rule revoking some of the modifications made to the NEPA regulations under the previous administration and reincorporated the consideration of direct, indirect and cumulative effects of major federal actions, including GHG emissions. And, in January 2023, the CEQ released guidance, effective immediately, to assist federal agencies in assessing the GHG emissions and climate change effects of their proposed actions under NEPA.

Many states and regions have adopted GHG initiatives, and certain governmental bodies have or are considering the imposition of fees or taxes based on the emission of GHG by certain facilities, including coal-fired electric generating facilities. For example, in 2005, ten Northeastern states entered into the Regional Greenhouse Gas Initiative agreement (“RGGI”), calling for the implementation of a cap and trade program aimed at reducing carbon dioxide emissions from power plants in the participating states. The members of RGGI have established in statutes and/or regulations a carbon dioxide trading program. Auctions for carbon dioxide allowances under the program began in September 2008. Since its inception, several additional states and Canadian provinces have joined RGGI as participants or observers, while Virginia has withdrawn from RGGI via executive order by its governor. Similar to RGGI, five western states launched the Western Regional Climate Initiative, although only California and certain Canadian provinces are currently active participants. We cannot predict what other regional greenhouse gas reduction initiatives may arise in the future.

It is possible that future international, federal and state initiatives to control GHG emissions could result in increased costs associated with fossil fuel production and consumption, such as costs to install additional controls to reduce carbon dioxide emissions or costs to purchase emissions reduction credits to comply with future emissions trading programs. Such increased costs for fossil fuel consumption could result in some customers switching to alternative sources of fuel, or otherwise adversely affect our operations and demand for our products, which could have a material adverse effect on our business, financial condition, and results of operations. Finally, activists may try to hamper fossil fuel companies by other means, including pressuring financing and other institutions into restricting access to capital, bonding and insurance, as well as pursuing tort litigation for various alleged climate-related impacts.

Water Discharge

The Federal Clean Water Act (“CWA”) and similar state and local laws and regulations regulate discharges into certain waters, primarily through permitting. Section 404 of the CWA imposes permitting and mitigation requirements associated with the dredging and filling of certain wetlands and streams. The CWA and equivalent state legislation, where such equivalent state legislation exists, affect coal mining operations that impact such wetlands and streams. Although permitting requirements have been tightened in recent years, we believe we have obtained all necessary permits required under CWA Section 404 as it has traditionally been interpreted by the responsible agencies. However, mitigation requirements under existing and possible future “fill” permits may vary considerably. For that reason, the setting of post-mine asset retirement obligation accruals for such mitigation projects is difficult to ascertain with certainty and may increase in the future. Although more stringent permitting requirements may be imposed in the future, we are not able to accurately predict the impact, if any, of such permitting requirements.

In order for us to conduct certain activities, we may need to obtain a permit for the discharge of fill material from the United States Army Corps of Engineers (“Corps of Engineers”) and/or a discharge permit from the state regulatory authority under the state counterpart to the CWA. Our coal mining operations typically require Section 404 permits to authorize activities such as the creation of slurry ponds and stream impoundments. The CWA authorizes the EPA to review Section 404 permits issued by the Corps of Engineers, and in 2009, the EPA began reviewing Section 404 permits issued by the Corps of Engineers for coal mining in Appalachia. Currently, significant uncertainty exists regarding the obtaining of permits under the CWA for coal mining operations in Appalachia due to various initiatives launched by the EPA regarding these permits.

The EPA also has statutory “veto” power over a Section 404 permit if the EPA determines, after notice and an opportunity for a public hearing, that the permit will have an “unacceptable adverse effect.” In January 2011, the EPA exercised its veto power to withdraw or restrict the use of a previously issued permit for Spruce No. 1 Surface Mine in West Virginia, which is one of the largest surface mining operations ever authorized in Appalachia. This action was the first time that such power was exercised with regard to a previously permitted coal mining project which veto was subsequently upheld by the D.C. Circuit Court of Appeals in 2013. Any future use of the EPA’s Section 404 “veto” power could create uncertainty with regard to our continued use of current permits, as well as impose additional time and cost burdens on future operations, potentially adversely affecting our coal revenues. In addition, the EPA initiated a preemptive veto prior to the filing of any actual permit application for a copper and gold mine based on a fictitious mine scenario. The implications of this decision could allow the EPA to bypass the state permitting process and engage in watershed and land use planning.

Total Maximum Daily Load (“TMDL”) regulations under the CWA establish a process to calculate the maximum amount of a pollutant that an impaired waterbody can receive and still meet state water quality standards and to allocate pollutant loads among the point and non-point pollutant sources discharging into that water body. Likewise, when water quality in a receiving stream is better than required, states are required to conduct an antidegradation review before approving discharge permits. The adoption of new TMDL-related allocations or any changes to antidegradation policies for streams near our coal mines could require more costly water treatment and could adversely affect our coal production.

Considerable legal uncertainty exists surrounding the standard for what constitutes jurisdictional waters and wetlands subject to the protections and requirements of the CWA. Rulemakings to establish the extent of such jurisdiction were finalized in 2015 and 2020, respectively, and both rulemakings have been subject to substantial litigation. Although the EPA and Corps of Engineers did not seek to vacate the 2020 rule on an interim basis, two federal district courts in Arizona and New Mexico vacated the 2020 rule in decisions announced during the third quarter of 2021. In December 2022, the EPA and Corps of Engineers released a final revised definition of “waters of the United States” (“WOTUS”) founded upon a pre-2015 definition and including updates to incorporate existing Supreme Court decisions. However, continued uncertainty remains as to the government’s jurisdictional reach as the rule is likely to be subject to legal challenge. Judicial developments further add to this uncertainty. In October 2022, the Supreme Court heard oral arguments in *Sackett v. EPA* regarding the scope and authority of the CWA and the definition of WOTUS and is expected to release an opinion in this case in 2023, which could impact the regulatory definition and its implementation. To the extent any decision expands the scope of the EPA and the Corps of Engineers’ jurisdiction under the CWA, we could face increased costs and delays due to additional permitting and regulatory requirements and possible challenges to permitting decisions.

Hazardous Substances and Wastes

The Federal Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), otherwise known as the “Superfund” law, and analogous state laws, impose liability, without regard to fault or the legality of the original conduct on certain classes of persons that are considered to have contributed to the release of a “hazardous substance” into the environment. These persons include the owner or operator of the site where the release occurred and companies that disposed or arranged for the disposal of the hazardous substances found at the site. Persons who are or were responsible for the release of hazardous substances may be subject to joint and several liability under CERCLA for the costs of cleaning up releases of hazardous substances and natural resource damages. Some products used in coal mining operations generate waste containing hazardous substances. We are currently unaware of any material liability associated with the release or disposal of hazardous substances from our past or present mine sites.

The Federal Resource Conservation and Recovery Act (“RCRA”) and analogous state laws impose requirements for the generation, transportation, treatment, storage, disposal, and cleanup of hazardous and non-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. While these laws impose ongoing compliance obligations, such costs are not believed to have a material impact on our operations.

RCRA impacts the coal industry in particular because it regulates the disposal of certain coal combustion by-products (“CCB”). On April 17, 2015, the EPA finalized regulations under RCRA for the disposal of CCB. Under the finalized regulations, CCB is regulated as “non-hazardous” waste and avoids the stricter, more costly, regulations under RCRA’s hazardous waste rules. While classification of CCB 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. The CCB rule was subject to legal challenge and ultimately remanded to the EPA. On August 28, 2020, the EPA published a final revised rule mandating closure of unlined impoundments, with deadlines to initiate closure between 2021 and 2028, depending on site specific circumstances. Certain provisions of the revised CCB rule were vacated by the D.C. Circuit in 2018. The EPA is expected to finalize additional rules addressing those specific provisions in June 2023. Meanwhile, on January 25, 2022, the EPA published determinations for 9 of 57 CCB facilities who sought approval to continue disposal of CCB and non-CCB waste streams until 2023, as opposed to the initial 2021 deadline for unlined impoundments prescribed by the current rule. While the EPA issued one conditional approval, the EPA is requiring the remaining facilities to cease receipt of waste within 135 days of completion of public comment or around July 2022. And, in January 2023, the EPA issued six proposed determinations to deny facilities’ requests to continue disposal into unlined surface impoundments. The current determinations, future determinations of the same nature, or similar actions in expected future rulemakings could lead to accelerated, abrupt, or unplanned suspension of coal-fired boilers. The combined effect of the CCB rules and Effluent Limitations Guidelines and Standards (“ELG”) regulations (discussed below) has compelled power generating companies to close existing ash ponds and may force the closure of certain existing coal burning power plants that cannot comply with the new standards. Such retirements may adversely affect the demand for our coal.

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On November 3, 2015, the EPA published the final rule, ELG, revising the regulations for the Steam Electric Power Generating category which became effective on January 4, 2016. The rule sets the first federal limits on the levels of toxic metals in wastewater that can be discharged from power plants, based on technology improvements in the steam electric power industry over the last three decades. The combined effect of the CCB and ELG regulations has forced power generating companies to close existing ash ponds and will likely force the closure of certain older existing coal-burning power plants that cannot comply with the new standards. In November 2019, the EPA proposed revisions to the 2015 ELG rule and announced proposed changes to regulations for the disposal of coal ash in order to reduce compliance costs. In October 2020, the EPA published a final rule. In August 2021, the EPA initiated supplemental rulemaking indicating that it intended to strengthen certain discharge limits. The EPA expects to issue a proposed rule for public comment in the summer of 2023. It is unclear what impact these regulations will have on the market for our products.

Endangered Species Act

The federal Endangered Species Act (“ESA”) and counterpart state legislation protect species threatened with possible extinction. The U.S. Fish and Wildlife Service (the “USFWS”) works closely with the OSM and state regulatory agencies to ensure that species subject to the ESA are protected from potential impacts from mining-related activities. In October 2021, the Biden Administration proposed the rollback of new rules promulgated under the Trump Administration and, in June 2022, the USFWS and the National Marine Fisheries Service published a final rule rescinding the 2020 regulatory definition of “habitat.”

If the USFWS were to designate species indigenous to the areas in which we operate as threatened or endangered, or to re-designate a species from threatened to endangered, we could be subject to additional regulatory and permitting requirements, which in turn could increase operating costs or adversely affect our revenues.

Other Environmental, Health and Safety Regulation

In addition to the laws and regulations described above, we are subject to regulations regarding underground and above ground storage tanks in which we may store petroleum or other substances. Some monitoring equipment that we use is subject to licensing under the Federal Atomic Energy Act. Water supply wells located on our properties are subject to federal, state, and local regulations. In addition, our use of explosives is subject to the Federal Safe Explosives Act. We are also required to comply with the Federal Safe Drinking Water Act, the Toxic Substance Control Act, and the Emergency Planning and Community Right-to-Know Act. The costs of compliance with these regulations should not have a material adverse effect on our business, financial condition or results of operations.

Climate Change Issues

Physical Climate Risks. Increased frequency of severe and extreme weather events associated with climate change could materially impact our facilities, energy sales, and results of operations. We are unable to predict these events. However, we perform ongoing assessments of physical risk, including physical climate risk, to our business. More extreme and volatile temperatures, increased storm intensity and flooding, and more volatile precipitation leading to changes in lake and river levels are among the weather events that are most likely to impact our business.

Transition Climate Risks. Future legislative and regulatory programs, at both the federal and state levels, could significantly limit allowed GHG emissions or impose a cost or tax on GHG emissions. Revised or additional future GHG legislation and/or regulation related to the generation of electricity or the extraction, production, distribution, transmission, storage and end use of natural gas could materially impact our gas supply, financial position, financial results and cash flows.

Regarding federal policies, we continue to monitor the implementation of any final and proposed climate change-related legislation and regulations, including the Infrastructure Investment and Jobs Act, signed into law in November 2021; the development of the Enhancement and Standardization of Climate-Related Disclosures, proposed by the SEC in March 2022; the Inflation Reduction Act (“IRA”), signed into law in August 2022; and the EPA’s proposed methane regulations for the oil and natural gas industry, but we cannot predict their impact on our business at this time. We have identified potential opportunities associated with the Infrastructure Investment and Jobs Act and the IRA and are evaluating how they may align with our strategy going forward. The energy-related provisions of the Infrastructure Investment and Jobs Act include new federal funding for power grid infrastructure and resiliency investments, new and existing energy efficiency and weatherization programs, electric vehicle infrastructure for public chargers and additional LIHEAP funding over the next five years. The IRA contains climate and energy provisions, including funding to decarbonize the electric sector.

Suppliers

The main types of goods we purchase are mining equipment and replacement parts, steel-related (including roof control) products, belting products, lubricants, electricity, fuel, and tires. Although we have many long, well-established relationships with our key suppliers, we do not believe that we are dependent on any of our individual suppliers other than for purchases of electricity. The supplier base providing mining materials has been relatively consistent in recent years. Purchases of certain underground mining equipment are concentrated with one principal supplier; however, supplier competition continues to develop.

Illinois Basin (ILB)

The coal industry underwent a significant transformation in the early 1990s, as greater environmental accountability was established in the electric utility industry. Through the U.S. Clean Air Act, acceptable baseline levels were established for the release of sulfur dioxide in power plant emissions. In order to comply with the new law, most utilities switched fuel consumption to low-sulfur coal, thereby stripping the ILB of over 50 million tons of annual coal demand. This strategy continued until mid-2000 when a shortage of low-sulfur coal drove up prices. This price increase combined with the assurance from the U.S. government that the utility industry would be able to recoup their costs to install scrubbers caused utilities to begin investing in scrubbers on a large scale. With scrubbers, the ILB re-opened as a significant fuel source for utilities and has enabled them to burn lower-cost high sulfur coal.

The ILB consists of coal mining operations covering more than 50,000 square miles in Illinois, Indiana, and western Kentucky. The ILB is centrally located between four of the largest regions that consume coal as fuel for electricity generation (East North Central, West South Central, West North Central, and East South Central). The region also has access to sufficient rail and water transportation routes that service coal-fired power plants in these regions as well as other significant coal consuming regions of the South Atlantic and Middle Atlantic.

U. S. Coal Industry

The major coal production basins in the U.S. include Central Appalachia (CAPP), Northern Appalachia (NAPP), Illinois Basin (ILB), Powder River Basin (PRB), and the Western Bituminous region (WB). CAPP includes eastern Kentucky, Tennessee, Virginia and southern West Virginia. NAPP includes Maryland, Ohio, Pennsylvania, and northern West Virginia. The ILB includes Illinois, Indiana, and western Kentucky. The PRB is located in northeastern Wyoming and southeastern Montana. The WB includes western Colorado, eastern Utah, and southern Wyoming. Hallador, through its wholly-owned subsidiary Sunrise Coal, LLC, mines coal exclusively in the ILB.

Coal type varies by basin. Heat value and sulfur content are important quality characteristics and determine the end-use for each coal type.

Coal in the U.S. is mined through surface and underground mining methods. The primary underground mining techniques are longwall mining and continuous (room-and-pillar) mining. The geological conditions dictate which technique to use. Our mines utilize the continuous mining technique. In continuous mining, rooms are cut into the coal bed leaving a series of pillars, or columns of coal, to help support the mine roof and control the flow of air. Continuous mining equipment cuts the coal from the mining face. Generally, openings are driven 20' wide, and the pillars are rectangular in shape measuring 40'x 40'. As mining advances, a grid-like pattern of entries and pillars is formed. Roof bolts are used to secure the roof of the mine. Battery cars move the coal to the conveyor belt for transport to the surface. The pillars can constitute up to 50% of the total coal in a seam.

The United States coal industry is highly competitive, with numerous producers selling into all markets that use coal. We compete against large producers such as Peabody Energy Corporation (NYSE: BTU), Alliance Resource Partners (Nasdaq: ARLP), and other private producers.

Human Capital

As of December 31, 2022, Hallador Energy Company and its subsidiaries employed 980 full-time employees and temporary miners. 930 of those employees and temporary miners are directly involved in the coal mining or coal washing process. Our workforce is entirely union-free. To attract and retain top talent, we provide competitive wages, an annual bonus for all employees, excellent benefits, an employee health clinic, and a culture that is committed to health and safety at all levels.

Employee health and safety is a top priority at Hallador Energy's wholly owned subsidiary, Sunrise Coal, LLC. With a robust safety department and safety standards that exceed mandated guidelines, we make safety the foundation of everything we do. While every precaution is taken to prevent mine emergencies, Sunrise Coal has its own private mine rescue team. This team is trained and ready to manage any emergency at a Sunrise Coal, LLC facility, but also ready and available to assist other mine rescue teams. We continuously monitor safety data such as injury severity, violations per inspection day, and significant and substantial citations and compare to the national averages noting that in 2021 we were at or below the national averages in all three categories. For more information about citations or orders for violations of standards under the FMSHA, as amended by the Miner Act, please see our [Exhibit 95.1](#) to this Annual Report on Form 10-K.

While other companies have moved to high deductible health plans, Hallador Energy is committed to providing comprehensive affordable health insurance with low-cost deductibles and co-pays to take care of our employees and their families. We believe in decreasing the barriers to healthcare, so employees and their dependents do not have to delay care. Our employees and their families also have access to a private full-time health and wellness clinic, with free medications, no cost diagnostics, and a wellness coach.

Beyond investing in the safety and health of its employees, Hallador Energy invests in educational opportunities for its employees. All continuing education requirements and training are completely paid for by the company and tuition reimbursement programs are available to every employee companywide.

Other

We have no significant patents, trademarks, licenses, franchises or concessions.

Our corporate office is located at 1183 East Canvasback Drive, Terre Haute, Indiana, 47802, as well as Sunrise Coal and Hallador Power's corporate offices. All offices can be reached at 812.299.2800. Terre Haute is approximately 70 miles west of Indianapolis.

Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to these reports are available, free of charge, on our website at www.halladorenergy.com under the "Investor Relations" section, as soon as reasonably practicable after we electronically file such reports with, or furnish them to, the SEC at www.sec.gov.

ITEM 1A. RISK FACTORS

Risks Related to our Business

Global economic conditions or economic conditions in any of the industries in which our customers operate as well as sustained uncertainty in financial markets could have material adverse impacts on our business and financial condition that we currently cannot predict.

Weakness in global economic conditions or economic conditions in any of the industries we serve or in the financial markets could materially adversely affect our business and financial condition. For example:

- the demand for electricity in the U.S. and globally may decline if economic conditions deteriorate, which may negatively impact the revenues, margins, and profitability of our business;
- any inability of our customers to raise capital could adversely affect their ability to honor their obligations to us; and
- our future ability to access the capital markets may be restricted as a result of future economic conditions, which could materially impact our ability to grow our business, including development of our coal reserves.

The stability and profitability of our operations could be adversely affected if our customers do not honor existing contracts or do not extend existing or enter into new long-term contracts for coal or electric power.

In 2022, the vast majority of our sales were under contracts having a term greater than one year, which we refer to as long-term contracts. These contracts have historically provided a relatively secure market for the amount of production committed under the terms of the contracts. From time to time industry conditions could make it more difficult for us to enter into long-term contracts with our electric utility customers, and if supply exceeds demand in the coal industry, electric utilities may become less willing to lock in price or quantity commitments for an extended period of time. Accordingly, we may not be able to continue to obtain long-term sales contracts with reliable customers as existing contracts expire, which could subject a portion of our revenue stream to the increased volatility of the spot market.

Some of our long-term sales contracts contain provisions allowing for the renegotiation of prices and, in some instances, the termination of the contract or the suspension of purchases by customers.

Some of our long-term sales contracts contain provisions that allow for the purchase price to be renegotiated at periodic intervals. These price reopener provisions may automatically set a new price based on the prevailing market price or, in some instances, require the parties to the contract to agree on a new price. Any adjustment or renegotiation leading to a significantly lower contract price could adversely affect our operating profit margins. Accordingly, long-term contracts may provide only limited protection during adverse market conditions. In some circumstances, failure of the parties to agree on a price under a reopener provision can also lead to early termination of a contract.

Several of our long-term contracts also contain provisions that allow the customer to suspend or terminate performance under the contract upon the occurrence or continuation of certain events that are beyond the customer's reasonable control. Such events could include labor disputes, mechanical malfunctions and changes in government regulations, including changes in environmental regulations rendering use of our coal inconsistent with the customer's environmental compliance strategies. Additionally, most of our long-term contracts contain provisions requiring us to deliver coal within stated ranges for specific coal characteristics. Failure to meet these specifications can result in economic penalties, rejection or suspension of shipments or termination of the contracts. In the event of early termination of any of our long-term contracts, if we are unable to enter into new contracts on similar terms, our business, financial condition and results of operations could be adversely affected.

We depend on a few customers for a significant portion of our revenue, and the loss of one or more significant customers could affect our ability to maintain the sales volume and price of the coal we produce.

During 2022, we derived 90% of our coal revenue from five customers, each representing at least 10% of our coal sales. If in the future we lose any of these customers without finding replacement customers willing to purchase an equivalent amount of coal on similar terms, or if these customers were to decrease the amounts of coal purchased or the terms, including pricing terms, on which they buy coal from us, it could have a material adverse effect on our business, financial condition and results of operations. Our electric operations revenue for 2022 was generated entirely by one customer as a condition of the Asset Purchase Agreement upon the closing of the acquisition of Hoosier Energy's Merom Generation Station ("Merom") in October 2022.

Our ability to collect payments from our customers could be impaired if their creditworthiness declines or if they fail to honor their contracts with us.

Our ability to receive payment for coal and electric power sold and delivered depends on the continued creditworthiness of our customers. If the creditworthiness of our customers declines significantly, our business could be adversely affected. In addition, if a customer refuses to accept shipments of our coal for which they have an existing contractual obligation, our revenues will decrease, and we may have to reduce production at our mines until our customer's contractual obligations are honored.

Although none of our employees are members of unions, our workforce may not remain union-free in the future.

None of our employees are represented under collective bargaining agreements. However, all of our workforce may not remain union-free in the future, and legislative, regulatory or other governmental action could make it more difficult to remain union-free. If some or all of our currently union-free operations were to become unionized, it could adversely affect our productivity and increase the risk of work stoppages at our mining complexes. In addition, even if we remain union-free, our operations could still be adversely affected by work stoppages at unionized companies, particularly if union workers were to orchestrate boycotts against our operations.

Our recent acquisition of Merom may not achieve its intended results.

On October 21, 2022, the Company, through its subsidiary Hallador Power Company, LLC, completed its acquisition of the one Gigawatt Merom Generating Station located in Sullivan County, Indiana pursuant to an Asset Purchase Agreement with Hoosier Energy. The Company entered into the Asset Purchase Agreement with the expectation that the acquisition of Merom would result in various benefits, including, among other things, securing future demand for a material portion of the Company's coal production and also providing a path for Merom's transition to renewable energy when the coal plant is eventually retired. Achieving the anticipated benefits of the acquisition (including the eventual transition to renewable energy) is subject to a number of uncertainties. Failure to achieve these anticipated benefits could result in lower-than-expected revenues or income generated by the combined businesses and diversion of management's time and energy and could have an adverse effect on the Company's business, financial results and prospects. In addition, in connection with the Asset Purchase Agreement, the Company assumed certain decommissioning costs and environmental responsibilities. In the event these assumed costs and responsibilities exceed the Company's estimates, the Company may incur additional liabilities that could have an adverse effect on the Company's business, financial results and prospects.

The operation and maintenance of the Merom facilities or future investment in the Merom facilities are subject to operational risks that could adversely affect our financial position, results of operations and cash flows.

The operation and maintenance of generating facilities involves many risks, including the performance by key contracted suppliers and maintenance providers; increases in the costs for or limited availability of key supplies, labor and services; breakdown or failure of facilities; curtailment of facilities by counterparties; or the impact of unusual, adverse weather conditions or other natural events, as well as the risk of performance below expected levels of output or efficiency. The Merom facilities contain older generating equipment, which even if maintained in accordance with good engineering practices, may require additional capital expenditures to continue operating at peak efficiency, while additional costs may be required as we eventually transition the Merom facilities to renewable energy. We could also be subject to costs associated with any unexpected failure to produce and deliver power, including failure caused by breakdown or forced outage, as well as the repair of damage to facilities due to storms, natural disasters, wars, sabotage, terrorist acts and other catastrophic events.

Completion of growth projects and future expansion could require significant amounts of financing that may not be available to us on acceptable terms, or at all.

We plan to fund capital expenditures for our current growth projects with existing cash balances, future cash flows from operations, borrowings under credit facilities and cash provided from the issuance of debt or equity. At times, weakness in the energy sector in general and coal, in particular, has significantly impacted access to the debt and equity capital markets. Accordingly, our funding plans may be negatively impacted by this constrained environment as well as numerous other factors, including higher than anticipated capital expenditures or lower than expected cash flow from operations. In addition, we may be unable to refinance our current debt obligations when they expire or obtain adequate funding prior to expiry because our lending counterparties may be unwilling or unable to meet their funding obligations. Furthermore, additional growth projects and expansion opportunities may develop in the future that could also require significant amounts of financing that may not be available to us on acceptable terms or in the amounts we expect, or at all.

Various factors could adversely impact the debt and equity capital markets as well as our credit ratings or our ability to remain in compliance with the financial covenants under our then current debt agreements, which in turn could have a material adverse effect on our financial condition, results of operations and cash flows. If we are unable to finance our growth and future expansions as expected, we could be required to seek alternative financing, the terms of which may not be attractive to us, or to revise or cancel our plans.

Terrorist attacks or cyber-incidents could result in information theft, data corruption, operational disruption and/or financial loss.

Like most companies, we have become increasingly dependent upon digital technologies, including information systems, infrastructure and cloud applications and services, to operate our businesses, to process and record financial and operating data, communicate with our business partners, analyze mine and mining information, estimate quantities of coal reserves, as well as other activities related to our businesses. Strategic targets, such as energy-related assets, could be at greater risk of future terrorist or cyber-attacks than other targets in the U.S. Deliberate attacks on, or security breaches in, our systems or infrastructure, or the systems or infrastructure of third parties, could lead to corruption or loss of our proprietary data and potentially sensitive data, delays in production or delivery, difficulty in completing and settling transactions, challenges in maintaining our books and records, environmental damage, communication interruptions, other operational disruptions and third-party liability. Our insurance may not protect us against such occurrences. Consequently, it is possible that any of these occurrences, or a combination of them, could have a material adverse effect on our business, financial condition, results of operations and cash flows. Further, as cyber incidents continue to evolve, we could be required to expend additional resources to continue to modify or enhance our protective measures or to investigate and remediate any vulnerability to cyber incidents.

We may not recover our investments in our mining and other assets, which may require us to recognize impairment charges related to those assets.

The value of our assets has from time to time been adversely affected by numerous uncertain factors, some of which are beyond our control, including unfavorable changes in the economic environments in which we operate, lower-than-expected coal pricing, technical and geological operating difficulties, an inability to economically extract our coal reserves and unanticipated increases in operating costs. These factors may trigger the recognition of additional impairment charges in the future, which could have a substantial impact on our results of operations.

If we are unable to comply with the covenants contained in our credit agreement, the lenders could declare all amounts outstanding to be due and payable and foreclose on their collateral, which could materially adversely affect our financial condition and operations.

As disclosed in [Note 5](#) to our financial statements, there are two key ratio covenants stated in our credit agreement: (i) a Minimum Debt Service Coverage Ratio (consolidated adjusted EBITDA/annual debt service) of 1.25 to 1.00 and (ii) a Maximum Leverage Ratio (consolidated funded debt/trailing twelve months adjusted EBITDA) not to exceed 2.50 to 1.00, which also decreases for March 31, 2023 and each fiscal quarter thereafter to 2.25 to 1.00.

On December 31, 2022, our debt service coverage ratio was 1.49, and our leverage ratio was 2.05. Therefore, we were in compliance with these two ratios.

Our indebtedness may limit our ability to borrow additional funds or capitalize on business opportunities.

On December 31, 2022, our funded bank debt was \$85.2 million, we had outstanding convertible notes totaling \$19 million, and held letters of credit totaling \$11.2 million. Our leverage may:

- adversely affect our ability to finance future operations and capital needs;
- limit our ability to pursue acquisitions and other business opportunities; and
- make our results of operations more susceptible to adverse economic or operating conditions.

Various limitations in our debt agreements may reduce our ability to incur additional indebtedness, to engage in some transactions, and capitalize on business opportunities. Any subsequent refinancing of our current indebtedness or any new indebtedness could have similar or greater restrictions.

We could be deemed ineligible for the Paycheck Protection Program (PPP) loan we received in 2020 upon audit by the United States Small Business Administration (SBA) upon completion of an SBA audit.

The PPP loan application required us to certify that the current economic uncertainty made the PPP loan request necessary to support our ongoing operations. While we made this certification in good faith after analyzing, among other things, our financial situation and access to alternative forms of capital, and believe that we satisfied all eligibility criteria and that our receipt of the PPP loan is consistent with the broad objectives of the Paycheck Protection Program of the CARES Act, the certification described above does not contain any objective criteria and is subject to interpretation. In addition, the SBA has stated that it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith. The lack of clarity regarding loan eligibility under the program resulted in significant media coverage and controversy with respect to public companies applying for and receiving loans. If despite our good faith belief that we satisfied all eligibility requirements for the PPP loan, we are found to have been ineligible to receive the PPP loan or in violation of any of the laws or regulations that apply to us in connection with the PPP loan, including the False Claims Act, we may be subject to penalties, including significant civil, criminal and administrative penalties and could be required to repay the PPP loan. We received forgiveness of the entire \$10 million of the PPP loan in July 2021, and as a part of the forgiveness process were required to make certain certifications that remain subject to audit and review by governmental entities and could subject us to significant penalties and liabilities if found to be inaccurate. In addition, our receipt of the PPP loan resulted in adverse publicity, and a review or audit by the SBA or other government entity or claims under the False Claims Act could consume significant financial and management resources. Any of these events could harm our business, results of operations, and financial condition.

Investor and lender focus on ESG matters may negatively impact our business, financial results, and stock price.

Companies across all industries, including companies in the fossil-fuel industry, are facing increased scrutiny from stakeholders related to their ESG practices. Companies that do not adapt or comply with evolving investor or stakeholder expectations and standards, or are perceived to have not responded appropriately to ESG issues, regardless of any legal requirement to do so, may suffer reputational damage and the business, financial condition, and stock price of such companies could be materially and adversely affected. Several advocacy groups, both domestically and internationally, have campaigned for governmental and private action to promote change at public companies related to ESG matters, including through the investment and voting practices of investment advisers, public pension funds, universities, and other members of the investing community. These activities include increasing attention to and demands for action related to climate change, promoting the use of substitutes to fossil-fuel products, encouraging the divestment of fossil-fuel equities, and pressuring lenders to limit funding to companies engaged in the extraction of fossil-fuel reserves. These activities could increase costs, impact our supply chain, reduce demand for our coal, reduce our profits, increase the potential for investigations and litigation, impair our brand, limit our choices for lenders, insurance providers and business partners, and have negative impacts on our stock price and access to capital markets.

In addition, certain organizations that provide corporate governance and other corporate risk information to investors have developed scores and ratings to evaluate companies and investment funds based upon ESG or "sustainability" metrics. Currently, there are no universal standards for such scores or ratings, but consideration of sustainability evaluations is becoming more broadly accepted by investors. Indeed, many investment funds focus on positive ESG business practices and sustainability scores when making investments, whereas other funds may use certain ESG criteria to "screen" certain sectors, such as coal or fossil fuels more generally, out of their investments. In addition, investors, particularly institutional investors, use these scores to benchmark companies against their peers and if a company is perceived as lagging, these investors may engage with companies to require improved ESG disclosure or performance or sell their interests in the company, particularly if its ESG performance does not improve. Moreover, certain members of the broader investment community may consider a company's sustainability score as a reputational or other factor in making an investment decision. Companies in the energy industry, and in particular those focused on coal, natural gas, or oil extraction, often do not score as well under ESG assessments compared to companies in other industries. Consequently, a low ESG or sustainability score could result in our securities being excluded from the portfolios of certain investment funds and investors, restricting our access to capital to fund our continuing operations and growth opportunities. Additionally, to the extent ESG matters negatively impact our reputation, we may not be able to compete as effectively to recruit or retain employees, which may adversely affect our operations.

Public statements with respect to ESG matters, such as emission reduction goals, other environmental targets, or other commitments addressing certain social issues, are becoming increasingly subject to heightened scrutiny from public and governmental authorities related to the risk of potential "greenwashing," i.e., misleading information or false claims overstating potential ESG benefits. For example, in March 2021, the SEC established the Climate and ESG Task Force in the Division of Enforcement to identify and address potential ESG-related misconduct, including greenwashing. Certain non-governmental organizations and other private actors have also filed lawsuits under various securities and consumer protection laws alleging that certain ESG-statements, goals, or standards were misleading, false, or otherwise deceptive. As a result, we may face increased litigation risks from private parties and governmental authorities related to our ESG efforts. In addition, any alleged claims of greenwashing against us or others in our industry may lead to further negative sentiment and diversion of investments. Additionally, we could face increasing costs as we attempt to comply with and navigate further ESG-related focus and scrutiny.

A significant portion of the electricity we sell is used by residential and commercial customers for heating and air conditioning. Accordingly, fluctuations in weather, gas and electricity commodity costs, inflation and economic conditions impact demand of our customers and our operating results.

Energy sales are sensitive to variations in weather. Forecasts of energy sales are based on "normal" weather, which represents a long-term historical average. Significant variations from normal weather resulting from climate change or other factors could have, and have had, a material impact on energy sales. Additionally, residential usage, and to some degree commercial usage, is sensitive to fluctuations in commodity costs for electricity, whereby usage declines with increased costs, thus affecting our financial results. Commodity prices have been and may continue to be volatile. Lastly, residential and commercial customers' usage is sensitive to economic conditions and factors such as recession, inflation, unemployment, consumption and consumer confidence. Therefore, prevailing economic conditions affecting the demand of our customers may in turn affect our financial results.

We face various risks related to pandemics and similar outbreaks, which have had and may continue to have material adverse effects on our business, financial position, results of operations, and/or cash flows.

Since first reported in late 2019, the COVID-19 pandemic has dramatically impacted the global health and economic environment, including millions of confirmed cases, business slowdowns or shutdowns, government challenges, and market volatility of an unprecedented nature. The COVID-19 pandemic and related economic repercussions have created significant volatility, uncertainty, and turmoil in the coal and electric industry driven by widespread government-imposed lockdowns. While most government-imposed shut-downs in the United States and abroad have been phased out, there is a possibility that such shut-downs may be reinstated if COVID-19 or another pandemic were to again become an acute, severe risk. This could cause a sustained decrease in demand for our coal and electric power and the failure of our customers to purchase coal or electric power from us that they are obligated to purchase pursuant to existing contracts, which would have a material adverse effect on our operations and financial condition. The various governmental and private responses to the pandemic also led to widespread, global supply chain disruptions. These supply chain disruptions have previously caused and may continue to or again cause some of our suppliers to fail to deliver the quantities of supplies we need or fail to deliver such supplies in a timely manner.

The extent to which COVID-19 or another future pandemic may adversely impact our results of operations, cash flows and financial condition depends on future developments, which are highly uncertain and unpredictable.

Risks Related to our Industry

A substantial or extended decline in coal prices could negatively impact our results of operations.

Our results of operations are primarily dependent upon the prices we receive for our coal, as well as our ability to improve productivity and control costs. The prices we receive for our production depends upon factors beyond our control, including:

- the supply of and demand for domestic and foreign coal;
- weather conditions and patterns that affect demand for or our ability to produce coal;
- the proximity to and capacity of transportation facilities;
- supply chain and cost of raw materials for coal operations;
- competition from other coal suppliers;
- domestic and foreign governmental regulations and taxes;
- the price and availability of alternative fuels;
- the effect of worldwide energy consumption, including the impact of technological advances on energy consumption;
- overall domestic and global economic conditions;
- the adverse impact of the COVID-19 pandemic due to the reduction in demand;
- international developments impacting supply of coal; and
- the impact of domestic and foreign governmental laws and regulations, including environmental and climate change regulations and regulations affecting the coal mining industry and coal-fired power plants, and delays in the receipt of, failure to receive, failure to maintain or revocation of necessary governmental permits.

Any adverse change in these factors could result in weaker demand and lower prices for our products. A substantial or extended decline in coal prices could materially and adversely affect us by decreasing our revenues to the extent we are not protected by the terms of existing coal supply agreements.

Competition within the coal industry could adversely affect our ability to sell coal.

We compete with other coal producers for domestic coal sales in various regions of the U.S. The most important factors on which we compete are delivered price (*i.e.*, the cost of coal delivered to the customer, including transportation costs, which are generally paid by our customers either directly or indirectly), coal quality characteristics, contract flexibility (*e.g.*, volume optionality and multiple supply sources) and reliability of supply. Some competitors could have, among other things, larger financial and operating resources, lower per ton cost of production, or relationships with specific transportation providers. The competition among coal producers could impact our ability to retain or attract customers and could adversely impact our revenues and cash from operations.

Changes in taxes or tariffs and other trade measures could adversely affect our results of operations, financial position and cash flows.

We pay certain taxes and fees related to our operations. Congress or state legislatures may seek to increase these taxes and fees that relate specifically to the coal industry. We cannot predict further developments, and such increases could have a material adverse effect on our results of operations, financial position, and cash flows.

New tariffs and other trade measures could adversely affect our results of operations, financial position and cash flows. In response to the tariffs imposed by the United States, the European Union, Canada, Mexico and China have imposed tariffs on United States goods and services. The new tariffs, along with any additional tariffs or trade restrictions that may be implemented by the United States or retaliatory trade measures or tariffs implemented by other countries, could result in reduced economic activity, increased costs in operating our business, reduced demand and changes in purchasing behaviors for thermal coal, limits on trade with the United States or other potentially adverse economic outcomes. While tariffs and other retaliatory trade measures imposed by other countries on United States goods have not yet had a significant impact on our business or results of operations, we cannot predict further developments, and such existing or future tariffs could have a material adverse effect on our results of operations, financial position and cash flows and could reduce our revenues and cash available for distribution.

Changes in consumption patterns by utilities regarding the use of coal, including plans by utilities to shut down or move away from coal-fired generation, have affected our ability to sell the coal we produce.

The domestic electric utility industry accounts for the vast majority of domestic coal consumption. The amount of coal consumed by the domestic electric utility industry is affected primarily by the overall demand for electricity, environmental and other governmental regulations, and the price and availability of competing fuels for power plants such as nuclear, natural gas and fuel oil as well as alternative sources of energy. Gas-fueled generation has the potential to displace a significant amount of coal-fired electric power generation in the near term, particularly from older, less efficient coal-fired powered generators.

Future environmental regulation of GHG emissions also could accelerate the use by utilities of fuels other than coal. In addition, federal and state mandates for increased use of electricity derived from renewable energy sources could affect demand for coal. Such mandates, combined with other incentives to use renewable energy sources, such as tax credits, could make alternative fuel sources more competitive with coal. Further, far-reaching federal regulations promulgated by the EPA in the last several years, such as CSAPR and MATS, have led to the premature retirement of coal-fired generating units and a significant reduction in the amount of coal-fired generating capacity in the United States. A decrease in coal consumption by the domestic electric utility industry could adversely affect the demand for or the price of coal, which could negatively impact our results of operations and reduce our cash from operations.

Other factors, such as efficiency improvements associated with technologies powered by electricity have slowed electricity demand growth and could contribute to slower growth in the future. Further decreases in the demand for electricity, such as decreases that could be caused by a worsening of current economic conditions or a prolonged economic recession, could have a material adverse effect on the demand for coal and our business over the long term.

Extensive environmental laws and regulations affect coal consumers and have corresponding effects on the demand for coal as a fuel source.

Federal, state and local laws and regulations extensively regulate the amount of sulfur dioxide, particulate matter, nitrogen oxides, mercury and other compounds emitted into the air from coal-fired electric power plants, which are the ultimate consumers of much of our coal. These laws and regulations can require significant emission control expenditures for many coal-fired power plants, and various new and proposed laws and regulations could require further emission reductions and associated emission control expenditures. These laws and regulations could affect demand and prices for coal. There is also continuing pressure on federal and state regulators to impose limits on carbon dioxide emissions from electric power plants, particularly coal-fired power plants. Further, far-reaching federal regulations promulgated by the EPA in the last several years, such as CSAPR and MATS, have led to the premature retirement of coal-fired generating units and a significant reduction in the amount of coal-fired generating capacity in the U.S.

Our operations are subject to a series of risks resulting from climate change.

Combustion of fossil fuels, such as the coal we produce, results in the emission of carbon dioxide into the atmosphere. Concerns about the environmental impacts of such emissions have resulted in a series of regulatory, political, litigation, and financial risks for our business. Global climate issues continue to attract public and scientific attention. Most scientists have concluded that increasing concentrations of GHGs in the Earth's atmosphere could produce climate changes that have significant physical effects, such as increased frequency and severity of storms, droughts and floods, and other climatic events. Increasing government attention is being paid to global climate issues and to emissions of GHGs, including emissions due to fossil fuels.

In the United States, no comprehensive climate change legislation has been implemented at the federal level. However, following the U.S. Supreme Court finding that GHG emissions constitute a pollutant under the CAA, the EPA has adopted regulations that, among other things, establish construction and operating permit reviews for GHG emissions from certain large stationary sources, require the monitoring and annual reporting of GHG emissions from certain sources in the United States, or constrain the emissions of power plants (though such emissions restraints have been subject to challenge.)

Separately, various states and groups of states have adopted or are considering adopting legislation, regulations, or other regulatory initiatives that are focused on such areas as GHG cap-and-trade programs, carbon taxes, reporting and tracking programs, and restriction of emissions. Internationally, the Paris Agreement requires member states to submit non-binding, individually-determined emissions reduction targets. These commitments could further reduce demand and prices for fossil fuels. Although the United States had withdrawn from the Paris Agreement, following President Biden's executive order in January 2021, the United States rejoined the Agreement and, in April 2021, established a goal of reducing economy-wide net GHG emissions 50-52% below levels by 2030. Additionally, at COP26 in Glasgow in November 2021, the United States and the European Union jointly announced the launch of a Global Methane Pledge committing to a collective goal of reducing global methane emissions by at least 30% from 2020 levels by 2030, including "all feasible reductions" in the energy sector. At COP27 in Sharm El-Sheik in November 2022, countries reiterated the agreements from COP26 and were called upon to accelerate efforts toward the phase out of inefficient fossil fuel subsidies. The United States also announced, in conjunction with the European Union and other partner countries, that it would develop standards for monitoring and reporting methane emissions to help create a market for low methane-intensity natural gas. Although no firm commitment or timeline to phase out or phase down all fossil fuels was made at COP27, there can be no guarantees that countries will not seek to implement such a phase out in the future. The full impact of these actions is uncertain at this time and it is unclear what additional initiatives may be adopted or implemented that may have adverse effects upon us and our operators' operations.

Governmental, scientific, and public concern over climate change has also resulted in increased political risks, including certain climate-related pledges made by certain candidates now in political office. In January 2021, President Biden issued an executive order that commits to substantial action on climate change, calling for, among other things, the increased use of zero-emissions vehicles by the federal government, the elimination of subsidies provided to the fossil-fuel industry, a doubling of electricity generated by offshore wind by 2030, and increased emphasis on climate-related risks across governmental agencies and economic sectors. Other actions that may be pursued include restrictive requirements on new pipeline infrastructure or fossil-fuel export facilities or the promulgation of a carbon tax or cap and trade program. Further, although Congress has not passed such legislation, almost half of the states have begun to address GHG emissions, primarily through the planned development of emissions inventories, regional GHG cap and trade programs, or the establishment of renewable energy requirements for utilities. Depending on the particular program, we or our customers could be required to control GHG emissions or to purchase and surrender allowances for GHG emissions resulting from our operations. Litigation risks are also increasing.

Apart from governmental regulation, there are also increasing financial risks for fossil-fuel producers as stakeholders of fossil-fuel energy companies may elect in the future to shift some or all of their support into non-energy related sectors. Institutional lenders who provide financing to fossil-fuel energy companies also have become more attentive to sustainable lending practices and some of them may elect not to provide funding for fossil-fuel energy companies. For example, at COP26, the Glasgow Financial Alliance for Net Zero ("GFANZ") announced that commitments from over 450 firms across 45 countries had resulted in over \$130 trillion in capital committed to net zero goals. The various sub-alliances of GFANZ generally require participants to set short-term, sector-specific targets to transition their financing, investing, and/or underwriting activities to net zero emissions by 2050. There is also a risk that financial institutions will be required to adopt policies that have the effect of reducing the funding provided to the fossil-fuel sector. In late 2020, the Federal Reserve announced it had joined the Network for Greening the Financial System ("NGFS"), a consortium of financial regulators focused on addressing climate-related risks in the financial sector, and, in September 2022, announced that six of the U.S.' largest banks will participate in a pilot climate scenario analysis to enhance the ability of firms and supervisors to measure and manage climate-related financial risk. The Federal Reserve released its pilot exercise in January 2023 which is designed to analyze the impact of both physical and transition risks related to climate change on specific assets of the banks' portfolio. Although we cannot predict the effects of these actions, such limitation of investments in and financing, bonding, and insurance coverages for fossil-fuel energy companies could adversely affect our coal mining operations.

The adoption and implementation of new or more stringent international, federal, or state legislation, regulations, or other regulatory initiatives that impose more stringent standards for GHG emissions from fossil-fuel companies could result in increased costs of compliance or costs of consuming, and thereby reduce demand for coal, which could reduce the profitability of our interests. Additionally, political, litigation, and financial risks could result in either us restricting or canceling mining activities, incurring liability for infrastructure damages as a result of climatic changes, or having an impaired ability to continue to operate in an economic manner. One or more of these developments, as well as concerted conservation and efficiency efforts that result in reduced electricity consumption, and consumer and corporate preferences for non-fossil-fuel sources, including alternative energy sources, could cause prices and sales of our coal to materially decline and could cause our costs to increase and adversely affect our revenues and results of operations.

Climate change may also result in various physical risks, such as the increased frequency or intensity of extreme weather events or changes in meteorological and hydrological patterns that could adversely impact our operations. Such physical risks may result in damage to our facilities or otherwise adversely impact operations which could decrease our production. We may not have insurance to cover these risks and the consequences for our operations could have a negative impact on the costs and revenues from operations.

We or our customers could be subject to related to the alleged effects of climate change.

Increasing attention to climate change risk has also resulted in a recent trend of governmental investigations and private litigation by state and local governmental agencies as well as private plaintiffs in an effort to hold energy companies accountable for the alleged effects of climate change. Other public nuisance lawsuits have been brought in the past against power, coal, and oil & gas companies alleging that their operations are contributing to climate change. The plaintiffs in these suits sought various remedies, including punitive and compensatory damages and injunctive relief. While the U.S. Supreme Court held that federal common law provided no basis for public nuisance claims against the defendants in those cases, tort-type liabilities remain a possibility and a source of concern. Government entities in other states (including California and New York) have brought similar claims seeking to hold a wide variety of companies that produce fossil fuels liable for the alleged impacts of the GHG emissions attributable to those fuels. Those lawsuits allege damages as a result of climate change and the plaintiffs are seeking unspecified damages and abatement under various tort theories. Separately, litigation has been brought against certain fossil-fuel companies alleging that they have been aware of the adverse effects of climate change for some time but failed to adequately disclose such impacts to their investors or consumers. We have not been made a party to these other suits, but it is possible that we could be included in similar future lawsuits initiated by state and local governments as well as private claimants.

Litigation resulting from disputes with our customers could result in substantial costs, liabilities, and loss of revenues.

From time to time we have disputes with our customers over the provisions of long-term coal supply contracts relating to, among other things, coal pricing, quality, quantity and the existence of specified conditions beyond our or our customers' control that suspend performance obligations under the particular contract. Disputes could occur in the future, and we may not be able to resolve those disputes in a satisfactory manner, which could have a material adverse effect on our business, financial condition and results of operations.

Our profitability could decline due to unanticipated mine operating conditions and other events that are not within our control and that may not be fully covered under our insurance policies.

Our mining operations are influenced by changing conditions or events that can affect production levels and costs at particular mines for varying lengths of time and, as a result, can diminish our profitability. These conditions and events include, among others:

- mining and processing equipment failures and unexpected maintenance problems;
- unavailability of required equipment;
- prices for fuel, steel, explosives and other supplies;
- fines and penalties incurred as a result of alleged violations of environmental and safety laws and regulations;
- variations in thickness of the layer, or seam, of coal;
- amounts of overburden, partings, rock and other natural materials;
- weather conditions, such as heavy rains, flooding, ice and other natural events affecting operations, transportation or customers;
- accidental mine water discharges and other geological conditions;
- seismic activities, ground failures, rock bursts or structural cave-ins or slides;
- fires;
- employee injuries or fatalities;
- labor-related interruptions;
- increased reclamation costs;
- inability to acquire, maintain or renew mining rights or permits in a timely manner, if at all;
- fluctuations in transportation costs and the availability or reliability of transportation; and
- unexpected operational interruptions due to other factors.

These conditions have the potential to significantly impact our operating results. Prolonged disruption of production at any of our mines would result in a decrease in our revenues and profitability, which could materially adversely impact our quarterly or annual results.

Our inability to obtain commercial insurance at acceptable rates or our failure to adequately reserve for self-insured exposures could increase our expenses and have a negative impact on our business.

We believe that commercial insurance coverage is prudent in certain areas of our business for risk management. Insurance costs could increase substantially in the future and could be affected by natural disasters, fear of terrorism, financial irregularities, cybersecurity breaches and other fraud at publicly-traded companies, intervention by the government, an increase in the number of claims received by the carriers, and a decrease in the number of insurance carriers. In addition, the carriers with which we hold our policies could go out of business or be otherwise unable to fulfill their contractual obligations or could disagree with our interpretation of the coverage or the amounts owed. In addition, for certain types or levels of risk, such as risks associated with certain natural disasters or terrorist attacks, we may determine that we cannot obtain commercial insurance at acceptable rates, if at all. Therefore, we may choose to forego or limit our purchase of relevant commercial insurance, choosing instead to self-insure one or more types or levels of risks. If we suffer a substantial loss that is not covered by commercial insurance or our self-insurance reserves, the loss and related expenses could harm our business and operating results. Also, exposures exist for which no insurance may be available and for which we have not reserved. In addition, environmental activists could try to hamper fossil-fuel companies by other means including pressuring insurance and surety companies into restricting access to certain needed coverages.

Our mining operations are subject to extensive and costly laws and regulations, and such current and future laws and regulations could increase current operating costs or limit our ability to produce coal.

We are subject to numerous federal, state and local laws and regulations affecting the coal mining industry, including laws and regulations pertaining to employee health and safety, permitting and licensing requirements, air and water quality standards, plant and wildlife protection, reclamation and restoration of mining properties after mining is completed, the discharge or release of materials into the environment, surface subsidence from underground mining and the effects that mining has on groundwater quality and availability. Certain of these laws and regulations may impose strict liability without regard to fault or legality of the original conduct. Failure to comply with these laws and regulations may result in the assessment of administrative, civil and criminal penalties, the imposition of remedial liabilities, and the issuance of injunctions limiting or prohibiting the performance of operations. Complying with these laws and regulations could be costly and time-consuming and could delay commencement or continuation of exploration or production operations. The possibility exists that new laws or regulations may be adopted, or that judicial interpretations or more stringent enforcement of existing laws and regulations could occur, which could materially affect our mining operations, cash flow, and profitability, either through direct impacts on our mining operations, or indirect impacts that discourage or limit our customers' use of coal. Federal and state laws addressing mine safety practices impose stringent reporting requirements and civil and criminal penalties for violations. Federal and state regulatory agencies continue to interpret and implement these laws and propose new regulations and standards. Implementing and complying with these laws and regulations has increased and will continue to increase our operational expense and have an adverse effect on our results of operation and financial position.

We may be unable to obtain and renew permits necessary for our operations, which could reduce our production, cash flow and profitability.

Mining companies must obtain numerous governmental permits or approvals that impose strict conditions and obligations relating to various environmental and safety matters in connection with coal mining. The permitting rules are complex and can change over time. Regulatory authorities exercise considerable discretion in the timing and scope of permit issuance. The public has the right to comment on permit applications and otherwise participate in the permitting process, including through court intervention. Accordingly, permits required to conduct our operations may not be issued, maintained or renewed, or may not be issued or renewed in a timely fashion, or may involve requirements that restrict our ability to economically conduct our mining operations. Limitations on our ability to conduct our mining operations due to the inability to obtain or renew necessary permits or similar approvals could reduce our production, cash flow, and profitability.

The EPA has begun reviewing permits required for the discharge of overburden from mining operations under Section 404 of the CWA. Various initiatives by the EPA regarding these permits have increased the time required to obtain and the costs of complying with such permits. In addition, the EPA previously exercised its “veto” power to withdraw or restrict the use of previously issued permits in connection with one of the largest surface mining operations in Appalachia. The EPA’s action was ultimately upheld by a federal court. As a result of these developments, we may be unable to obtain or experience delays in securing, utilizing or renewing Section 404 permits required for our operations, which could have an adverse effect on our results of operation and financial position.

In addition, some of our permits could be subject to challenges from the public, which could result in additional costs or delays in the permitting process, or even an inability to obtain permits, permit modifications or permit renewals necessary for our operations.

Inflation could result in higher costs and decreased profitability.

The United States, European Union and other large economies have recently experienced inflation at a rate significantly higher than recent years. Current and future inflationary effects may be driven by, among other things, governmental stimulus and monetary policies, supply chain disruptions and geopolitical instability, including the ongoing military conflict between Ukraine and Russia. This recent inflation has resulted in rising prices, including increases in freight rates, prices for energy and other costs, and has adversely impacted us and may further impact us negatively in the future. Sustained inflation could result in higher costs for transportation, energy, materials, supplies and labor. Our efforts to recover inflation-based cost increases from our customers may be hampered as a result of the structure of our contracts and competitive pressures. Accordingly, substantial inflation may have an adverse impact on our business, financial position, results of operations and cash flows. Inflation has also resulted in higher interest rates in the U.S., which could increase our cost of debt borrowing in the future.

Increases in interest rates could adversely affect our business.

The Federal Reserve raised the federal funds interest rate throughout 2022 in its effort to take action against domestic inflation, and is expected to continue to raise these rates in 2023. We have exposure to these past increases in interest rates, and may be affected further in the future. Based on our current variable debt level of \$85.2 million as of December 31, 2022, comprised of funds drawn on our outstanding bank debt, an increase of one percentage point in the interest rate will result in an increase in annual interest expense of slightly less than \$1 million. Any indebtedness we incur in the future may also expose us to increased interest rates, whether as a result of higher fixed rates at the time such a new facility is entered into or because such new indebtedness accrues interest at a variable rate. As a result, our results of operations, cash flows and financial condition could be materially adversely affected by significant increases in interest rates.

Fluctuations in transportation costs and the availability or reliability of transportation could reduce revenues by causing us to reduce our production or by impairing our ability to supply coal to our customers.

Transportation costs represent a significant portion of the total cost of coal for our customers and, as a result, the cost of transportation is a critical factor in a customer’s purchasing decision. Increases in transportation costs could make coal a less competitive source of energy or could make our coal production less competitive than coal produced from other sources. Disruption of transportation services due to weather-related problems, flooding, drought, accidents, mechanical difficulties, strikes, lockouts, bottlenecks or other events could temporarily impair our ability to supply coal to our customers. Our transportation providers could face difficulties in the future that could impair our ability to supply coal to our customers, resulting in decreased revenues. If there are disruptions of the transportation services provided by our primary rail carriers that transport our coal and we are unable to find alternative transportation providers to ship our coal, our business could be adversely affected.

Conversely, significant decreases in transportation costs could result in increased competition from coal producers in other parts of the country. For instance, difficulty in coordinating the many eastern coal loading facilities, the large number of small shipments, the steeper average grades of the terrain and a more unionized workforce are all issues that combine to make coal shipments originating in the eastern U.S. inherently more expensive on a per-mile basis than coal shipments originating in the western U.S. Historically, high coal transportation rates from the western coal-producing areas into certain eastern markets limited the use of western coal in those markets. Lower rail rates from the western coal producing areas to markets served by eastern U.S. coal producers have created major competitive challenges for eastern coal producers. In the event of further reductions in transportation costs from western coal-producing areas, the increased competition with certain eastern coal markets could have a material adverse effect on our business, financial condition and results of operations.

States in which our coal is transported by truck may modify or increase enforcement of their laws regarding weight limits or coal trucks on public roads. Such legislation and enforcement efforts could result in shipment delays and increased costs. An increase in transportation costs could have an adverse effect on our ability to increase or to maintain production and could adversely affect revenues.

Political or financial instability, currency fluctuations, the outbreak of pandemics or other illnesses (such as the COVID- 19 pandemic), labor unrest, transport capacity and costs, port security, weather conditions, natural disasters, or other events that could alter or suspend our operations, slow or disrupt port activities, or affect foreign trade are beyond our control and could materially disrupt our ability to participate in the export market for coal sales, which could adversely affect our sales and our results of operations.

We may not be able to successfully grow through future acquisitions.

We have expanded our operations by adding and developing mines and coal reserves in existing, adjacent and neighboring properties, including through our recent acquisition of Merom. We continually seek to expand our operations and coal reserves. Our future growth could be limited if we are unable to continue to make acquisitions, or if we are unable to successfully integrate the companies, businesses or properties we acquire. We may not be successful in consummating any acquisitions and the consequences of undertaking these acquisitions are unknown. Moreover, any acquisition could be dilutive to earnings. Our ability to make acquisitions in the future could require significant amounts of financing that may not be available to us under acceptable terms and may be limited by restrictions under our existing or future debt agreements, competition from other coal companies for attractive properties or the lack of suitable acquisition candidates.

Expansions and acquisitions involve a number of risks, any of which could cause us not to realize the anticipated benefits.

If we are unable to successfully integrate the companies, businesses or properties we acquire, our profitability may decline, and we could experience a material adverse effect on our business, financial condition, or results of operations. Expansion and acquisition transactions involve various inherent risks, including:

- uncertainties in assessing the value, strengths, and potential profitability of, and identifying the extent of all weaknesses, risks, contingent and other liabilities (including environmental or mine safety liabilities) of, expansion and acquisition opportunities;
- the ability to achieve identified operating and financial synergies anticipated to result from an expansion or an acquisition;
- problems that could arise from the integration of the new operations; and
- unanticipated changes in business, industry or general economic conditions that affect the assumptions underlying our rationale for pursuing the expansion or acquisition opportunity.

Any one or more of these factors could cause us not to realize the benefits anticipated to result from an expansion or acquisition. Any expansion or acquisition opportunities we pursue could materially affect our liquidity and capital resources and may require us to incur indebtedness, seek equity capital or both. In addition, future expansions or acquisitions could result in us assuming more long-term liabilities relative to the value of the acquired assets than we have assumed in our previous expansions and/or acquisitions.

The unavailability of an adequate supply of coal reserves that can be mined at competitive costs could cause our profitability to decline.

Our profitability depends substantially on our ability to mine coal reserves that have the geological characteristics that enable them to be mined at competitive costs and to meet the quality needed by our customers. Because we deplete our reserves as we mine coal, our future success and growth depend, in part, upon our ability to acquire additional coal reserves that are economically recoverable. Replacement reserves may not be available when required or, if available, may not be mineable at costs comparable to those of the depleting mines. We may not be able to accurately assess the geological characteristics of any reserves that we acquire, which could adversely affect our profitability and financial condition. Exhaustion of reserves at particular mines also could have an adverse effect on our operating results that is disproportionate to the percentage of overall production represented by such mines. Our ability to obtain other reserves in the future could be limited by restrictions under our existing or future debt agreements, competition from other coal companies for attractive properties, the lack of suitable acquisition candidates or the inability to acquire coal properties on commercially reasonable terms.

The estimates of our coal reserves could prove inaccurate and could result in decreased profitability.

The estimates of our coal reserves could vary substantially from actual amounts of coal we are able to recover economically. All of the reserves presented in this Annual Report on Form 10-K constitute proven and probable reserves. There are numerous uncertainties inherent in estimating quantities of reserves, including many factors beyond our control. Estimates of coal reserves necessarily depend upon a number of variables and assumptions, any one of which could vary considerably from actual results. These factors and assumptions relate to:

- geological and mining conditions, which may not be fully identified by available exploration data and/or differ from our experiences in areas where we currently mine;
- the percentage of coal in the ground ultimately recoverable;
- historical production from the area compared with production from other producing areas;
- the assumed effects of regulation and taxes by governmental agencies;
- future improvements in mining technology; and
- assumptions concerning future coal prices, operating costs, capital expenditures, severance and excise taxes, and development and reclamation costs.

For these reasons, estimates of the recoverable quantities of coal attributable to any particular group of properties, classifications of reserves based on risk of recovery 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 substantially. Actual production, revenue, and expenditures with respect to our reserves will likely vary from estimates, and these variations may be material. Any inaccuracy in the estimates of our reserves could result in higher than expected costs and decreased profitability.

Mining in certain areas in which we operate is more difficult and involves more regulatory constraints than mining in other areas of the U.S., which could affect the mining operations and cost structures of these areas.

The geological characteristics of some of our coal reserves, such as depth of overburden and coal seam thickness, make them difficult and costly to mine. As mines become depleted, replacement reserves may not be available when required or, if available, may not be mineable at costs comparable to those characteristic of the depleting mines. In addition, permitting, licensing and other environmental and regulatory requirements associated with certain of our mining operations are more costly and time-consuming to satisfy. These factors could materially adversely affect the mining operations and cost structures of, and our customers' ability to use coal produced by, our mines.

Unexpected increases in raw material costs could significantly impair our operating profitability.

Our coal mining operations are affected by commodity prices. We use significant amounts of steel, petroleum products, and other raw materials in various pieces of mining equipment, supplies and materials, including the roof bolts required by the room-and-pillar method of mining. Steel prices and the prices of scrap steel, natural gas and coking coal consumed in the production of iron and steel fluctuate significantly and could change unexpectedly. Inflationary pressures have and could continue to lead to price increases affecting many of the components of our operating expenses such as fuel, steel, and maintenance expense.

There could be acts of nature or terrorist attacks or threats that could also impact the future costs of raw materials. Future volatility in the price of steel, petroleum products or other raw materials will impact our operational expenses and could result in significant fluctuations in our profitability.

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 to secure performance or payment of certain long-term obligations, such as mine closure or reclamation costs. We may have difficulty procuring or maintaining our surety bonds. Our bond issuers may demand higher fees, 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 bonds in place before mining can commence or continue, 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 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 surety and restrictions on availability of collateral for current and future third-party surety bond issuers under the terms of our financing arrangements.

Certain federal income tax deductions currently available with respect to coal mining and production may be eliminated as a result of future legislation.

In past years, members of Congress have indicated a desire to eliminate certain key U.S. federal income tax provisions currently applicable to coal companies, including the percentage depletion allowance with respect to coal properties. Elimination of those provisions would negatively impact our financial statements and results of operations.

A shortage of skilled labor may make it difficult for us to maintain labor productivity and competitive costs and could adversely affect our profitability.

Efficient coal mining using modern techniques and equipment requires skilled laborers, preferably with at least one year of experience and proficiency in multiple mining tasks. In recent years, a shortage of experienced coal miners has caused us to include some inexperienced staff in the operation of certain mining units, which decreases our productivity and increases our costs. This shortage of experienced coal miners is the result of a significant percentage of experienced coal miners reaching retirement age, combined with the difficulty of retaining existing workers in and attracting new workers to the coal industry. Thus, this shortage of skilled labor could continue over an extended period. If the shortage of experienced labor continues or worsens, it could have an adverse impact on our labor productivity and costs and our ability to expand production in the event there is an increase in the demand for our coal, which could adversely affect our profitability.

Disruptions in supply chains could significantly impair our operating profitability.

We are dependent upon vendors to supply mining equipment, safety equipment, supplies, and materials. If a vendor fails to deliver on its commitments, or if common carriers have difficulty providing capacity to meet demands for their services, we could experience reductions in our production or increased production costs, which could lead to reduced profitability and adversely affect our results of operations.

Inflationary pressures could significantly impair our operating profitability.

Any future inflationary or deflationary pressures could adversely affect the results of our operations. For example, at times our results have been significantly impacted by price increases affecting many of the components of our operating expenses such as fuel, steel, maintenance expense and labor. In addition to potential cost increases, inflation could cause a decline in global or regional economic conditions that reduce demand for our coal and could adversely affect our results of operations.

The Russian-Ukrainian conflict, and sanctions brought against Russia, have caused significant market disruptions that may lead to increased volatility in the price of commodities.

The extent and duration of the military conflict involving Russia and Ukraine, resulting sanctions and future market or supply disruptions in the region are impossible to predict, but could be significant and may have a severe adverse effect on the region. Globally, various governments have banned imports from Russia including commodities such as coal. These events have caused volatility in the aforementioned commodity markets. Although we have not experienced any material adverse effect on our results of operations, financial condition or cash flows as a result of the war or the resulting volatility, such volatility, may significantly affect prices for our coal or the cost of supplies and equipment, as well as the prices of competing sources of energy for our electric power plant customers.

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The war, trade and monetary sanctions, as well as any escalation of the conflict and future developments, could significantly affect worldwide market prices and demand for our coal and cause turmoil in the capital markets and generally in the global financial system. Additionally, the geopolitical and macroeconomic consequences of the war and associated sanctions cannot be predicted, but could severely impact the world economy. If any of these events occur, the resulting political instability and societal disruption could reduce overall demand for products, causing a reduction in our revenues or an increase in our costs and thereby materially and adversely affecting our results of operations.

The integration of any expansions or acquisitions that we complete will be subject to substantial risks.

Even if we make expansions or acquisitions that we believe will increase our revenue, any expansion acquisition involves potential risks, including, among other things:

- the validity of our assumptions about estimated proved reserves, future production, prices, revenues, capital expenditures, and operating expenses;
- a decrease in our liquidity by using a significant portion of our cash generated from operations or borrowing capacity to finance acquisitions;
- a significant increase in our interest expense or financial leverage if we incur debt to finance acquisitions;
- the assumption of unknown liabilities, losses or costs for which we are not indemnified or for which any indemnity we receive is inadequate;
- mistaken assumptions about the overall cost of equity or debt;
- our ability to obtain satisfactory title to the assets we acquire;
- an inability to hire, train or retain qualified personnel to manage and operate the acquired assets; and
- the occurrence of other significant changes, such as impairment of properties, goodwill or other intangible assets, asset devaluation, or restructuring charges.

ITEM 1B. UNRESOLVED STAFF COMMENTS. None.

ITEM 2. PROPERTIES.

See “Item 7 - Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of our mines.

ITEM 3. LEGAL PROCEEDINGS. None

ITEM 4. MINE SAFETY DISCLOSURES:

Safety is a core value for us and our subsidiaries. As such, we have dedicated a great deal of time, energy, and resources to creating a culture of safety.

See [Exhibit 95](#) to this Form 10-K for a listing of our mine safety violations.

PART II

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

Stock Price Information

Our common stock trades on the NASDAQ Capital Market under the symbol HNRG, and 31.7% is held by our officers, directors, and their affiliates.

At March 10, 2023, we had 249 shareholders of record of our common stock; this number does not include the shareholders holding stock in "street name." We estimate we have over 5,000 street name holders.

Equity Compensation Plan Information

See Note 9 to our consolidated financial statements.

ITEM 6. [RESERVED]

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

Our consolidated financial statements should be read in conjunction with this discussion. The following analysis includes a discussion of metrics on a per ton basis derived from the condensed consolidated financial statements, which are considered non-GAAP measurements. These metrics are significant factors in assessing our operating results and profitability.

OVERVIEW

Hallador Energy Company (the "Company" or "Hallador") is an energy company operating in the state of Indiana. Historically, the largest portion of our business has been devoted to coal mining in the State of Indiana through Sunrise Coal, LLC (a wholly-owned subsidiary) serving the electric power generation industry.

On October 21, 2022, the Company, through its subsidiary Hallador Power Company, LLC, completed its acquisition of the one Gigawatt ("GW") Merom Generating Station ("Merom") located in Sullivan County, Indiana pursuant to an Asset Purchase Agreement (the "Purchase Agreement") with Hoosier Energy (the "Seller").

As a result of the Merom acquisition, commencing with this Form 10-K, the Company has two reportable segments: coal operations (operated by Sunrise Coal, LLC) and electric operations (operated by Hallador Power Company, LLC).

In addition to our reportable segments, the remainder of our operations are presented as "Corporate and Other" and primarily are comprised of unallocated corporate costs in addition to activities such as a 50% interest in Sunrise Energy, LLC, a private gas exploration company with operations in Indiana, accounted for using the equity method, and our wholly-owned subsidiary Summit Terminal LLC, a logistics transport facility located on the Ohio River.

Fiscal year 2022 was a transitional year for Hallador. The market price for coal approached all-time highs. We were successful in signing 2.2 million tons of new coal sales contracts at an average price of ~\$125 per ton in the summer of 2022, of which a small percentage of deliveries were completed in 2022 and will continue through 2025 with the majority contracted to be delivered in 2023. To fulfill these obligations, we invested substantially in 2022 to expand our coal production capacity from ~6 million tons annually to ~7.5 million tons in 2023.

In addition to our acquisition of Merom in Q4 2022 described above, we also expanded our coal production capacity by adding more units of production at our Oaktown Mining Complex, opening a small surface mine pit near Freelandville, Indiana ("Freelandville"), and moving our Ace in the Hole production to a small surface mine pit near Petersburg, Indiana ("Prosperity"). Freelandville and Prosperity production began in Q3 2022. Volumes from these new pits are expected to be higher cost, and our newer workforce and surface pits will require a ramp to reach peak productivity. We will continue to evaluate the productivity of these mines in connection with market conditions to determine the appropriate operational balance.

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To help fund our investment in expanded mine production, improve our liquidity, and position us to efficiently operate Merom, we issued \$29 million of convertible notes, \$10 million in Q2 2022 and \$19 million in Q3 2022. The \$10 million of notes issued in Q2 2022 have been converted into the Company's common stock, bringing our outstanding share count to 33.0 million shares as of December 31, 2022. If the additional notes issued in Q3 2022 were to also convert, our outstanding share count would increase to approximately 36.1 million shares, representing an approximate 17% increase in share count.

Bank debt was reduced during the year by \$26.5 million bringing the balance owed at the end of fiscal 2022 to \$85.2 million, bringing the Debt to EBITDA covenant under our credit agreement to 2.05X at the end of fiscal 2022. See Note 5 to our consolidated financial statements for additional discussion about our bank debt and related liquidity.

Mining Properties

The following information concerning our mining properties has been prepared in accordance with the requirements of subpart 1300 of Regulation S-K, which first became applicable to us for the fiscal year ended December 31, 2021. These requirements differ from the previously applicable disclosure requirements of SEC Industry Guide 7. Among other differences, subpart 1300 of Regulation S-K requires us to disclose our mineral (coal) resources, which we have none, in addition to our mineral (coal) reserves, as of the end of our most recently completed fiscal year both in the aggregate and for each of our individually material mining properties.

As used in this Annual Report on Form 10-K, the terms “mineral resources,” “mineral reserve,” “proven mineral reserve” and “probable mineral reserve” are defined and used in accordance with subpart 1300 of Regulation S-K. Under subpart 1300 of Regulation S-K, mineral resources may not be classified as “mineral reserves” unless the determination has been made by a qualified person (QP) that the mineral resources can be the basis of an economically viable project. You are specifically cautioned not to assume that any part or all of the mineral deposits (including any mineral resources) in these categories will ever be converted into mineral reserves, as defined by the SEC.

Internal qualified person(s) have estimated the Company's mineral reserves and mineral resources based on geologic data, coal ownership (control) information, and current and/or proposed operating plans. Periodic updates occur to mineral reserve and mineral resource estimates attributable to revised mine plans, new exploration data, depletion from coal production, property acquisitions or dispositions, and/or other geologic or mining data. Sunrise's estimates of mineral reserves are proven and probable reserves that could be extracted or produced at the time of the reserve determination, economically, legally, and after considering all material modifying factors. Modifications or updates of the estimates of the Company's mineral reserves is limited to qualified geologists and mining engineers. All modifications or updates of the estimates of recoverable coal reserves are documented. The John T. Boyd Company, a qualified person firm, has assessed the Company's estimates of mineral reserves and mineral resources and supporting information. Based upon the review, John T. Boyd Company provided modification to the Company's estimates of mineral reserves where warranted.

The information that follows is derived, for the most part, from, and in some instances is extracted from, the Oaktown Mining Complex technical report summary (“TRS”) that was filed with our 2021 Annual Report on form 10-K and a subsequent update letter from John T. Boyd Company. There were no material adjustments to the coal resources and reserves necessitating the filing of an amended or revised TRS. The Oaktown Mining Complex is the Company's individually material property. Sections of the following information provided herein do not fully describe assumptions, qualifications, and procedures. Reference should be made to the full text of the TRS which is made a part of this Annual report on Form 10-K and incorporated hereby by reference. The Oaktown Mining Complex TRS was prepared by the John T. Boyd Company in compliance with the Item 60(b)(96) and subpart 1300 of Regulation S-K.

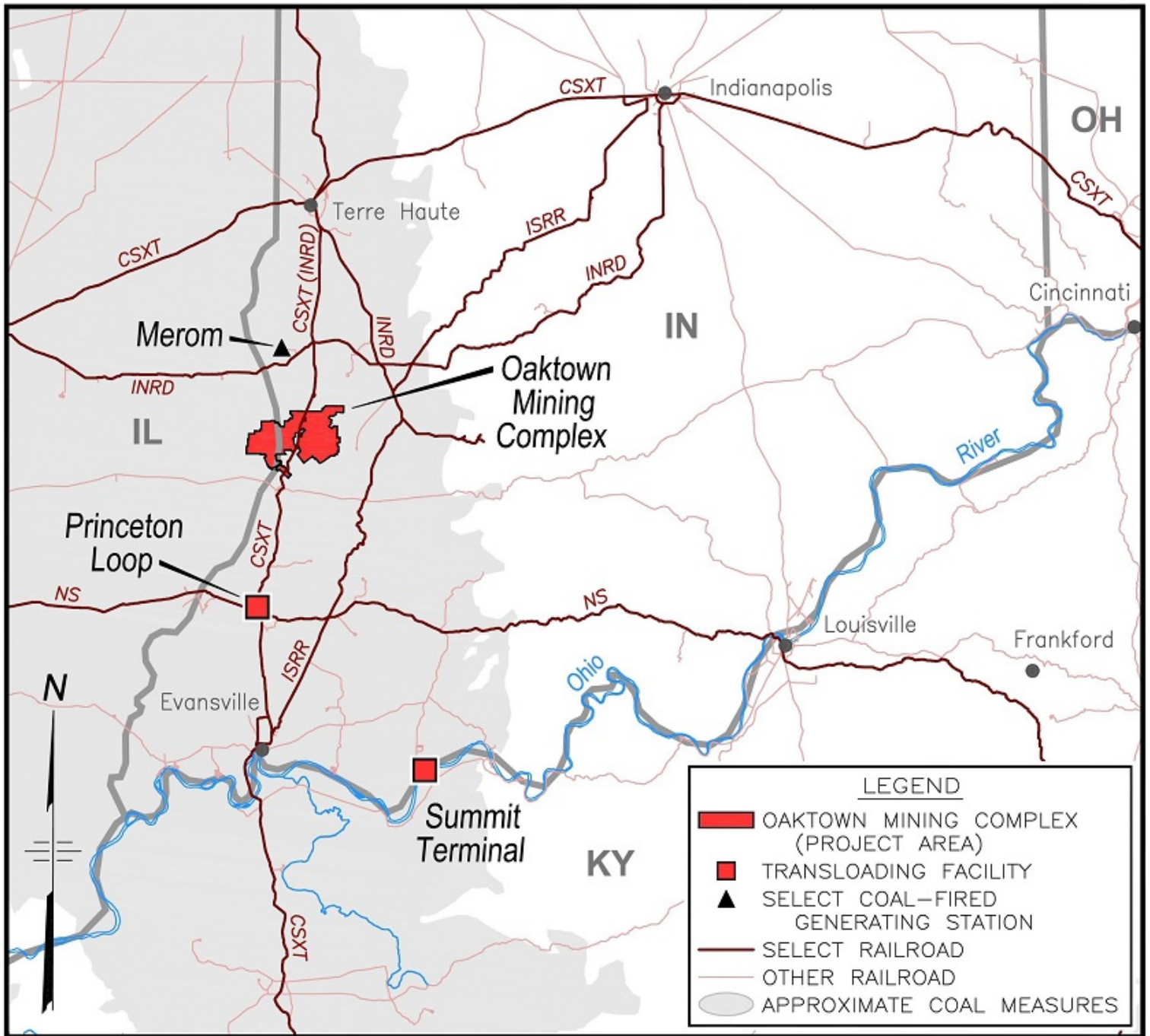
The following table provides a summary of all of the Company's mineral reserves determined by the John T. Boyd Company as of the end of the fiscal year ended December 31, 2022:

SUMMARY MINERAL RESERVES AT END OF THE FISCAL YEAR ENDED DECEMBER 31, 2022

	Mineral Reserves (tons in millions)		
	Proven	Probable	Total
Oaktown Mining Complex			
Oaktown Fuels No. 1 Mine	36.2	0.5	36.7
Oaktown Fuels No. 2 Mine	28.5	1.1	29.6
Total	<u>64.7</u>	<u>1.6</u>	<u>66.3</u>

Oaktown Mining Complex

The Oaktown Mining Complex is a coal mining and processing operation located in Knox and Sullivan counties, Indiana, and Crawford and Lawrence counties, Illinois. The following figure shows the general location of the Oaktown Mining Complex:



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Comprising 118 square miles within the ILB coal-producing region of the mid-western United States, the Oaktown Mining Complex is one of the largest underground Room-and-Pillar (R&P) coal mining complexes in North America. The Oaktown Mining Complex operations currently consist of two active underground mines - Oaktown Fuels No. 1 Mine and Oaktown Fuels No. 2 Mine - and related infrastructure. Geographically, the Oaktown Complex Coal Preparation Plant is located at approximately 28°51'24.7" N latitude and 87°25'30.9" W longitude. Within the Oaktown Mining Complex area and immediate vicinity, our Company controls approximately 75,000 acres of mineral rights. This control exists as a complex collection of leases that apply to more than 2,000 tracts. Each of which range from less than an acre to several hundred acres in size. Ownership of the surface rights and the mineral rights is often severed for the properties and the estates are often fractions, in which mineral rights are split between several owners. The Company and its predecessors have acquired the necessary rights to support development and operations through purchase or lease agreements with predominately private owners or entities. As part of the Oaktown Mining Complex, the Company controls surface rights through fee simple ownership for over 1,700 permitted acres. Upon those acres resides the surface facilities for mine accesses, processing, storing, shipping, and refuse disposal facilities (i.e., refuse impoundment site and fine refuse injection sites). Our involvement with the Oaktown Mining Complex dates to 2014 with the acquisition of Oaktown Fuels No. 1 and No. 2 Mines from Vectren Fuels.

Each mine of the Oaktown Mining Complex utilizes R&P mining (employing Continuous Miners, or CM) for primary production. This mining method is highly productive and commercially demonstrated; it has been one of the primary approaches to underground mining the Indiana V Seam for decades. Oaktown Mining Complex has utilized this mining method since the inception of each operation. To date, Oaktown Mining Complex has produced a combined 64.7 million tons of clean coal. The complex is configured to operate up to 7 CM sections, with an annual production target of approximately 7 million product tons. The Oaktown Complex Coal Preparation Plant serves as the coal washing and shipment facility for the Oaktown Mining Complex's two R&P mines. The plant was commissioned in 2009 to wash coal by the Oaktown Fuels No. 1 Mine. The Oaktown Complex Coal Preparation Plant's processing capacity is in the process of being upgraded to 1,800 raw tons-per-hour (TPH) from its current 1,600 raw TPH. Product coal from the Oaktown Mining Complex is transported to its customer base via rail, truck, or a combination of both. The Oaktown Complex Coal Preparation Plant is served by both the CSX Railroad and Indiana Railroad (INRD) via a rail spur and rail loop that connects the complex with the mainline rail just north of Oaktown, Indiana.

Additionally, the Oaktown Complex Coal Preparation Plant can facilitate the loading of trucks for direct transport to select customers, or to our transload facility in Princeton, Indiana serviced by the Norfolk Southern (NS) Railroad.

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.

Multiple permits are required by federal and state law for underground mining, coal preparation and related facilities, and other incidental activities. All necessary permits to support current operations are in place or pending approval. New permits or permit revisions may be necessary from time to time to facilitate future operations. Given sufficient time and planning, we should be able to secure new permits, as required, to maintain our planned operations within the context of the current regulations.

Permits generally require that the Company post a performance bond in an amount established by the regulator program to: (1) provide assurance that any disturbance or liability created during mining operation is properly mitigated, and (2) assure that all regulation requirements of the permit are fully satisfied. We hold surety bonds to cover obligations relating to mining and reclamation, road repair, etc. Those obligations are currently estimated at \$6.8 million.

Additional information is provided in the following table regarding the Oaktown Mining Complex mineral reserves:

OAKTOWN MINING COMPLEX
Recoverable Coal Reserves as of December 31, 2022 and 2021

Mine/Reserve	As Received Heat Value (Btu/lb)	As Received SO ₂ Content (lbs/MMBtu)	Owned (%)	Leased (%)	Recoverable Coal Reserves (As-Received)			
	Approximate	Approximate			Proven	Probable	12/31/2022	12/31/2021
Oaktown Mining Complex								
Oaktown Fuels No. 1 Mine	11,522	6.1	—	100.0	36.2	0.5	36.7	40.5
Oaktown Fuels No. 2 Mine	11,534	5.7	—	100.0	28.5	1.1	29.6	30.9
Total					64.7	1.6	66.3	71.4

Oaktown Fuels No. 1 Mine

The assigned and accessible reserve base for the Oaktown Fuels No. 1 Mine contains 36.7 million tons of recoverable Indiana V seam coal, of which 36.7 million tons are currently permitted. The reserve contains saleable tons which average heating content of approximately 11,522 Btu per pound with approximately 6.1 pounds of sulfur dioxide per MMBtu on an as-received basis. Access to the Oaktown Fuels No. 1 Mine is via a 90-foot-deep box cut and a 2,200-foot slope, which facilitates the egress of coals being mined in excess of 375 feet below the surface. Since beginning first commercial coal production in 2009, the mine workings have substantially grown, and an additional mine access (elevator) was constructed for employee and supply ingress/egress closer to the active production faces.

Oaktown Fuels No. 2 Mine

The assigned and accessible reserve base for the Oaktown Fuels No. 2 Mine contains 29.7 million tons of recoverable Indiana V seam coal, of which 23.8 million tons are currently permitted. The reserve contains saleable tons which average heating content of approximately 11,534 Btu per pound with approximately 5.7 pounds of sulfur dioxide per MMBtu on an as-received basis. Access to the Oaktown Fuels No. 2 Mine is via an 80-foot-deep box cut and 2,600-foot slope, which facilitates the egress of coals being mined in excess of 400 feet below the surface. Since beginning first commercial coal production in 2013 the mines workings have substantially grown and, during 2021, an additional mine access (elevator) has been constructed for employee and supply ingress/egress closer to the active production faces.

Historical production for our Oaktown Mining Complex during the years ended December 31, 2022, 2021, and 2020 is provided in the following table:

Mine/Reserve	Annual Saleable Production Tons (Million Tons)		
	2022	2021	2020
Oaktown Mining Complex			
Oaktown Fuels No. 1 Mine	3.9	3.5	3.4
Oaktown Fuels No. 2 Mine	2.5	2.1	1.8
Total Oaktown Mining Complex Production	6.4	5.6	5.2

Other Properties

The Company holds other recoverable coal reserves in the ILB, which are not deemed individually material.

Ace in the Hole Mine (Ace)(surface) – Assigned

Ace Mine is now depleted. Remaining inventory of coal and base is scheduled to be moved to our Carlisle and Oaktown wash plants in early 2023. Reclamation will resume in the Spring of 2023. We expect Phase 1 reclamation should be substantially complete by the end of 2023.

Ace in the Hole Mine #2 Reserves (surface) – Unassigned

In 2018, we leased property giving us 1.0 million controlled, saleable tons at a new location 2 miles southwest of our Ace in the Hole mine. Future mine development is being reviewed along with other opportunities.

Prosperity (surface) – Assigned

The Prosperity mine contains approximately 0.3 million tons of low sulfur coal needed to blend with our Oaktown coal to reduce the sulfur content to a salable level for Southeastern US markets. The mine opened in the summer of 2022. The mine is producing coal and also reclaiming the slurry pond and refuse pile left by the Prosperity underground mine. Additional reserves are in the area that may extend the life of this mine. Currently the mine is projected to produce approximately 20,000 tons per month until mid-2024.

Freelandville (surface) – Assigned

Sunrise is a contract miner at the Freelandville East Mine Center Pit, Permit No. S 358. Sunrise has an option through May 31, 2023 to assume the permit. The permit contains approximately 1.7 million tons of salable coal with an additional 0.6 million available. Mining started in the fall of 2022. Once the mine reaches full capacity in March of 2023 the mine is expected to produce approximately 40,000 salable tons per month.

Our Coal Contracts

In 2022, Sunrise sold 6.3 million tons of coal to 14 power plants in five different states across nine different customers.

During 2022, we derived 90% of our revenue from five customers (10 power plants), with each of the five customers representing at least 10% of our coal sales. During 2021, we derived 95% of our revenue from five customers (10 power plants), with each of the five customers representing at least 10% of our coal sales.

Significant customers in 2022 include Vectren Corporation, a wholly-owned subsidiary of CenterPoint Energy (NYSE: CNP), Orlando Utility Commission (OUC), Alcoa Power Generating, Inc., a subsidiary of Alcoa Corporation (NYSE: AA), Indianapolis Power & Light Company (IPL), a wholly-owned subsidiary of The AES Corporation (NYSE: AES), and Duke Energy Corporation (NYSE: DUK).

Of our 2022 sales, 74% were shipped to locations in the State of Indiana.

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In the summer of 2022, customer coal inventories and natural gas (a competitor to coal) inventory levels were lower than normal. Customers paid near record prices in 2022 to secure limited fuel supply. We invested in expanding our mining production to meet the demand. As discussed above we have opened the Prosperity and Freelandville surface mines to meet the demand resulting in contracts being signed raising our estimated average sales price for 2023 to \$58.70 per ton.

Year	Contracted tons (millions)*	Estimated price per ton
2023	7.5	\$ 58.70
2024 - 2027 (total)	7.3	**
Total	14.8	

* Contracted tons are subject to adjustment in instances of force majeure and exercise of customer options to either take additional tons or reduce tonnage if such option exists in the customer contract.

** Unpriced or partially priced tons

As of December 31, 2022, we are committed to supplying our customers up to a maximum of 14.8 million tons of coal through 2027 of which 10.8 million tons are priced.

Beginning in 2024, with the acquisition of the Merom power plant, we have the optionality to sell up to 3.0 million tons of our coal directly to the Merom plant, which would be in addition to the contracted tons to our third party customers described above. We anticipate our mines will need to produce at a 7 million-ton annualized pace for the foreseeable future to meet the Merom plant and third party market demand.

We expect to continue selling a significant portion of our coal under supply agreements with terms of one year or longer. Typically, customers enter into coal supply agreements to secure reliable sources of coal at predictable prices while we seek stable sources of revenue to support the investments required to open, expand and maintain, or improve productivity at the mines needed to supply these contracts. The terms of coal supply agreements result from competitive bidding and extensive negotiations with customers.

Some utility customers have proposed shuttering certain plant units or entire plants in the coming years. It remains to be seen whether these plans will be implemented.

Liquidity and Capital Resources

As set forth in our Consolidated Statements of Cash Flows, cash provided by operations was \$54.2 million and \$48.0 million for the years ended December 31, 2022 and 2021 respectively. Operating cash flow increased primarily due to an increase in operating margins at our coal mines brought on by the addition of higher priced contracts in the summer of 2022. Operating margin per ton at our coal mines increased in 2022 to \$8.35 per ton from \$7.35 per ton in 2021, increasing operating cash flow by \$7.6 million.

Our capital expenditure budget for 2023 is \$69 million, of which \$35 million is for maintenance capex. Of the \$69 million, the budget for coal operations is \$34 million and the budget for electric operations is \$35 million.

We paid down debt of \$26.5 million in 2022. As of December 31, 2022, our bank debt was \$85.2 million. On March 13, 2023, we executed an amendment to our credit agreement with PNC Bank, National Association (in its capacity as administrative agent, "PNC"), administrative agent for our lenders under our credit agreement. The primary purpose of the amendment is to convert \$35 million of the revolver into a new term loan with a maturity of March 31, 2024 (with principal payments of \$10.0 million due by June 30, 2023; \$10.0 million by September 30, 2023; \$10.0 million by December 31, 2023, and \$5.0 million by March 31, 2024), and extend the maturity date of the revolver to May 31, 2024. The effect of the amendment on our future cash flow is to extend the maturity date of \$44.7 million of our outstanding debt as of December 31, 2022 to May 2024. In addition, the amendment reduced the total capacity under the revolver to \$85.0 million (previously \$120 million). Subsequent to the amendment, the current portion of our outstanding debt as of December 31, 2022 is \$35.5 million.

We expect cash from operations generated primarily by our expected higher coal margins in 2023 to fund our capital expenditures and our debt service.

[See Note 5](#) to our consolidated financial statements for additional discussion about our bank debt and related liquidity.

Off-Balance Sheet Arrangements

Other than our surety bonds for reclamation, we have no material off-balance sheet arrangements. We have recorded the present value of reclamation obligations of \$20.8 million, including \$7.2 million at Merom, presented as asset retirement obligations (ARO) in our accompanying balance sheets. In the event we are not able to perform reclamation, we have surety bonds in place totaling \$36.9 million to cover ARO.

Capital Expenditures (capex)

For the year ended December 31, 2022, our capex was \$54.0 million allocated as follows (in millions):

Oaktown – maintenance capex	\$	21.0
Oaktown – investment		22.1
Prosperity mine		3.6
Freelandville mine		2.5
Merom plant		3.7
Other		1.1
Capex per the Consolidated Statements of Cash Flows	\$	<u>54.0</u>

Results of Operations**Presentation of Segment Information**

Our operations are divided into two primary reportable segments: coal operations and electric operations. The remainder of our operations, which are not significant enough on a stand-alone basis to warrant treatment as an operating segment, are presented as "Corporate and Other" within the Notes to the Consolidated Financial Statements and primarily are comprised of unallocated corporate costs and activities, including a 50% interest in Sunrise Energy, LLC, a private gas exploration company with operations in Indiana, which we account for using the equity method, and our wholly-owned subsidiary Summit Terminal LLC, a logistics transport facility located on the Ohio River.

Coal Operations

	<u>2022</u>	<u>2021</u>
OPERATING REVENUES:	\$ 293,344	\$ 246,396
EXPENSES:		
Operating expenses	236,416	198,442
Depreciation, depletion and amortization	43,612	39,829
Asset impairment	—	1,588
Asset retirement obligations accretion	1,010	1,504
Asset retirement obligations change in estimate	—	(3,510)
Exploration costs	651	482
General and administrative	7,919	6,069
Total operating expenses	<u>289,608</u>	<u>244,404</u>
INCOME (LOSS) FROM OPERATIONS	<u>3,736</u>	<u>1,992</u>

Operating revenues from coal operations increased 19% over 2021 due in large part to unprecedented increases in natural gas prices. As a result, higher priced contracts sold in the summer of 2022 and delivered in Q4 of 2022 increased our average sales price by over \$6 per ton from 2021. We also sold 168,000 additional tons over 2022 at the higher average price due to lower inventories and the higher gas prices.

Operating expenses increased, however, by ~\$5 per ton. The addition of the higher cost Freelandville and Prosperity surface mines as well as significant inflationary pressures contributed significantly to the increased costs. We continue to experience significant onboarding of new employees which takes time provide training and gain the experience to reach maximum productivity which is also contributing to higher costs.

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Depreciation, depletion, and amortization increased 9% as a significant amount of our assets are depreciated and amortized based on production which increased approximately 13% over 2021.

Changes in asset retirement obligation accretion and change in estimate are a result of a review in 2021 that determined the liabilities we have recorded and the future liabilities were overstated due to a change in estimate when factoring time to reclamation, discount rates used, and inflationary factors used. Our review in 2022 did not result in any significant adjustments.

General and administrative expenses increased 30% over 2022 due in large part to additional professional fees related to bank refinancing and additional audit requirements. Increased wages due to bonuses and incentives to retain and attract talent also contributed to the increased costs.

Electric Operations

	<u>2022</u>	<u>2021</u>
OPERATING REVENUES:	\$ 66,316	\$ —
EXPENSES:		
Operating expenses	29,608	—
Depreciation, depletion and amortization	3,117	—
General and administrative	2,086	—
Total operating expenses	<u>34,811</u>	<u>—</u>
INCOME (LOSS) FROM OPERATIONS	<u>31,505</u>	<u>—</u>

A comparative discussion is not relevant as the Electric Operations did not begin until the Merom Acquisition closed in October 2022.

Operating revenue is derived from a power purchase agreement signed with Hoosier in conjunction with the Merom Acquisition at fixed prices which were below market prices at the date we entered into the agreement. The power purchase agreement expires in 2025 and requires us to provide a fixed amount of power over the term of the agreement. As a result of the below market contract, we recorded a contract liability at the close of the acquisition totaling \$184.5 million that will be amortized over the term of the agreement as the contract is fulfilled. For the year ended December 31, 2022, we recorded \$23.3 million of revenue as a result of amortizing the contract liability.

Operating expenses include coal purchased under an agreement signed with Hoosier in conjunction with the Merom acquisition at fixed prices which were below market prices at the date we entered into the agreement. The coal purchase agreement expires in May 2023 and requires us to purchase a fixed amount of coal over the term of the agreement. As a result of the below market contract, we recorded a contract asset at the close of the acquisition totaling \$34.3 million that will be amortized over the term of the agreement as the contract is fulfilled. For the year ended December 31, 2022, we recorded \$3.6 million in additional operating expense for coal purchased and used and an additional \$11.2 million to inventory for coal purchased and unused as a result of amortizing the contract asset.

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The following tables presenting our quarterly results of operations should be read in conjunction with the consolidated financial statements and related notes included in Item 8 of this Form 10-K. We have prepared the unaudited information on the same basis as our audited consolidated financial statements. Our operating results for any quarter are not necessarily indicative of results for any future quarters or for a full year. The tables present our unaudited quarterly results of operations for the eight quarters ended December 31, 2022, and include all adjustments, consisting only of normal recurring adjustments, that we consider necessary for fair presentation of our consolidated operating results for the quarters presented.

	Mar-31 2022	Jun-30 2022	Sep-30 2022	Dec-31 2022	Total 2022
SALES AND OPERATING REVENUES:					
Coal sales	\$ 57,010	\$ 64,161	\$ 83,562	\$ 84,643	\$ 289,376
Electric sales	—	0	—	66,252	66,252
Other revenues	1,897	1,768	1,522	1,176	6,363
Total revenue	<u>58,907</u>	<u>65,929</u>	<u>85,084</u>	<u>152,071</u>	<u>361,991</u>
EXPENSES:					
Operating expenses	54,601	51,394	64,557	96,056	266,608
Depreciation, depletion and amortization	9,531	11,164	11,187	14,993	46,875
Asset retirement obligations accretion	246	250	255	259	1,010
Exploration costs	57	215	121	258	651
General and administrative	3,149	3,722	3,569	5,977	16,417
Total operating expenses	<u>67,584</u>	<u>66,745</u>	<u>79,689</u>	<u>117,543</u>	<u>331,561</u>
INCOME (LOSS) FROM OPERATIONS	(8,677)	(816)	5,395	34,528	30,430
Bank debt and other interest	(1,710)	(1,770)	(2,360)	(2,438)	(8,278)
Amortization and swap related interest	(74)	(567)	(995)	(1,098)	(2,734)
Equity method investment income	150	188	168	(63)	443
INCOME (LOSS) BEFORE INCOME TAXES	(10,311)	(2,965)	2,208	30,929	19,861
INCOME TAX EXPENSE (BENEFIT):					
Current	—	—	—	—	—
Deferred	(177)	421	596	916	1,756
Total income tax expense (benefit)	<u>(177)</u>	<u>421</u>	<u>596</u>	<u>916</u>	<u>1,756</u>
NET INCOME (LOSS)	\$ (10,134)	\$ (3,386)	\$ 1,612	\$ 30,013	\$ 18,105
NET INCOME (LOSS) PER SHARE:					
Basic	\$ (0.33)	\$ (0.11)	\$ 0.05	\$ 0.91	\$ 0.57
Diluted	\$ (0.33)	\$ (0.11)	\$ 0.05	\$ 0.83	\$ 0.55
WEIGHTED AVERAGE SHARES OUTSTANDING:					
Basic	30,785	30,785	32,983	32,983	32,043
Diluted	30,785	30,809	33,268	36,428	33,649

	Mar-31 2021	Jun-30 2021	Sep-30 2021	Dec-31 2021	Total 2021
SALES AND OPERATING REVENUES:					
Coal sales	\$ 45,879	\$ 54,600	\$ 79,036	\$ 64,388	\$ 243,903
Other revenues	816	1,038	786	1,123	3,763
Total revenue	<u>46,695</u>	<u>55,638</u>	<u>79,822</u>	<u>65,511</u>	<u>247,666</u>
EXPENSES:					
Operating expenses	34,009	42,456	67,792	54,583	198,840
Depreciation, depletion and amortization	10,307	9,715	9,842	10,109	39,973
Asset impairment	—	—	—	1,588	1,588
Asset retirement obligations accretion	363	373	380	388	1,504
Asset retirement obligations change in estimate	—	—	—	(3,510)	(3,510)
Exploration costs	58	159	96	169	482
General and administrative	2,821	3,383	3,067	5,562	14,833
Total operating expenses	<u>47,558</u>	<u>56,086</u>	<u>81,177</u>	<u>68,889</u>	<u>253,710</u>
LOSS FROM OPERATIONS	(863)	(448)	(1,355)	(3,378)	(6,044)
Bank debt and other interest	(2,135)	(2,307)	(2,167)	(1,901)	(8,510)
Amortization and swap related interest	237	125	59	41	462
Gain on extinguishment of debt	—	—	10,000	—	10,000
Equity method investment income	—	63	90	211	364
INCOME (LOSS) BEFORE INCOME TAXES	<u>(2,761)</u>	<u>(2,567)</u>	<u>6,627</u>	<u>(5,027)</u>	<u>(3,728)</u>
INCOME TAX EXPENSE (BENEFIT):					
Current	—	—	—	—	—
Deferred	(1,729)	397	(1,359)	2,717	26
Total income tax expense (benefit)	<u>(1,729)</u>	<u>397</u>	<u>(1,359)</u>	<u>2,717</u>	<u>26</u>
NET INCOME (LOSS)	<u>\$ (1,032)</u>	<u>\$ (2,964)</u>	<u>\$ 7,986</u>	<u>\$ (7,744)</u>	<u>\$ (3,754)</u>
NET INCOME (LOSS) PER SHARE:					
Basic and diluted	\$ (0.03)	\$ (0.10)	\$ 0.26	\$ (0.25)	\$ (0.12)

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Quarterly coal sales and cost data follow (in 000's, except for per ton data and wash plant recovery percentage):

All Mines	1st 2022	2nd 2022	3rd 2022	4th 2022	T4Qs
Tons produced	1,397	1,762	1,663	1,721	6,543
Tons sold	1,377	1,595	1,705	1,664	6,341
Coal sales	\$ 57,010	\$ 64,161	\$ 83,563	\$ 84,641	\$ 289,375
Average price per ton	\$ 41.40	\$ 40.23	\$ 49.01	\$ 50.87	\$ 45.64
Wash plant recovery in %	67%	71%	69%	68%	
Operating costs	\$ 54,443	\$ 50,776	\$ 63,876	\$ 67,319	\$ 236,414
Average cost per ton	\$ 39.54	\$ 31.83	\$ 37.46	\$ 40.46	\$ 37.28
Margin	\$ 2,567	\$ 13,385	\$ 19,687	\$ 17,322	\$ 52,961
Margin per ton	\$ 1.86	\$ 8.39	\$ 11.55	\$ 10.41	\$ 8.35
Capex	\$ 9,082	\$ 13,821	\$ 15,096	\$ 12,368	\$ 50,367
Maintenance capex	\$ 4,481	\$ 7,600	\$ 6,625	\$ 5,748	\$ 24,454
Maintenance capex per ton	\$ 3.25	\$ 4.76	\$ 3.89	\$ 3.45	\$ 3.86

All Mines	1st 2021	2nd 2021	3rd 2021	4th 2021	T4Qs
Tons produced	1,592	1,292	1,440	1,447	5,771
Tons sold	1,174	1,403	2,042	1,554	6,173
Coal sales	\$ 45,879	\$ 54,600	\$ 79,036	\$ 64,388	\$ 243,903
Average price per ton	\$ 39.08	\$ 38.92	\$ 38.71	\$ 41.43	\$ 39.51
Wash plant recovery in %	74%	69%	73%	70%	
Operating costs	\$ 33,907	\$ 42,364	\$ 67,694	\$ 54,583	\$ 198,548
Average cost per ton	\$ 28.88	\$ 30.20	\$ 33.15	\$ 35.12	\$ 32.16
Margin	\$ 11,972	\$ 12,236	\$ 11,342	\$ 9,805	\$ 45,355
Margin per ton	\$ 10.20	\$ 8.72	\$ 5.55	\$ 6.31	\$ 7.35
Capex	\$ 5,720	\$ 5,117	\$ 7,238	\$ 9,975	\$ 28,050
Maintenance capex	\$ 2,343	\$ 1,049	\$ 2,324	\$ 3,302	\$ 9,018
Maintenance capex per ton	\$ 2.00	\$ 0.75	\$ 1.14	\$ 2.12	\$ 1.46

Critical Accounting Estimates

We believe that the estimates of our coal reserves, our asset retirement obligation liabilities, our deferred tax accounts, our valuation of inventory, our treatment of business combinations, and the estimates used in our impairment analysis are our critical accounting estimates.

The reserve estimates are used in the depreciation, depletion and amortization calculations and our internal cash flow projections. If these estimates turn out to be materially under or over-stated, our depreciation, depletion and amortization expense and impairment test may be affected. The process of estimating reserves is complex, requiring significant judgment in the evaluation of all available geological, geophysical, engineering and economic data. The reserve estimates are prepared by professional engineers, both internal and external, and are subject to change over time as more data becomes available. Changes in the reserves estimates from the prior year were nominal.

We have analyzed our filing positions in all of the federal and state jurisdictions where we are required to file income tax returns, as well as all open tax years in these jurisdictions. We identified our federal tax return and our Indiana state tax return as "major" tax jurisdictions. We believe that our income tax filing positions and deductions would be sustained on audit and do not anticipate any adjustments that will result in a material change to our consolidated financial position. We have not taken any significant uncertain tax positions and our tax provision and returns are prepared by a large public accounting firm with significant experience in energy related industries. Changes to the estimates from reported amounts in the prior year were not significant.

Inventory is valued at lower of cost or net realizable value (NRV). Anticipated utilization of low sulfur, higher-cost coal from our Ace in the Hole, Freelandville, and Prosperity mines has the potential to create NRV adjustments as our estimated needs change. The NRV adjustments are subject to change as our costs may fluctuate due to higher or lower production and our NRV may fluctuate based on sales contracts we enter into from time to time. There were no significant changes to our NRV adjustment estimates from the prior year.

We account for business acquisitions as either asset acquisitions or business combination depending on the circumstances as outlined in ASC 805-50. For acquisitions accounted for as a business combination, we record the assets acquired, including identified intangible assets and liabilities assumed at their fair value. For acquisitions accounted for as asset acquisitions, we allocate the fair value of consideration exchanged in the transaction to each of the acquired assets based upon their relative fair value. Fair value in many instances involves estimates based on third-party valuations, such as appraisals, or internal valuations based on discounted cash flow analyses or other valuation techniques. Those estimates are subject to a high degree of uncertainty, thus we typically will retain professionals in the relevant industries of the acquiree to assist us with our analysis and valuations. See "[Item 8. Financial Statements - Note 16 - Acquisition](#)" for more information on the Merom Acquisition.

ITEM 8. FINANCIAL STATEMENTS

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Hallador Energy Company

Opinion on the financial statements

We have audited the accompanying consolidated balance sheet of Hallador Energy Company (a Colorado corporation) and subsidiaries (the “Company”) as of December 31, 2022, the related consolidated statements of operations, cash flows and stockholders’ equity for the year ended December 31, 2022, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022, and the results of its operations and its cash flows for the year ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

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, 2022, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), and our report dated March 16, 2023 expressed an unqualified opinion.

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 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 the financial statements are free of material misstatement, whether due to error or fraud. Our audit 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 audit 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 audit provides 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 critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Accounting for and valuation of the Merom one gigawatt power plant

As described further in Note 16 to the financial statements, on October 21, 2022, the Company completed the purchase of the Merom one gigawatt power plant located on 800 acres in Sullivan County, Indiana, along with equipment and machinery, materials inventory, a coal ash landfill; and coal inventory (collectively, the Merom Plant Acquisition). The consideration exchanged for the Merom Plant Acquisition was \$181.1 million, comprised of \$2.9 million in direct transaction costs, \$11.0 million future capacity reductions, \$17.0 million coal inventory on hand, and certain contracts entered into with the seller at the time of closing as consideration consisting of a power purchase agreement and a coal purchase agreement. The acquisition date fair values of the power purchase and coal purchase agreements were a \$184.5 million liability and a \$34.3 million asset, respectively. The consideration exchanged in an asset acquisition is allocated among the individual components of assets acquired based upon their relative fair values. We identified the accounting for and valuation of the power plant as a critical audit matter.

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The principal considerations for our determination that the accounting for and valuation of the power plant is a critical audit matter are that (1) the transaction requires the appropriate application of complex accounting authoritative guidance from FASB's Accounting Standards Codification ("ASC"), (2) significant judgment is used by management when determining the relative fair value of the assets acquired and the fair value of consideration exchanged, (3) there is a high degree of auditor judgment and subjectivity in performing procedures and evaluating management's significant accounting and valuation assumptions, and (4) the audit effort involved the use of professionals with specialized skill and knowledge.

Our audit procedures related to the accounting for and the valuation of the power plant included the following, among others:

- We tested the design and operating effectiveness of the controls over the Company's acquisition and valuation process, including application of the appropriate accounting literature and testing controls over management's review of the specialists' calculations and significant assumptions and the completeness and accuracy of the underlying data.
- With the assistance of our valuation specialists, we evaluated the discounted cash flow valuation methods used to determine the fair value of the power purchase agreement, coal purchase agreement and power plant for reasonableness by testing management's computations within an acceptable tolerance range.
- We tested the reasonableness of forecasted revenues and expenses, as well as the discount rate applied to the present value of the estimated future cash flows with the assistance of our valuation specialists.
- We assessed the appropriate interpretation and application used by management of the FASB's ASC including ASC 805, *Business Combinations*, and ASC 820, *Fair Value Measurements*.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2022.

Tulsa, Oklahoma
March 16, 2023

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of Hallador Energy Company

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheet of Hallador Energy Company (the “Company”) as of December 31, 2021, the related consolidated statements of operations, cash flows, and stockholders' equity for the year then ended, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

The Company's management is responsible for these financial statements. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our 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 the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit 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 audit 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 audit provides a reasonable basis for our opinion.

We have served as the Company's auditor from 2003 through 2022.

/S/PLANTE & MORAN, PLLC

Denver, Colorado

March 28, 2022, except for Note 18, as to which the date is March 16, 2023.

PART I - FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS

Hallador Energy Company
Consolidated Balance Sheets
As of December 31,
(in thousands)

	2022	2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 3,009	\$ 2,546
Restricted cash	3,417	3,283
Accounts receivable	29,889	13,584
Inventory	49,796	7,699
Parts and supplies	28,295	10,015
Contract asset - coal purchase agreement	19,567	—
Prepaid expenses	4,546	2,112
Total current assets	138,519	39,239
Property, plant and equipment:		
Land and mineral rights	115,595	115,837
Buildings and equipment	534,129	342,782
Mine development	140,108	112,575
Total property, plant and equipment	789,832	571,194
Less - accumulated depreciation, depletion and amortization	(309,370)	(268,370)
Total property, plant and equipment, net	480,462	302,824
Investment in Sunrise Energy	3,988	3,545
Other assets	7,585	8,372
Total assets	\$ 630,554	\$ 353,980
LIABILITIES, REDEEMABLE NONCONTROLLING INTERESTS, AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of bank debt, net	\$ 33,031	\$ 23,098
Accounts payable and accrued liabilities	82,972	41,528
Deferred revenue	35,485	—
Contract liability - power purchase agreement and capacity payment reduction	88,114	—
Total current liabilities	239,602	64,626
Long-term liabilities:		
Bank debt, net	49,713	84,667
Convertible notes payable	10,000	—
Convertible notes payable - related party	9,000	—
Deferred income taxes	4,606	2,850
Asset retirement obligations	17,254	14,025
Contract liability - power purchase agreement	84,096	—
Other	1,259	1,577
Total long-term liabilities	175,928	103,119
Total liabilities	415,530	167,745
Commitments and contingencies		
Redeemable noncontrolling interests	—	4,000
Stockholders' equity:		
Preferred stock, \$.10 par value, 10,000 shares authorized; none issued	—	—
Common stock, \$.01 par value, 100,000 shares authorized; 32,983 and 30,785 issued and outstanding, respectively	330	308
Additional paid-in capital	118,788	104,126
Retained earnings	95,906	77,801
Total stockholders' equity	215,024	182,235
Total liabilities, redeemable noncontrolling interests, and stockholders' equity	\$ 630,554	\$ 353,980

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

Hallador Energy Company
Consolidated Statements of Operations
For the years ended December 31,
(in thousands, except per share data)

	2022	2021
SALES AND OPERATING REVENUES:		
Coal sales	\$ 289,376	\$ 243,903
Electric sales	66,252	—
Other revenues	6,363	3,763
Total sales and operating revenues	<u>361,991</u>	<u>247,666</u>
OPERATING EXPENSES:		
Operating expenses	266,608	198,840
Depreciation, depletion and amortization	46,875	39,973
Asset impairment	—	1,588
Asset retirement obligations accretion	1,010	1,504
Asset retirement obligations change in estimate	—	(3,510)
Exploration costs	651	482
General and administrative	16,417	14,833
Total operating expenses	<u>331,561</u>	<u>253,710</u>
INCOME (LOSS) FROM OPERATIONS	30,430	(6,044)
Interest expense (1)	(11,012)	(8,048)
Gain on extinguishment of debt	—	10,000
Equity method investment income	443	364
INCOME (LOSS) BEFORE INCOME TAXES	<u>19,861</u>	<u>(3,728)</u>
INCOME TAX EXPENSE:		
Current	—	—
Deferred	1,756	26
Total income tax expense	<u>1,756</u>	<u>26</u>
NET INCOME (LOSS)	<u>\$ 18,105</u>	<u>\$ (3,754)</u>
NET INCOME (LOSS) PER SHARE:		
Basic	\$ 0.57	\$ (0.12)
Diluted	\$ 0.55	\$ (0.12)
WEIGHTED AVERAGE SHARES OUTSTANDING:		
Basic	32,043	30,614
Diluted	33,649	30,614
<hr/>		
(1) Interest Expense:		
Interest on bank debt	\$ 7,563	\$ 8,510
Other interest	715	—
Amortization and swap related interest:		
Payments on interest rate swap, net of changes in value	(867)	(3,026)
Amortization of debt issuance costs	3,601	2,564
Total amortization and swap related interest	<u>2,734</u>	<u>(462)</u>
Total interest expense	<u>\$ 11,012</u>	<u>\$ 8,048</u>

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

Hallador Energy Company
Consolidated Statements of Cash Flows
For the years ended December 31,
(in thousands)

	<u>2022</u>	<u>2021</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	\$ 18,105	\$ (3,754)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Deferred income taxes	1,756	26
Equity income – Sunrise Energy	(443)	(364)
Depreciation, depletion and amortization	46,875	39,973
Asset impairment	—	1,588
Gain on extinguishment of debt	—	(10,000)
Loss (gain) on sale of assets	(264)	317
Payments on interest rate swap, net of changes in value	(867)	(3,026)
Change in fair value of fuel hedge	—	(297)
Amortization of debt issuance costs	3,601	2,564
Asset retirement obligations accretion	1,010	1,504
Asset retirement obligations change in estimate	—	(3,510)
Cash paid on asset retirement obligation reclamation	(3,162)	—
Stock-based compensation	1,269	1,004
Provision for loss on customer contracts	159	—
Amortization of contract asset and contract liabilities	(19,731)	—
Change in current assets and liabilities:		
Accounts receivable	(16,305)	830
Inventory	(25,863)	16,964
Parts and supplies	(6,271)	(1,112)
Prepaid expenses	(5,941)	(5,215)
Accounts payable and accrued liabilities	24,037	10,844
Deferred revenue	35,485	—
Other	719	(362)
Net cash provided by operating activities	<u>\$ 54,169</u>	<u>\$ 47,974</u>

Hallador Energy Company
Consolidated Statements of Cash Flows
For the years ended December 31,
(in thousands)
(continued)

	2022	2021
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures	\$ (54,020)	\$ (28,050)
Proceeds from sale of equipment	655	525
Net cash used in investing activities	<u>(53,365)</u>	<u>(27,525)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Payments on bank debt	(78,225)	(46,249)
Borrowings of bank debt	51,700	20,250
Issuance of convertible notes payable	11,000	—
Issuance of related party convertible notes payable	18,000	—
Debt issuance costs	(2,097)	(418)
Distributions to redeemable noncontrolling interests	(585)	—
Taxes paid on vesting of RSUs	—	(274)
Net cash used in financing activities	<u>(207)</u>	<u>(26,691)</u>
Increase (decrease) in cash, cash equivalents, and restricted cash	597	(6,242)
Cash, cash equivalents, and restricted cash, beginning of year	5,829	12,071
Cash, cash equivalents, and restricted cash, end of year	<u>\$ 6,426</u>	<u>\$ 5,829</u>
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH:		
Cash and cash equivalents	\$ 3,009	\$ 2,546
Restricted cash	3,417	3,283
	<u>\$ 6,426</u>	<u>\$ 5,829</u>
SUPPLEMENTAL CASH FLOW INFORMATION:		
Cash paid for interest	\$ 8,123	\$ 8,720
SUPPLEMENTAL NON-CASH FLOW INFORMATION:		
Change in capital expenditures included in accounts payable and prepaid expenses	\$ 3,440	\$ 8,520

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

Hallador Energy Company
Consolidated Statement of Stockholders' Equity
(in thousands)

	Common Stock Issued		Additional Paid-in Capital	Retained Earnings	Total Stockholders' Equity
	Shares	Amount			
BALANCE, DECEMBER 31, 2020	30,610	\$ 306	\$ 103,399	\$ 81,555	\$ 185,260
Stock-based compensation	—	—	1,004	—	1,004
Stock issued on vesting of RSUs	296	3	(3)	—	—
Taxes paid on vesting of RSUs	(121)	(1)	(274)	—	(275)
Net loss	—	—	—	(3,754)	(3,754)
BALANCE, DECEMBER 31, 2021	30,785	308	104,126	77,801	182,235
Stock-based compensation	—	—	1,269	—	1,269
Cancellation of redeemable noncontrolling interests	—	—	3,415	—	3,415
Stock issued on redemption of convertible note	232	2	998	—	1,000
Stock issued on redemption of related party convertible notes	1,966	20	8,980	—	9,000
Net income	—	—	—	18,105	18,105
BALANCE, DECEMBER 31, 2022	<u>32,983</u>	<u>330</u>	<u>118,788</u>	<u>95,906</u>	<u>215,024</u>

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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021**

(1) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Consolidation

The consolidated financial statements include the accounts of Hallador Energy Company (hereinafter known as, “we, us, or our”) and its wholly owned subsidiaries Sunrise Coal, LLC (“Sunrise”), Hallador Power Company, LLC (“Hallador Power”) and Hourglass Sands, LLC (“Hourglass”), as well as Sunrise and Hallador Power's wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated. Sunrise is engaged in the production of steam coal from mines located in western Indiana.

Segment Information

As the result of Hallador Power’s acquisition of the Merom one gigawatt power plant in Sullivan County, Indiana (the “Merom Power Plant”) from Hoosier Energy Rural Electric Cooperative, Inc. (“Hoosier”) on October 21, 2022 (the “Merom Acquisition”), as further described in Note 16, beginning in the fourth quarter of 2022 we began to strategically view and manage our operations through two reportable segments: Coal Operations and Electric Operations. The remainder of our operations, which are not significant enough on a stand-alone basis to warrant treatment as an operating segment, are presented as "Corporate and Other" and primarily are comprised of unallocated corporate costs and activities, including a 50% interest in Sunrise Energy, LLC, a private gas exploration company with operations in Indiana, which we account for using the equity method, and our wholly-owned subsidiary Summit Terminal LLC, a logistics transport facility located on the Ohio River. Prior periods have been recast to reflect Corporate and Other apart from Coal Operations which previously were aggregated into a single reportable segment.

The Coal Operations reportable segment includes currently operating mining complexes Oaktown 1 and 2 underground mines, Prosperity surface mine, Freelandville surface mine, and Carlisle wash plant.

The Electric Operations reportable segment includes electric power generation facilities of the Merom Power Plant.

Accounts Receivable

The timing of revenue recognition, billings and cash collections results in accounts receivable from customers. Customers are invoiced as coal is shipped or as power is delivered or at periodic intervals in accordance with contractual terms. Invoices typically include customary adjustments for the resolution of price variability, such as coal quality thresholds. Payments are generally received within thirty days of invoicing. Historically, credit losses have been insignificant. No charges for credit losses were recognized during the years ended December 31, 2022 or 2021.

Inventory and Parts and Supplies

Inventory and parts and supplies are valued at the lower of cost or net realizable value determined using the first-in first-out method. Inventory costs include labor, supplies, operating overhead, and other related costs incurred at or on behalf of the mining location or plant, including depreciation, depletion, and amortization of equipment, buildings, mineral rights, and mine development costs.

Contract Asset - Coal Purchase Agreement

Contract Asset - Coal Purchase Agreement is the result of a coal purchase agreement with Hoosier whereby we are purchasing coal from Hoosier through May 31, 2023 at fixed prices which were below market prices at the date we entered into the agreement. This agreement was entered into as consideration in the Merom Acquisition. The asset is being amortized to inventory as coal is purchased over the term of the agreement as the contract is fulfilled. During the year ended December 31, 2022, \$14.7 million was amortized, of which \$3.6 million was recognized in operating expenses on the consolidated statement of operations. The Coal Purchase Agreement term is from October 22, 2022 to May 31, 2023.

Prepaid Expenses

Prepaid expenses include prepaid insurance and other prepaid balances with vendors for various services paid for in advance of use.

Advanced Royalties

Coal leases that require minimum annual or advance payments and are recoverable from future production are generally deferred and charged to expense as the coal is subsequently produced. Advance royalties are included in other assets.

Mining Properties and Plant Equipment

Mining properties are recorded at cost. Interest costs applicable to major asset additions are capitalized during the construction period. Expenditures that extend the useful lives or increase the productivity of the assets are capitalized. The cost of maintenance and repairs that do not extend the useful lives or increase the productivity of the assets are expensed as incurred. Other than land and most mining equipment, mining properties are depreciated using the units-of-production method over the estimated recoverable reserves. Most surface and underground mining equipment is depreciated using estimated useful lives ranging from three to twenty-five years.

The values of the property, plant and equipment acquired as part of the Merom Acquisition are recorded at relative fair value based on the consideration paid upon closing of the acquisition of the plant in October 2022. Other equipment is recorded at cost. Expenditures that extend the useful lives or increase the productivity of the assets are capitalized. The cost of maintenance and repairs that do not extend the useful lives or increase the productivity of the assets are expensed as incurred. Most power plant equipment is depreciated using estimated useful lives ranging from four to nine years.

If facts and circumstances suggest that a long-lived asset may be impaired, the carrying value is reviewed for recoverability. If this review indicates that the carrying value of the asset will not be recoverable through estimated undiscounted future net cash flows related to the asset over its remaining life, then an impairment loss is recognized by reducing the carrying value of the asset to its estimated fair value. See Note 2 for further discussion of impairments.

Mine Development

Costs of developing new mines, including asset retirement obligation assets, or significantly expanding the capacity of existing mines, are capitalized and amortized using the units-of-production method over estimated recoverable reserves.

Deferred Revenue

Deferred revenue includes advance payments on electric capacity payments and prepayments on coal deliveries. The deferred revenue for each will be reversed to revenue on a monthly pro-rata basis for the capacity payments and as coal is delivered for the coal prepayments based upon the underlying contractual terms. All deferred revenue is expected to be recognized in revenue within one year.

Asset Retirement Obligations (ARO) – Reclamation

At the time they are incurred, legal obligations associated with the retirement of long-lived assets are reflected at their estimated fair value, with a corresponding charge to mine development. Obligations are typically incurred when we commence development of underground and surface mines and include reclamation of support facilities, refuse areas and slurry ponds.

Obligations are reflected at the present value of their future cash flows. We reflect accretion of the obligations for the period from the date they are incurred through the date they are extinguished. The ARO assets are amortized using the units-of-production method over estimated recoverable (proven and probable) reserves. We are using credit-adjusted risk-free discount rates ranging from 5.0% to 10% to discount the obligation, inflation rates anticipated during the time to reclamation, and cost estimates prepared by our engineers inclusive of market risk premiums. Federal and state laws require that mines be reclaimed in accordance with specific standards and approved reclamation plans, as outlined in mining permits. Activities include reclamation of pit and support acreage at surface mines, sealing portals at underground mines, and reclamation of refuse areas and slurry ponds.

We review our ARO at least annually and reflect revisions for permit changes, changes in our estimated reclamation costs and changes in the estimated timing of such costs. The change in estimate for the year ended December 31, 2021 was a result of a change in timing of expected reclamation of the Ace in the Hole Mine, Carlisle Mine, and Prosperity Mine and updates to inflation rates from when the liabilities were first projected. In the event we are not able to perform reclamation, we have surety bonds totaling \$36.9 million to cover ARO.

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The table below (in thousands) reflects the changes to our ARO:

	Year Ended December 31,	
	2022	2021
Balance, beginning of year	\$ 14,125	\$ 16,277
Merom acquisition	7,230	—
Freelandville addition	1,631	—
Accretion	1,010	1,504
Change in estimate	—	(3,510)
Payments	(3,162)	(146)
Balance, end of year	20,834	14,125
Less current portion	(3,580)	(100)
Long-term balance, end of year	\$ 17,254	\$ 14,025

Contract Liabilities - Power Purchase Agreement and Capacity Payment Reduction

Contract Liabilities - Power Purchase Agreement and Capacity Payment Reduction is the result of a power purchase agreement with Hoosier whereby we are selling power to Hoosier through 2025 at fixed prices which were below market prices at the date we entered into the agreement. We also agreed to a reduction in future capacity payments as part of the acquisition consideration. These agreements were entered into as consideration in the Merom Acquisition. The power purchase agreement liability is amortized to electric sales revenue pro-rata over the term of the agreement as the contract is fulfilled. During the year ended December 31, 2022, amortization of the power purchase agreement contract liability totaled \$23.3 million. The Power Purchase Agreement term is from October 22, 2022 to December 31, 2025. The Capacity Payment Reductions occur on May 31, 2023 and November 30, 2023 in the amount of \$7.5 million each.

Interest Rate Swaps

The Company generally utilizes derivative instruments to manage exposures to interest rate risk on long-term debt. The Company enters interest rate swaps in order to achieve a mix of fixed and variable rate debt that it deems appropriate. These interest rate swaps have not been designated as hedging instruments and are accounted for as an asset or a liability in the accompanying Consolidated Balance Sheets at their fair value. Realized and unrealized gains and losses are classified as operating activities in the accompanying Consolidated Statements of Cash Flows. As of December 31, 2022, the Company is not a party to any interest rate swaps.

Commitments and Contingencies

From time to time the Company is involved in legal proceedings and/or may be subject to industry rulings that could bring rise to claims in the ordinary course of business. The Company has concluded that the likelihood is remote that the ultimate resolution of any pending litigation or pending claims will be material or have a material adverse effect on the Company's business, financial position, results of operations or liquidity.

Statement of Cash Flows

Cash and cash equivalents include investments with maturities when purchased of three months or less.

Income Taxes

Income taxes are provided based on the liability method of accounting. The provision for income taxes is based on pretax financial income. Deferred tax assets and liabilities are recognized for the future expected tax consequences of temporary differences between income tax and financial reporting and principally relate to differences in the tax basis of assets and liabilities and their reported amounts, using enacted tax rates in effect for the year in which differences are expected to reverse.

Net Income (Loss) per Share

Basic earnings (loss) per share (“EPS”) are computed by dividing net earnings (loss) by the weighted average number of common shares outstanding for the period.

Diluted EPS attributable to common shareholders is computed by adjusting net earnings by the weighted average number of common shares and potential common shares outstanding (if dilutive) during each period. Potential common shares include shares of restricted stock units as if the units issued by the Company were vested and convertible debt. The Company applied the treasury stock method to account for the dilutive impact of its restricted stock units and the if converted method for its convertible notes. Anti-dilutive securities are excluded from diluted EPS. As a result of determining the effect of potentially dilutive securities, in certain periods, diluted net loss per share is the same as the basic net loss per share for the periods presented.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with generally accepted accounting principles requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual amounts could differ from those estimates. The most significant estimates included in the preparation of the financial statements relate to: (i) deferred income tax accounts, (ii) coal reserves, (iii) depreciation, depletion, and amortization, (iv) estimates related to the Merom Acquisition, (v) estimates used in our impairment analysis and measurement of impairments, and (vi) estimates used in the calculation of our asset retirement obligations.

Long-term Contracts

As of December 31, 2022, we are committed to supplying our customers up to a maximum of 14.8 million tons of coal through 2027 of which 10.8 million tons are priced.

For 2022, we derived 90% of our coal sales from five customers, each representing at least 10% of our coal sales. 86% of our coal operations accounts receivable was from four customers, each representing more than 10% of the December 31, 2022 balance. 100% of our electric sales and accounts receivable were with one customer.

For 2021, we derived 95% of our coal sales from four customers, each representing at least 10% of our coal sales. 99% of our coal operations accounts receivable was from five customers, each representing more than 10% of the December 31, 2021 balance.

For 2022, we derived 100% of our electric generation and capacity revenue from Hoosier. As of December 31, 2022, we are committed to supply 100% of the plants energy and capacity to Hoosier through May 31, 2023, reducing commitments to 22% of energy output and 32% of its capacity from June 1, 2023 through December 31, 2025.

Stock-based Compensation

Stock-based compensation for restricted stock units is measured at the grant date based on the fair value of the award and is recognized as expense over the applicable vesting period of the stock award (generally two to four years) using the straight-line method.

(2) LONG-LIVED ASSET IMPAIRMENTS

Long-lived assets are reviewed for impairment whenever events or changes in circumstance indicate that the carrying amount of the assets may not be recoverable.

Prosperity Mine

We recorded an impairment of \$1.6 million as of December 31, 2021 on assets consisting of the wash plant and rail facilities at the Prosperity Mine. The wash plant was torn down and the remaining rail was pulled up in the fourth quarter of 2021.

(3) INVENTORY

Inventory is valued at lower of cost or net realizable value (NRV). As of December 31, 2022, and December 31, 2021, coal inventory includes NRV adjustment of \$4.9 million and \$3.8 million, respectively.

(4) OTHER LONG-TERM ASSETS (IN THOUSANDS)

	December 31,	
	2022	2021
Advanced coal royalties	\$ 5,967	\$ 6,678
Other	1,618	1,694
Total other assets	<u>\$ 7,585</u>	<u>\$ 8,372</u>

(5) BANK DEBT

On March 25, 2022, we executed an amendment to our credit agreement with PNC Bank, National Association (in its capacity as administrative agent, "PNC"), administrative agent for our lenders under our credit agreement. The primary purpose of the amendment was to return the allowable leverage ratio and debt service coverage ratio to their December 31, 2021 levels through September 30, 2022, with the debt service coverage waived for March 31, 2022.

On May 20, 2022, we executed an additional amendment to our credit agreement with PNC. The primary purpose of this amendment was to modify the allowable leverage ratio and debt service coverage ratio through June 30, 2022, to provide relief for current and anticipated covenant violations.

On August 5, 2022, we executed an additional amendment to our credit agreement with PNC. The primary purpose of this amendment was to modify the allowable leverage ratio and debt service coverage ratio through September 30, 2022, to provide relief for anticipated covenant violations.

On March 13, 2023, we executed an additional amendment to our credit agreement with PNC. The primary purpose of the amendment is to convert \$35 million of the outstanding balance on the revolver into a new term loan with a maturity of March 31, 2024 and extend the maturity date of the revolver to May 31, 2024. The amendment also reduced the total capacity under the revolver to \$85 million and waives the maximum annual capital expenditure covenant for 2022 and increases the covenant for 2023 to \$75 million. Subsequent to December 31, 2022, and prior to the effective date of this amendment, we had borrowed an additional \$17.0 million under the revolver.

The interest rate per the amendment will transition from LIBOR to SOFR based pricing with ranges from SOFR plus 4.00% to SOFR plus 5.00%, depending on the Company's leverage ratio. The Company expects the interest rate to be SOFR plus 4.00% for the majority of 2023.

Bank debt was reduced by \$26.5 million during the year ended December 31, 2022. Prior to the latest amendment, bank debt was comprised of term debt (\$5.5 million as of December 31, 2022) and a \$120 million revolver (\$79.7 million borrowed as of December 31, 2022). The term debt amortization was to conclude with the final payment in March 2023. The revolver was to mature in September 2023. Under the provision of the latest amendment, bank debt is comprised of term debt (\$40.5 million as of December 31, 2022) and a \$85 million revolver (\$44.7 million borrowed as of December 31, 2022). The term debt requires payment of \$5.5 million in March 2023 and \$10 million each quarter thereafter in 2023 and \$5.0 million by March 31, 2024. Our debt is recorded at amortized cost, which approximates fair value due to the variable interest rates in the agreement, and is collateralized primarily by our assets.

Liquidity

As of December 31, 2022, we had additional borrowing capacity of \$29.1 million under the revolver and total liquidity of \$32.1 million. Our additional borrowing capacity is net of \$11.2 million in outstanding letters of credit as of December 31, 2022 that were required to maintain surety bonds. Liquidity consists of our additional borrowing capacity and cash and cash equivalents.

We entered new contracts during the three months ended June 30, 2022, with significantly higher prices, that began shipping during the three months ended September 30, 2022. These contracts substantially increased our cash flow for the remainder of 2022 and 2023.

Fees

Unamortized bank fees and other costs incurred in connection with the initial facility and subsequent amendments totaled \$4.0 million as of December 31, 2021. Additional costs incurred with the March 25, 2022, May 20, 2022, and August 5, 2022 amendments totaled \$2.1 million. These costs were deferred and are being amortized over the term of the loan. Unamortized costs as of December 31, 2022, and December 31, 2021, were \$2.5 million and \$4.0 million, respectively.

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Bank debt, less debt issuance costs, is presented below (in thousands):

	December 31,	
	2022	2021
Current bank debt	\$ 35,500	\$ 25,725
Less unamortized debt issuance cost	(2,469)	(2,627)
Net current portion	<u>\$ 33,031</u>	<u>\$ 23,098</u>
Long-term bank debt	\$ 49,713	\$ 86,013
Less unamortized debt issuance cost	—	(1,346)
Net long-term portion	<u>\$ 49,713</u>	<u>\$ 84,667</u>
Total bank debt	\$ 85,213	\$ 111,738
Less total unamortized debt issuance cost	(2,469)	(3,973)
Net bank debt	<u>\$ 82,744</u>	<u>\$ 107,765</u>

Covenants

The credit facility includes a Maximum Leverage Ratio (consolidated funded debt / trailing twelve months adjusted EBITDA), calculated as of the end of each fiscal quarter for the trailing twelve months, not to exceed the amounts below:

Fiscal Periods Ending	Ratio
December 31, 2022	2.50 to 1.00
March 31, 2023, and each fiscal quarter thereafter	2.25 to 1.00

As of December 31, 2022, our Leverage Ratio of 2.05 was in compliance with the requirements of the credit agreement.

Beginning December 31, 2022, the credit facility requires a Minimum Debt Service Coverage Ratio (consolidated adjusted EBITDA/annual debt service) calculated as of the end of each fiscal quarter for the trailing 12 months of 1.25 to 1.00 through the maturity of the credit facility.

As of December 31, 2022, our Debt Service Coverage Ratio of 1.49 was in compliance with the requirements of the credit agreement.

Interest Rate

The interest rate on the facility ranges from LIBOR plus 2.75% to LIBOR plus 4.00%, depending on our Leverage Ratio, with a LIBOR floor of 0.50%. We entered into swap agreements to fix the LIBOR component of the interest rate at 2.92% on the declining term loan balance and on \$52.7 million of the revolver. The swap agreements matured in *May 2022*. On December 31, 2022, we are paying LIBOR plus 4.0% on the outstanding bank debt.

Future Maturities (in thousands):

2023	35,500
2024	49,713
Total	<u>\$ 85,213</u>

Paycheck Protection Program

As previously reported in the Current Report on Form 8-K filed with the Securities and Exchange Commission on April 16, 2020, we entered into a Paycheck Protection Program Promissory Note and Agreement on April 15, 2020, evidencing an unsecured \$10 million loan (the "PPP Loan") under the Paycheck Protection Program (or "PPP") made through First Financial Bank, N.A., (the "Lender"). The PPP was established under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and is administered by the U.S. Small Business Administration (the "SBA").

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Under the terms of the CARES Act, PPP loan recipients can apply for forgiveness. The SBA can grant forgiveness of all, or a portion of, loans made under the PPP if the recipients use the PPP loan proceeds for eligible purposes, including payroll costs, mortgage interest, rent or utility costs, and meet other requirements regarding, among other things, the maintenance of employment and compensation levels. The Company used the PPP Loan proceeds for qualifying expenses and applied for the forgiveness of the PPP Loan in accordance with the terms of the CARES Act.

On July 23, 2021, we received a notification from the Lender that the SBA approved our PPP Loan forgiveness application for the entire PPP Loan balance of \$10 million, together with interest accrued thereon. The Lender notified us that the forgiveness payment was received on July 26, 2021. The forgiveness of the PPP Loan is recognized as other income.

The SBA retains the right to review the Company's loan file for a period subsequent to the date the loan is forgiven, with the potential for the SBA to pursue legal remedies at its discretion.

(6) ACCOUNTS PAYABLE AND ACCRUED LIABILITIES (IN THOUSANDS)

	December 31,	
	2022	2021
Accounts payable	\$ 62,306	\$ 27,835
Accrued property taxes	1,917	2,529
Accrued payroll	5,933	2,413
Workers' compensation reserve	3,440	2,560
Group health insurance	2,250	1,800
Fair value of interest rate swaps	—	867
Asset retirement obligation - current portion	3,580	100
Other	3,546	3,424
Total accounts payable and accrued liabilities	\$ 82,972	\$ 41,528

(7) REVENUE**Revenue from Contracts with Customers**

We account for a contract with a customer when the parties have approved the contract and are committed to performing their respective obligations, the rights of each party are identified, payment terms are identified, the contract has commercial substance, and it is probable substantially all of the consideration will be collected. We recognize revenue when we satisfy a performance obligation by transferring control of a good or service to a customer.

Coal operations

Our coal revenue is derived from sales to customers of coal produced at our facilities. Our customers typically purchase coal directly from our mine sites or our rail facility in Princeton, Indiana, where the sale occurs and where title, risk of loss, and control pass to the customer at that point. Our customers arrange for and bear the costs of transporting their coal from our mines to their plants or other specified discharge points. Our customers are typically domestic utility companies. Our coal sales agreements with our customers are fixed-priced, fixed-volume supply contracts, or include a pre-determined escalation in price for each year. Price re-opener and index provisions may allow either 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 the prevailing market price or, in some instances, require us to negotiate a new price, sometimes within specified ranges of prices. The terms of our coal sales agreements result from competitive bidding and extensive negotiations with customers. Consequently, the terms of these contracts vary by customer.

Coal sales agreements will typically contain coal quality specifications. With coal quality specifications in place, the raw coal sold by us to the customer at the delivery point must be substantially free of magnetic material and other foreign material impurities and crushed to a maximum size as set forth in the respective coal sales agreement. Price adjustments are made and billed in the month the coal sale was recognized based on quality standards that are specified in the coal sales agreement, such as Btu factor, moisture, ash, and sulfur content, and can result in either increases or decreases in the value of the coal shipped.

Electric operations

The Company concluded that the definition of a contract and the criteria in ASC 606, *Revenue from Contracts with Customers* ("ASC 606"), was met at the time the PPA was executed by the parties, as this is the point at which enforceable rights and obligations were established. Accordingly, the Company concluded that the PPA constitutes a valid contract under ASC 606.

The Company will recognize revenue daily for the actual capacity made available as part of its stand-ready obligation to provide electricity for the contract capacity performance obligation and daily for the actual delivered electricity plus the amortization of the contract liability as a result of the APA with Hoosier, for the Delivered Energy performance obligation.

Disaggregation of Revenue

Revenue is disaggregated by primary geographic markets, as we believe this best depicts how the nature, amount, timing, and uncertainty of our revenue and cash flows are affected by economic factors.

Coal operations

74% and 73% of our coal revenue for the years ended December 31, 2022 and 2021, respectively, was sold to customers in the State of Indiana with the remainder sold to customers in Florida, North Carolina, Georgia, and Alabama.

Electric operations

100% of our electric revenue for the year ended December 31, 2022 was sold to Hoosier in the State of Indiana.

Performance Obligations

Coal operations

A performance obligation is a promise in a contract with a customer to provide distinct goods or services. Performance obligations are the unit of account for purposes of applying the revenue recognition standard and therefore determine when and how revenue is recognized. In most of our coal contracts, the customer contracts with us to provide coal that meets certain quality criteria. We consider each ton of coal a separate performance obligation and allocate the transaction price based on the base price per the contract, increased or decreased for quality adjustments.

We recognize revenue at a point in time as the customer does not have control over the asset at any point during the fulfillment of the contract. For substantially all of our customers, this is supported by the fact that title and risk of loss transfer to the customer upon loading of the truck or railcar at the mine. This is also the point at which physical possession of the coal transfers to the customer, as well as the right to receive substantially all benefits and the risk of loss in ownership of the coal.

We have remaining coal sales performance obligations relating to fixed priced contracts of approximately \$593 million, which represent the average fixed prices on our committed contracts as of December 31, 2022. We expect to recognize approximately 75% of this coal sales revenue in 2023, with the remainder recognized thereafter.

We have remaining performance obligations relating to coal sales contracts with price reopeners of approximately \$166 million, which represents our estimate of the expected re-opener price on committed contracts as of December 31, 2022. We expect to recognize all of this coal sales revenue beginning in 2024.

The coal tons used to determine the remaining performance obligations are subject to adjustment in instances of force majeure and exercise of customer options to either take additional tons or reduce tonnage if such option exists in the customer contract.

Electric operations

The Company concluded that each megawatt hour ("MWh") of delivered energy is capable of being distinct as a customer could benefit from each on its own by using/consuming it as a part of its operations. The Company also concluded that the stand-ready obligation to be available to provide electricity to Hoosier is capable of being distinct as each unit of capacity provides an economic benefit to the holder and could be sold by Hoosier.

Hallador shall sell, and Hoosier shall buy, at least 70% of the delivered energy quantities through 2025 at the contract price, which is \$34.00 per MWh.

In addition to delivered energy, Hallador shall provide a stand-ready obligation to provide electricity, also known as contract capacity. The contract capacity that Hallador shall provide is 917 megawatts ("MW") for contract year 1, and 300 MW for contract years 2-4. Hoosier shall pay Hallador the capacity price of \$5.80 per kilowatt month for the contract capacity.

Contract Balances

Under ASC 606, the timing of when a performance obligation is satisfied can affect the presentation of accounts receivable, contract assets, and contract liabilities. The main distinction between accounts receivable and contract assets is whether consideration is conditional on something other than the passage of time. A receivable is an entity's right to consideration that is unconditional.

Under the typical payment terms of our contracts with customers, the customer pays us a base price for the coal, increased or decreased for any quality adjustments, electricity, or capacity. Amounts billed and due are recorded as trade accounts receivable and included in accounts receivable in our consolidated balance sheets. As of January 1, 2021, accounts receivable for coal sales billed to customers was \$12.8 million. We do not currently have any other contracts in place where we would transfer coal, electricity or capacity in advance of knowing the final price, and thus do not have any other contract assets recorded. Contract liabilities also arise when consideration is received in advance of performance.

(8) INCOME TAXES

Our income tax is different than the expected amount computed using the applicable federal statutory income tax rate of 21%. The reasons for and effects of such differences for the years ended December 31 are below (in thousands):

	<u>2022</u>	<u>2021</u>
Expected amount	\$ 4,171	\$ (783)
State income taxes, net of federal benefit	391	(767)
Percentage depletion	(2,081)	(1,725)
Valuation allowance	(970)	3,376
Stock-based compensation	—	380
PPP loan forgiveness	—	(2,100)
Return to provision adjustments	153	1,610
Other	92	35
	<u>\$ 1,756</u>	<u>\$ 26</u>

The deferred tax assets and liabilities resulting from temporary differences between book and tax basis are comprised of the following at December 31 (in thousands):

	<u>2022</u>	<u>2021</u>
Deferred tax assets:		
Net operating loss	\$ 26,570	\$ 32,659
Valuation allowance	(3,681)	(4,651)
Stock-based compensation	163	—
Other	471	—
Total deferred tax assets	<u>23,523</u>	<u>28,008</u>
Deferred tax liabilities:		
Coal properties	(26,446)	(30,368)
Investment in partnerships	(1,480)	(484)
Other	(203)	(6)
Total deferred tax liabilities	<u>(28,129)</u>	<u>(30,858)</u>
Net deferred tax liability	<u>\$ (4,606)</u>	<u>\$ (2,850)</u>

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Our effective tax rate ("ETR") for 2022 was 9% compared to (1%) for 2021. The tax rate for the years ended December 31, 2022 and 2021 are not predictive of future tax rates. Our ETR differs from the statutory rate due to statutory depletion in excess of tax basis, PPP loan forgiveness, return to provision adjustments, and changes in the valuation allowance. The deduction for statutory depletion does not necessarily change proportionately to changes in income before income taxes.

We recognize deferred tax assets to the extent that we believe that these assets are more likely than not to be realized. In making such a determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. Due to historical cumulative earnings over the prior 3 years as well as projected earnings into the future, the Company believes that it is more likely than not that the benefit from certain federal and state deferred tax assets will be realized. As such, the Company has released a portion of its valuation allowance in the current year. Due to federal NOL's that are limited to 80% utilization to offset future federal tax liabilities reversing the Company continues to have a valuation against a portion of these NOL's which it believes is not more likely than not to be realized. In recognition of this, we have provided a valuation allowance of \$3.7 million and \$4.7 million on the deferred tax assets related to these NOL carryforwards as of December 31, 2022 and 2021, respectively.

The federal NOLs generated in pre-2018 years and remaining of \$40.3 million can offset 100% of future years' taxable income. The federal NOLs generated in post 2017 years of \$60.7 million can offset 80% of future years' taxable income. The pre-2018 federal NOLs will expire in varying amounts from 2035 to 2037 if they are not utilized. Indiana NOLs have a 20-year carryforward period and will expire in the years 2034 to 2041 if they are not utilized.

We have analyzed our filing positions in all of the federal and state jurisdictions where we are required to file income tax returns, as well as all open tax years in these jurisdictions, to determine whether the positions will be more likely than not be sustained by the applicable tax authority. Tax positions not deemed to meet the more-likely-than-not threshold are not recorded as a tax benefit or expense in the current year. We identified our federal tax return and our Indiana state tax return as "major" tax jurisdictions. We believe that our income tax filing positions and deduction will be sustained on audit and do not anticipate any adjustments that will result in a material change to our consolidated financial position. While not material, we record any penalties and interest as general and administrative expense. Tax returns filed with the IRS and state entities generally remain subject to examination for three years after filing.

(9) STOCK COMPENSATION PLANS

Restricted Stock Units (RSUs)

The table below shows the number of RSUs available for issuance at December 31, 2022:

Total authorized RSUs in Plan approved by shareholders	4,850,000
Stock issued out of the Plan from vested grants	(3,265,829)
Non-vested grants	(1,056,937)
RSUs available for future issuance	<u>527,234</u>
Non-vested grants at December 31, 2020	324,250
Granted – weighted average share price on grant date was \$2.46	173,000
Vested – weighted average share price on vesting date was \$2.27	(296,250)
Forfeited	(18,000)
Non-vested grants at December 31, 2021	183,000
Granted – weighted average share price on grant date was \$6.74	881,437
Vested	—
Forfeited	(7,500)
Non-vested grants at December 31, 2022	<u>1,056,937</u>

RSU Vesting Schedule

<u>Vesting Year</u>	<u>RSUs Vesting</u>
2023	457,721
2024	299,608
2025	299,608

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Vested shares had a value of \$0.7 million for 2021, on their vesting dates. Under our RSU plan, participants are allowed to relinquish shares to pay for their required statutory income taxes.

The outstanding RSUs have a value of \$8.1 million based on the March 1, 2023 closing stock price of \$7.65.

For the years ended December 31, 2022 and 2021 stock-based compensation was \$1.3 million and \$1.0 million, respectively.

As of December 31, 2022, unrecognized stock compensation expense is \$5.1 million, and we had 527,234 RSUs available for future issuance. RSUs are not allocated earnings and losses as they are considered non-participating securities.

Stock Options

We have no stock options outstanding.

Stock Bonus Plan

Our stock bonus plan was authorized in late 2009 with 250,000 shares. Currently, we have 86,383 shares available for future issuance.

(10) EMPLOYEE BENEFITS

Our employee benefit expenses for the years ended December 31 are below (in thousands):

	2022	2021
Health benefits, including premiums	\$ 14,607	\$ 13,084
401(k) matching	2,549	1,946
Deferred bonus plan	809	698
Total	<u>\$ 17,965</u>	<u>\$ 15,728</u>

Of the amounts in the above table, \$17.4 million and \$15.2 million are recorded in operating expenses for 2022 and 2021, respectively with the remainder in general and administrative.

Our mine employees are also covered by workers' compensation and such costs for 2022 and 2021, were approximately \$4.9 million and \$2.9 million, respectively, and are recorded in operating expenses. Workers' compensation is a no-fault system by which individuals who sustain work-related injuries or occupational diseases are compensated. Benefits and coverage are mandated by each state which includes disability ratings, medical claims, rehabilitation services, and death and survivor benefits. We are partially self-insured for such claims, however, our operations are protected from these perils through stop-loss insurance policies. Our maximum annual exposure is limited to \$1 million per occurrence with a \$4 million aggregate deductible.

(11) LEASES

We have operating leases for office space and processing facilities with remaining lease terms ranging from less than one year to approximately five years. As most of the leases do not provide an implicit rate, we calculated the right-of-use assets and lease liabilities using our secured incremental borrowing rate at the lease commencement date. We currently do not have any finance leases outstanding.

Information related to leases was as follows as of December 31 (in thousands):

	2022
Operating lease information:	
Operating cash outflows from operating leases	\$ 218
Weighted average remaining lease term in years	1.30
Weighted average discount rate	6.0%

Future minimum lease payments under non-cancellable leases as of December 31, 2022 were as follows (in thousands):

Year	Amount
2023	\$ 173
2024	60
Total minimum lease payments	\$ 233
Less imputed interest	(3)
Total operating lease liability	<u>\$ 230</u>
As reflected on balance sheet:	
Other long-term liabilities	<u>\$ 230</u>

At December 31, 2022 and 2021, respectively, we had approximately \$230 and \$424 right-of-use operating lease assets recorded within “buildings and equipment” on the Consolidated Balance Sheet.

(12) SELF INSURANCE

We self-insure our underground mining equipment. Such equipment is allocated among seven mining units dispersed over 10 miles. The historical cost of such equipment was approximately \$280 million and \$260 million as of December 31, 2022 and December 31, 2021, respectively.

Restricted cash of \$3.4 million and \$3.3 million as of December 31, 2022, and December 31, 2021, respectively, represents cash held and controlled by a third party and is restricted for future workers’ compensation claim payments.

(13) NET INCOME (LOSS) PER SHARE

The following table (in thousands, except per share amounts) sets forth the computation of basic net income (loss) per share:

	Year Ended December 31,	
	2022	2021
Basic earnings per common share:		
Net income (loss) - basic	\$ 18,105	\$ (3,754)
Weighted average shares outstanding - basic	32,043	30,614
Basic earnings (loss) per common share	<u>\$ 0.57</u>	<u>\$ (0.12)</u>

The following table (in thousands, except per share amounts) sets forth the computation of diluted net income (loss) per share:

	Year Ended December 31,	
	2022	2021
Diluted earnings per common share:		
Net income (loss) - basic	\$ 18,105	\$ (3,754)
Add: Convertible Notes interest expense, net of tax	527	-
Net income (loss) - diluted	<u>\$ 18,632</u>	<u>\$ (3,754)</u>
Weighted average shares outstanding - basic	\$ 32,043	\$ 30,614
Add: Dilutive effects of if converted Convertible Notes	1,398	-
Add: Dilutive effects of Restricted Stock Units	208	-
Weighted average shares outstanding - diluted	<u>33,649</u>	<u>30,614</u>
Diluted net income (loss) per share	<u>\$ 0.55</u>	<u>\$ (0.12)</u>

(14) FAIR VALUE MEASUREMENTS

We account for certain assets and liabilities at fair value. The hierarchy below lists three levels of fair value based on the extent to which inputs used in measuring fair value are observable in the market. We categorize each of our fair value measurements in one of these three levels based on the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities. We consider active markets as those in which transactions for the assets or liabilities occur in sufficient frequency and volume to provide pricing information on an ongoing basis. We have no Level 1 instruments.

Level 2: Quoted prices in markets that are not active, or inputs that are observable, either directly or indirectly, for substantially the full term of the asset or liability. We have no Level 2 instruments.

Level 3: Measured based on prices or valuation models that require inputs that are both significant to the fair value measurement and less observable from objective sources (i.e., supported by little or no market activity). Our Level 3 instruments are comprised of interest rate swaps and impairment measurements. Although we utilize third-party broker quotes to assess the reasonableness of our prices and valuation, we do not have sufficient corroborating market evidence to support classifying these assets and liabilities as Level 2. The Company recorded an impairment during Q4 of 2021 which incorporates Level 3 non-recurring fair value measures as further discussed in Note 2. Certain properties' asset retirement obligation liabilities use Level 3 non-recurring fair value measures as further discussed in Note 1. Lastly, Level 3 fair value measurements were also used in the determination of the fair values of assets acquired, liabilities assumed and considerations exchanged as part of the Merom Acquisition.

The following table summarizes our financial assets and liabilities measured on a recurring basis at fair value at December 31, 2022 and 2021 by respective level of the fair value hierarchy (in thousands):

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
December 31, 2021				
Liabilities:				
Interest rate swaps	\$ —	\$ —	\$ 867	\$ 867

The table below highlights the change in fair value of the fuel hedges and interest rate swaps which are based on a discounted future cash flow model (in thousands):

Ending balance, December 31, 2021	867
Settlements	(1,058)
Unrealized loss	191
Ending balance, December 31, 2022	<u>\$ —</u>

(15) EQUITY METHOD INVESTMENTS**Sunrise Energy, LLC**

We own a 50% interest in Sunrise Energy, LLC, which owns gas reserves and gathering equipment with plans to develop and operate such reserves. Sunrise Energy also plans to develop and explore for oil, gas, and coal-bed methane gas reserves on or near our underground coal reserves. The carrying value of the investment included in our consolidated balance sheets as of December 31, 2022 and 2021 was \$4.0 million and \$3.5 million, respectively.

(16) MEROM ACQUISITION

On February 14, 2022, Hallador Power signed an Asset Purchase Agreement (“APA”), with Hoosier, a rural electric membership corporation organized and existing under the laws of the state of Indiana.

Under the APA, Hallador acquired the Merom power plant, along with: equipment and machinery in the power plant; materials inventory; a coal purchase agreement; a coal combustion certified coal ash landfill, certain Generation Interconnection Agreements, and coal inventory (collectively, the “Acquired Assets”). Additionally, contemporaneous with entering into the APA, Hallador entered into three other agreements with Hoosier comprised of (1) a Power Purchase Agreement (the “PPA”), (2) a Coal Supply Purchase Agreement (the “Coal Purchase Agreement”), and (3) a Closing Side Letter agreeing to a reduction in future capacity payments of \$15.0 million (“Capacity Payment Reduction”). The purchase price for the Acquired Assets also consists of the assumption of the power plant’s closure and post-closure remediation, valued at approximately \$7.2 million; no cash will be paid by Hallador to Hoosier to effectuate the APA other than payments totaling approximately \$17.0 million for coal inventory on hand, with an initial payment of \$5.4 million and subsequent periodic payments over time, subject to post-close adjustments based on actual on-site inventories. The acquisition closed on October 21, 2022.

The acquisition is being accounted for as an asset acquisition under ASC 805-50 as substantially all of the fair value of the gross assets acquired are concentrated in a group of similar identifiable assets. As such, the total purchase consideration (which includes \$2.9 million of transaction costs) are allocated to the assets acquired on a relative fair value basis.

The following table summarizes the final relative fair value allocation of assets acquired and liabilities assumed and incurred as of the Merom acquisition date.

Consideration:	(in thousands)
Direct transaction costs	\$ 2,855
Contract liability - PPA	184,500
Contract liability - Capacity payment reduction	11,000
Contract asset - Coal purchase agreement	(34,300)
Coal inventory purchased	5,400
Deferred coal inventory payment	11,600
Total consideration	<u>\$ 181,055</u>
Relative fair value of assets acquired:	
Plant	\$ 165,816
Materials and supplies	12,009
Coal inventory	10,460
Amount attributable to assets acquired	<u>\$ 188,285</u>
Fair value of liabilities assumed:	
Asset retirement obligations	\$ 7,230
Amount attributable to liabilities assumed	<u>\$ 7,230</u>

(17) CONVERTIBLE NOTES

On May 2, 2022, and May 20, 2022, we issued senior unsecured convertible notes (the "Notes") to five parties, in the aggregate principal amount of \$10 million, with \$9 million being issued to related parties affiliated with independent members of our board of directors and the remainder to a non-affiliated party. The Notes were scheduled to mature on December 29, 2028, and accrue interest at 8% per annum, with interest payable on the date of maturity. Pursuant to the terms of the Notes, the holders of the Notes may convert the entire principal balance and all accrued and unpaid interest then outstanding during the period beginning June 1, 2022, and ending on May 31, 2027, into shares of the Company's common stock at a conversion price the greater of (i) \$3.33 and (ii) the 30-day trailing volume-weighted average sales price for the common stock on the Nasdaq Capital Market ending on and including the date on which this Note is converted. At any time on or after June 1, 2025, the Company may, at its option and upon 30 days' written notice provided to the holders, elect to redeem the Notes (in whole and not in part) and the holders shall be obligated to surrender the Notes, at a redemption price equal to 100% of the outstanding principal balance, together with any accrued but unpaid interest thereon to the redemption date. After receipt of such redemption notice from the Company, the holder may, at its option, elect to convert the principal balance and accrued interest into the Company's common stock by giving written notice of such election to the Company no later than 5 days prior to the date fixed for redemption.

In June 2022, the four holders of the \$9 million related party Notes converted them into 1,965,841 shares of common stock of the Company and the one holder of the \$1 million Note converted it into 231,697 shares of common stock pursuant to the terms of the notes and their related agreements.

On July 29, 2022, we issued \$5 million of a senior unsecured convertible note to a related party affiliated with an independent member of our board of directors. The note carries an interest rate of 8% per annum with a maturity date of December 29, 2028. For the period August 18, 2022 through August 17, 2024, the holder has the option to convert the note into shares of the Company's common stock at a conversion price of \$6.254. Beginning August 18, 2025, the Company may elect to redeem the note and the holder shall be obligated to surrender the note at 100% of the outstanding principal balance together with any accrued unpaid interest. Upon receipt of the redemption notice from the Company, the holder may elect to convert the principal balance and accrued interest into the Company's common stock.

On August 8, 2022, we issued \$4 million of senior unsecured convertible notes to related parties affiliated with independent members of our board of directors. The notes carry an interest rate of 8% per annum with a maturity date of December 29, 2028. For the period August 18, 2022 through August 17, 2024, the holder has the option to convert the notes into shares of the Company's common stock at a conversion price of \$6.254. Beginning August 8, 2025, the Company may elect to redeem the note and the holder shall be obligated to surrender the note at 100% of the outstanding principal balance together with any accrued unpaid interest. Upon receipt of the redemption notice from the Company, the holder may elect to convert the principal balance and accrued interest into the Company's common stock.

On August 12, 2022, we issued a \$10 million senior unsecured convertible note to an unrelated party. The note carries an interest rate of 8% per annum with a maturity date of December 31, 2026. For the period August 18, 2022 through the maturity date, the holder has the option to convert the notes into shares of the Company's common stock at a conversion price of \$6.15. Beginning August 12, 2025, the Company may elect to redeem the note and the holder shall be obligated to surrender the note at 100% of the outstanding principal balance together with any accrued unpaid interest. Upon receipt of the redemption notice from the Company, the holder may elect to convert the principal balance and accrued interest into the Company's common stock.

The funds received from the issuance of the various notes described above in this note 17 were used to provide additional working capital to the Company. The conversion price and number of shares of the Company's common stock issuable upon conversion of the above notes are subject to adjustment from time to time for any subdivision or consolidation of the Company's shares of common stock and other standard dilutive events.

(18) SEGMENTS OF BUSINESS

At December 31, 2022, our operations are divided into two primary reportable segments, the Coal Operations and Electric Operations segments. The remainder of our operations, which are not significant enough on a stand-alone basis to warrant treatment as an operating segment, are presented as "Corporate and Other and Eliminations" and primarily are comprised of unallocated corporate costs and activities, including a 50% interest in Sunrise Energy, LLC, a private gas exploration company with operations in Indiana, which we account for using the equity method and our wholly-owned subsidiary Summit Terminal LLC, a logistics transport facility located on the Ohio River.

Year Ended December 31, (in millions)	2022	2021
Operating Revenues		
Coal Operations	\$ 293,344	\$ 246,396
Electric Operations	\$ 66,316	\$ -
Corporate and Other and Eliminations	\$ 2,331	\$ 1,270
Consolidated Operating Revenues	\$ 361,991	\$ 247,666
Income (Loss) from Operations		
Coal Operations	\$ 3,736	\$ 1,992
Electric Operations	\$ 31,505	\$ -
Corporate and Other and Eliminations	\$ (4,811)	\$ (8,036)
Consolidated Income (Loss) from Operations	\$ 30,430	\$ (6,044)
Depreciation, Depletion and Amortization		
Coal Operations	\$ 43,612	\$ 39,829
Electric Operations	\$ 3,117	\$ -
Corporate and Other and Eliminations	\$ 146	\$ 144
Consolidated Depreciation, Depletion and Amortization	\$ 46,875	\$ 39,973
Assets		
Coal Operations	\$ 376,228	\$ 346,201
Electric Operations	\$ 266,730	\$ -
Corporate and Other and Eliminations	\$ (12,404)	\$ 7,779
Consolidated Assets	\$ 630,554	\$ 353,980
Capital Expenditures		
Coal Operations	\$ 50,367	\$ 28,050
Electric Operations	\$ 3,653	\$ -
Corporate and Other and Eliminations	\$ -	\$ -
Consolidated Capital Expenditures	\$ 54,020	\$ 28,050

(19) SUBSEQUENT EVENTS

On March 13, 2023, we executed an amendment to our credit agreement with PNC as discussed in Note 5 to these consolidated financial statements.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES.

Disclosure Controls

We maintain a system of disclosure controls and procedures that are designed for the purposes of ensuring that information required to be disclosed in our SEC reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our CEO and CFO as appropriate to allow timely decisions regarding required disclosure.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our CEO and CFO of the effectiveness of the design and operation of our disclosure controls and procedures. Based upon that evaluation, our CEO and CFO concluded that our disclosure controls and procedures are effective for the purposes discussed above.

Management's Annual Report on Internal Control over Financial Reporting (ICFR)

Our management, including our CEO and CFO, is responsible for establishing and maintaining adequate ICFR. Our ICFR is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles in the United States. Because of its inherent limitations, ICFR may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance of achieving their control objectives. Management evaluated the effectiveness of our ICFR based on the framework in "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in 2013.

As permitted by the SEC, we have excluded the business of Hallador Power Company, LLC, our wholly-owned subsidiary, from our evaluation of the effectiveness of internal control over financial reporting for the year ended December 31, 2022, as substantive operations of this business commenced during the fourth quarter of 2022 following the acquisition of the Merom power plant on October 21, 2022. See "Note 16 – Merom Acquisition" for additional information on this acquisition. The operations excluded from our evaluation represent approximately 42% of our total assets as of December 31, 2022 and 18% of our total revenues for the year ended December 31, 2022.

Our management evaluated, with the participation of our CEO and CFO, the effectiveness of our ICFR as of December 31, 2022. Based on that evaluation, our management concluded that our ICFR was effective at December 31, 2022.

Grant Thornton LLP, an independent registered public accounting firm, has made an independent assessment of the effectiveness of our internal control over financial reporting as of December 31, 2022, as stated in their report that is included herein.

There were no significant changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2022 that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Hallador Energy Company

Opinion on internal control over financial reporting

We have audited the internal control over financial reporting of Hallador Energy Company (a Colorado corporation) and subsidiaries (the “Company”) as of December 31, 2022, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the consolidated financial statements of the Company as of and for the year ended December 31, 2022, and our report dated March 16, 2023 expressed an unqualified opinion on those financial statements.

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 Annual Report on Internal Control over Financial Reporting (“Management’s Report”). 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.

Our audit of, and opinion on, the Company’s internal control over financial reporting does not include the internal control over financial reporting of Hallador Power Company, LLC, a wholly-owned subsidiary, whose financial statements reflect total assets and revenues constituting 42 and 18 percent, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2022. As indicated in Management’s Report, Hallador Power Company, LLC began substantive operations during 2022. Management’s assertion on the effectiveness of the Company’s internal control over financial reporting excluded internal control over financial reporting of Hallador Power Company, LLC.

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.

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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/ GRANT THORNTON LLP

Tulsa, Oklahoma
March 16, 2023

ITEM 9B. OTHER INFORMATION

On March 13, 2023, Hallador Energy Company executed an amendment to its credit agreement with PNC, administrative agent for its lenders. The primary purpose of the amendment is to convert \$35 million of the Revolver into a new term loan with a maturity of March 31, 2024 and extend the maturity date of the Revolver to May 31, 2024. The amendment also waived the maximum annual capital expenditure covenant for 2022 and increases the covenant for 2023 to \$75 million.

The interest rate per the amendment will transition from LIBOR to SOFR based pricing with ranges from SOFR plus 4.00% to SOFR plus 5.00%, depending on the Company's leverage ratio. The Company expects the interest rate to be SOFR plus 4.00% for the majority of 2023.

A copy of the credit agreement is filed herewith as Exhibit 10.10 to this Form 10-K.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.

None.

PART III

Pursuant to paragraph 3 of General Instruction G to Form 10-K, the information required by Items 10 through 14 of Part III of this Report is incorporated by reference from our definitive proxy statement, which is to be filed pursuant to Regulation 14A within 120 days after the end of our fiscal year ended December 31, 2022.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

See [Item 8](#) for an index of our financial statements.

Our exhibit index is as follows:

3.1	Second Restated Articles of Incorporation of Hallador Energy Company effective December 24, 2009 (1)
3.2	By-laws of Hallador Energy Company, effective December 24, 2009 (2)
4.1	Description of Securities (3)
10.1	2009 Stock Bonus Plan (4)
10.2	Third Amended and Restated Credit Agreement dated May 21, 2018 (5)
10.3	Second Amendment to the Third Amended and Restated Credit Agreement and Waiver dated September 30, 2019 (6)
10.4	Third Amendment to the Third Amended and Restated Credit Agreement and Waiver (7)
10.5	Sixth Amendment to the Third Amended and Restated Credit Agreement dated March 25, 2022 (10)
10.	Seventh Amendment to the Third Amended and Restated Credit Agreement dated May 20, 2022 (12)
10.6	Eighth Amendment to the Third Amended and Restated Credit Agreement dated August 5 2022 (14)
10.7	Ninth Amendment to the Third Amended and Restated Credit Agreement dated September 28, 2022 (16)
10.8	Tenth Amendment to the Third Amended and Restated Credit Agreement dated March 13, 2023*
10.9	US SBA Loan (PPP) dated April 16, 2020 (7).
10.10	Amended and Restated Hallador Energy Company 2008 Restricted Stock Unit Plan (8)
10.11	Form of Hallador Energy Company Restricted Stock Unit Issuance Agreement* (8)
10.12	Hallador Energy Company 2020 Compensation Plan adopted March 5, 2020** (2)
10.13	2022 Executive Officer Compensation Plan**(17)
10.14	Asset and Purchase Agreement dated February 14, 2022 (9)
10.15	Hallador Energy Company Unsecured Convertible Promissory Note dated May 2, 2022 - Charles R. Wesley, IV Revocable Trust U/A dated October 30, 2020 (11)
10.16	Hallador Energy Company Unsecured Convertible Promissory Note dated May 2, 2022 - Lubar Opportunities Fund I, LLC (11)
10.17	Hallador Energy Company Unsecured Convertible Promissory Note - dated May 2, 2022 - NextG Partners LLC (11)
10.18	Hallador Energy Company Unsecured Convertible Promissory Note - dated May 2, 2022 - Hallador Alternative Asset Fund, LLC (11)
10.19	Hallador Energy Company Unsecured Convertible Promissory Note dated May 20, 2022 - NextG Partners, LLC (12)
10.20	Hallador Energy Company Unsecured Convertible Promissory Note dated May 20 2022 - Hallador Alternative Asset Fund, LLC (12)
10.21	Hallador Energy Company Unsecured Convertible Promissory Note dated May 20, 2022, - Lubar Opportunities Fund I, LLC (12)
10.22	Hallador Energy Company Unsecured Convertible Promissory Note dated May 20, 2020 - Murchison Capital Partners, LP (12)
10.21	Hallador Energy Company Convertible Note Purchase Agreement dated July 29, 2022 (13)
10.23	Hallador Energy Company Unsecured Convertible Promissory Note dated July 29, 2022 - Lubar Opportunities Fund I LLC (13)
10.24	Hallador Energy Company Unsecured Convertible Promissory Note dated August 8, 2022 - Lubar Opportunities Fund I, LLC (14)
10.25	Hallador Energy Company Unsecured Convertible Promissory Note dated August 8, 2022 - Hallador Alternative Assets Fund, LLC (14)
10.26	Hallador Energy Company Unsecured Convertible Promissory Note dated August 12, 2022 - ALJ (15)
14.1	Code of Ethics for Senior Officers (18)
21.1	List of Subsidiaries
23.1	Consent of Grant Thornton LLP
23.2	Consent of Plante & Moran, PLLC
31.1	SOX 302 Certification - President and CEO
31.2	SOX 302 Certifications - CFO
31.3	SOX 302 Certifications - CAO
32	SOX 906 Certification
95	Mine Safety Disclosure

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101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Schema Document
101.CAL*	Inline XBRL Calculation Linkbase Document
101.LAB*	Inline XBRL Labels Linkbase Document
101.PRE*	Inline XBRL Presentation Linkbase Document
101.DEF*	Inline XBRL Definition Linkbase Document
104*	Cover Page Interactive Data File (embedded within the Inline XBRL and contained in Exhibit 101)

- (1) IBR to Form 8-K dated December 31, 2009
 - (2) IBR to Form 10-K/A amendment 1, filed June 12, 2020
 - (3) IBR to Form 10-K filed March 9, 2020
 - (4) IBR to Form S-8 dated December 1, 2009
 - (5) IBR to Form 10-Q filed August 6, 2018
 - (6) IBR to Form 10-Q filed November 4, 2019
 - (7) IBR to Form 10-Q filed May 11, 2020
 - (8) IBR to Form DEF 14A dated April 11, 2017
 - (9) IBR to Form 8-K/A filed February 18, 2022
 - (10) IBR to Form 10-K filed March 28, 2022
 - (11) IBR to Form 8-K filed May 6, 2022
 - (12) IBR to Form 10-Q filed May 23, 2022
 - (13) IBR to Form 8-K filed August 4, 2022
 - (14) IBR to Form 8-K dated August 11, 2022
 - (15) IBR to Form 10-Q filed August 15, 2022
 - (16) IBR to Form 8-K filed October 4, 2022
 - (17) IBR to Form 10-Q filed November 14, 2022
 - (18) IBR to Form 10KSB dated April 14, 2006
- * Filed herewith.

** Management Agreements

ITEM 16. FORM 10-K SUMMARY.

As this item is optional, no summary is presented.

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.

HALLADOR ENERGY COMPANY

Date: March 16, 2023

/s/LAWRENCE D. MARTIN
Lawrence D. Martin, CFO

Date: March 16, 2023

/s/R. TODD DAVIS
R. Todd Davis, CAO

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>/s/DAVID HARDIE</u> David Hardie	Director	March 16, 2023
<u>/s/BRYAN LAWRENCE</u> Bryan Lawrence	Director	March 16, 2023
<u>/s/BRENT BILSLAND</u> Brent Bilsland	Board Chairman, President and CEO	March 16, 2023
<u>/s/DAVID J. LUBAR</u> David J. Lubar	Director	March 16, 2023

TENTH AMENDMENT TO THE THIRD AMENDED AND RESTATED CREDIT AGREEMENT

TENTH AMENDMENT TO THE THIRD AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment"), dated as of March 13, 2023, by and among **HALLADOR ENERGY COMPANY** (the "Borrower"), the Guarantors party hereto, the lenders listed on the signature pages hereof and **PNC BANK, NATIONAL ASSOCIATION**, as administrative agent for the Lenders (the "Administrative Agent") under the Credit Agreement referred to below.

WITNESSETH:

WHEREAS, the Borrower, the Lenders and the Administrative Agent are party to the Third Amended and Restated Credit Agreement dated as of May 21, 2018, as amended by the First Amendment dated as of March 26, 2019, the Second Amendment dated as of September 30, 2019, the Third Amendment dated as of April 15, 2020, the Fourth Amendment dated as of July 2, 2020, the Fifth Amendment dated as of May 27, 2021, the Sixth Amendment dated as of March 25, 2022, the Seventh Amendment dated as of May 20, 2022, the Eighth Amendment dated as of August 5, 2022 and the Ninth Amendment dated as of September 28, 2022 (and as may be further amended, restated, modified or supplemented, the "Credit Agreement") (capitalized terms used without definition in this Amendment have the meanings given to them in the Credit Agreement), pursuant to which the Lenders have extended credit to the Borrower;

WHEREAS, the Borrower has requested that certain amendments be made as set forth in more detail herein; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Credit Agreement.

NOW, THEREFORE, in consideration of their mutual covenants and agreements hereafter set forth, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I**Section 1.1 Amendments to Credit Agreement.**

- (a) The Credit Agreement is hereby amended to be as set forth in the conformed copy attached hereto as Exhibit A.
 - (b) Each of Exhibit 1.1(N)(3) [Term Note] and Exhibit 2.5.1 [Loan Request] to the Credit Agreement shall be amended and restated in its entirety and be replaced by Exhibit 1.1(N)(3) and 2.5.1 hereto, respectively.
 - (c) Each of Schedules 1.1(B) [Commitments of Lenders and Addresses for Notices], Schedule 1.1(R) [Real Property], Schedule 6.1.1 [Qualifications to Do Business], Schedule 6.1.2 [Subsidiaries], Schedule 6.1.4 [No Conflict; Material Agreements; Consents] and Schedule 8.2.1 [Existing Indebtedness] to the Credit Agreement shall be amended and restated in its entirety and be replaced by Schedules 1.1(B), 1.1(R), 6.1.1, 6.1.2, 6.1.4 and 8.2.1 hereto, respectively.
-

(d) Schedule A to the Third Amended and Restated Security Agreement shall be amended and restated in its entirety and be replaced by Schedule A hereto.

(e) The amendment to Section 8.2.14 of the Credit Agreement shall be effective as of October 1, 2022.

ARTICLE II

Section 2.1 No Other Amendments. Except as amended hereby, the terms and provisions of the Credit Agreement remain unchanged, are and shall remain in full force and effect unless and until modified or amended in writing in accordance with their terms, and are hereby ratified and confirmed. Except as expressly provided herein, this Amendment shall not constitute an amendment, waiver, consent or release with respect to any provision of any Loan Document, a waiver of any Potential Default or Event of Default under any Loan Document, or a waiver or release of any of the Lenders' or Administrative Agent's rights and remedies (all of which are hereby reserved).

Section 2.2 Conditions to Effectiveness. This Amendment shall become effective on the date (such date, the "Amendment No. 10 Effective Date") that the following conditions have been satisfied:

(a) Deliveries. The Administrative Agent shall have received each of the following:

(i) An executed counterpart of this Amendment executed on behalf of (i) each of the Loan Parties and (ii) each Lender and Issuing Lender party to the Credit Agreement.

(ii) A certificate of each of the Loan Parties signed by an Authorized Officer, dated the Amendment No. 10 Effective Date (x) certifying as to the satisfaction of the conditions set forth in Section 2.2(b) and (y) stating that no Material Adverse Change has occurred since the date of the last audited financial statements of the Borrower delivered to the Administrative Agent.

(iii) A certificate dated the Amendment No. 10 Effective Date and signed by the Secretary or an Assistant Secretary of each of the Loan Parties, certifying as appropriate as to: (a) all action taken by each Loan Party in connection with this Amendment and the other Loan Documents; (b) the names of the Authorized Officers authorized to sign the Loan Documents and their true signatures; and (c) there having been no changes to its organizational documents, or, if there have been changes, copies of its organizational documents as in effect on the Amendment No. 10 Effective 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 its state of organization.

(iv) Opinion addressed to the Administrative Agent and each of the Lenders and dated the Amendment No. 10 Effective Date as to such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request from Morgan Lewis & Bockius LLP, as Pennsylvania and Delaware counsel to the Loan Parties.

(v) A Lien search in acceptable scope and with acceptable results.

(vi) With respect to each structure on any real property that is encumbered by a Mortgage, the Administrative Agent shall have received a life-of-loan Federal Emergency Management Agency flood hazard determination, and, to the extent any such structure is located in a special flood hazard area, the Administrative Agent shall have received (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and (ii) evidence of flood insurance as required under the Credit Agreement.

(vii) A certificate in form and substance satisfactory to the Administrative Agent as to the capital adequacy and solvency of each Loan Party after giving effect to the transactions contemplated hereby signed by an Authorized Officer of each Loan Party, acting in its capacity as such officers.

(viii) An executed Certificate of Beneficial Ownership and such other documentation and other information requested by the Administrative Agent and each Lender in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act, in form and substance acceptable to Administrative Agent and each Lender.

(b) Certain Representations. (i) The representations and warranties of the Loan Parties contained in Section 6 of the Credit Agreement including as amended by the modifications and additional representations and warranties of this Amendment, and of each Loan Party in each of the other Loan Documents shall be true and accurate in all material respects on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which relate solely to an earlier date or time, which representations and warranties shall be true and correct in all material respects on and as of the specific dates or times referred to therein), (ii) each of the Loan Parties shall have performed and complied with all covenants and conditions hereof and thereof, (iii) no Event of Default or Potential Default shall have occurred and be continuing or shall exist, and (iv) the execution of this amendment has been duly authorized by the Loan Parties.

(c) No Defaults under Other Obligations. No default under any note, credit agreement or other document relating to existing Indebtedness of any of the Loan Parties shall occur as a result of this Amendment.

(d) No Actions or Proceedings. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain or prohibit, or to obtain damages in respect of, this Amendment, the other Loan Documents or the consummation of the transactions contemplated hereby or thereby or which, in the Administrative Agent's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Amendment or any of the other Loan Documents

(e) Consents. All material consents required to effectuate the transactions contemplated by this Amendment and the other Loan Documents and shall have been obtained.

(f) Confirmation of Guaranty. Each of the Guarantors confirms that they have read and understand the Amendment. In order to induce the Lenders, the Administrative Agent and the other Agents to enter into the Amendment, each of the Guarantors: (i) consents to the Amendment and the transactions contemplated thereby; (ii) ratifies and confirms each of the Loan Documents to which it is a party and ratifies and reaffirms its guaranty of the Guaranteed Obligations (as defined in the Guaranty Agreement); (iii) ratifies, agrees and confirms that it has been a Guarantor and a Loan Party at all times since it became a Guarantor and a Loan Party and from and after the date hereof, each Guarantor shall continue to be a Guarantor and a Loan Party in accordance with the terms of the Loan Documents, as the same may be amended in connection with the Amendment and the transactions contemplated thereby; and (iv) hereby ratifies and confirms its obligations under each of the Loan Documents (including all exhibits and schedules thereto), as the same may be amended in connection with the Amendment and the transactions contemplated thereby, by signing below as indicated and hereby acknowledges and agrees that nothing contained in any of such Loan Documents is intended to create, nor shall it constitute an interruption, suspension of continuity, satisfaction, discharge of prior duties, novation or termination of the indebtedness, loans, liabilities, expenses, guaranty or obligations of any of the Loan Parties under the Credit Agreement or any other such Loan Document or result in the novation of the Credit Agreement or any other Loan Document.

(g) Confirmation of Security. (i) Each Loan Party hereby ratifies and reaffirms its prior grant in favor of the Administrative Agent for the benefit of itself, the Lenders and any provider of any Lender Provided Interest Rate Hedge or any Other Lender Provided Financial Service Product, a continuing first priority lien (subject to Permitted Liens) on and security interest in, and to, the Collateral (as defined in the Security Agreement) and (ii) each Pledgor (as defined in the Pledge Agreement) hereby ratifies and reaffirms its prior grant in favor of the Administrative Agent for the benefit of itself, the Lenders and any provider of any Lender Provided Interest Rate Hedge or any Other Lender Provided Financial Service Product, a continuing first priority lien (subject to Permitted Liens) on and security interest in, and to, the Pledged Collateral (as defined in the Pledge Agreement), in each case, whether now or hereafter existing and wherever located and confirms that all such Liens and security interests continue in full force and effect to secure the Secured Obligations (as defined in the Security Agreement and the Pledge Agreement), after giving effect to this Amendment.

(h) Legal Details. All legal details and proceedings in connection with the transactions contemplated by this Amendment and the other Loan Documents shall be in form and substance satisfactory to the Administrative Agent and counsel for the Administrative Agent, and the Administrative Agent shall have received all such other counterpart originals or certified or other copies of such documents and proceedings in connection with such transactions, in form and substance satisfactory to the Administrative Agent and its counsel, as the Administrative Agent or its counsel may reasonably request. Without limiting the generality of the foregoing, the Loan Parties and Lenders hereby (i) agree that, for all purposes of this Amendment, electronic images of this Amendment or any other Loan Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waive any argument, defense or right to contest the validity or enforceability of the Amendment or any other Loan Documents based solely on the lack of paper original copies of such Amendment and Loan Documents, including with respect to any signature pages thereto.

(i) Consent Fee. The Borrower shall have paid to the Administrative Agent for the account of each Lender that has executed and delivered a signature page hereto to the Administrative Agent the Tenth Amendment Consent Fee (as defined in the Credit Agreement (as amended by this Amendment)).

(j) Fees. All fees, costs and expenses for which the Administrative Agent (and its Affiliates) are entitled to be paid or reimbursed, including but not limited to the fees and expenses of the Administrative Agent's legal counsel, shall have been paid.

Section 2.3 Post-Closing Conditions

Within 120 days of the Amendment No. 10 Effective Date (unless extended by the Administrative Agent in its sole discretion), the Collateral Agent shall have received with respect to each property encumbered by a Mortgage, in each case in form and substance reasonably acceptable to the Administrative Agent, (i) an amendment to the existing Mortgage (the "**Mortgage Amendment**") to reflect the matters set forth in this Amendment, duly executed and acknowledged by the applicable Loan Party, and in form for recording in the recording office where such Mortgage was recorded, together with such certifications, affidavits, questionnaires or returns as shall be required in connection with the recording or filings thereof under applicable law, (ii) evidence of the recording of the Mortgage Amendment, (iii) a title search related to each existing lender's title insurance policy, which shall reasonably assure the Collateral Agent as of the date of such title search that the real property subject to the lien of such Mortgage is free and clear of all defects and encumbrances except for Permitted Liens; and (iv) evidence of payment by the Borrower of all charges, taxes, fees, premiums and any other costs related to the recording of the Mortgage Amendments.

Section 2.4 Miscellaneous

(a) This Amendment shall become effective as provided in Section 2.2.

(b) The Credit Agreement, as amended by this Amendment, is in all respects ratified, approved and confirmed, and shall, as so amended, remain in full force and effect. From and after the date that the amendments herein described take effect, all reference to the "Agreement" in the Credit Agreement and in the other Loan Documents, shall be deemed to be references to the Credit Agreement as amended by this Amendment.

(c) This Amendment shall be deemed to be a contract under the laws of the Commonwealth of Pennsylvania, and for all purposes shall be governed by, construed and enforced in accordance with the laws of said Commonwealth. This Amendment shall be a Loan Document.

(d) Except as amended hereby, all of the terms and conditions of the Credit Agreement and the other Loan Documents shall remain in full force and effect. The Borrower, the other Loan Parties, each Lender party hereto, and the Administrative Agent acknowledge and agree that this Amendment is not intended to constitute, nor does it constitute, a novation, interruption, suspension of continuity, satisfaction, discharge or termination of the obligations, loans, liabilities, or indebtedness under the Credit Agreement or the other Loan Documents.

(e) This Amendment may be executed in any number of counterparts by the different parties hereto on separate counterparts. Each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one in the same instrument.

(f) Each Pledgor (as defined in the Pledge Agreement) hereby represents that Schedule A to the Pledge Agreement (as updated as of May 20, 2022 in connection with the Seventh Amendment to the Credit Agreement) is, as of the date hereof, a true, correct and complete list of capital stock, shares securities, member interests, partnership interests and other ownership interests constituting Pledged Collateral (as defined in the Pledge Agreement) owned by each Pledgor.

Section 2.5 General Release.

(a) In consideration of, among other things, the Administrative Agent's and the Lenders' execution and delivery of this Amendment, the Borrower and each other Loan Party, on behalf of itself and its agents, representatives, officers, directors, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, "Releasors"), hereby forever agrees and covenants not to sue or prosecute against any Releasee (as hereinafter defined) and hereby forever waives, releases and discharges, to the fullest extent permitted by law, each Releasee from any and all claims (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever, that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity (collectively, the "Claims"), against any or all of the Secured Parties in any capacity and their respective affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys, advisors and other representatives of each of the foregoing (collectively, the "Releasees"), based in whole or in part on facts, whether or not now known, existing on or before the Amendment No. 10 Effective Date, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Credit Agreement or any other Loan Documents or transactions contemplated thereby or any actions or omissions in connection therewith, (ii) any aspect of the dealings or relationships between or among the Borrower and the other Loan Parties, on the one hand, and any or all of the Secured Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof, or (iii) any aspect of the dealings or relationships between or among any or all of the Releasors, on the one hand, and any or all of the Releasees, on the other hand, but only to the extent such dealings or relationships relate to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. In entering into this Amendment, the Borrower and each other Loan Party consulted with, and has been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity thereof. The provisions of this Section 2.5 shall survive the termination of this Amendment, the Credit Agreement, the other Loan Documents and payment in full of the Obligations.

(b) The Borrower and each other Loan Party hereby agrees that the Releasees shall each be an Indemnitee and entitled to the benefits of Section 11.3 of the Credit Agreement, including, without limitation, with respect to any Claims arising from or in connection with the negotiation, preparation, execution, delivery, performance, administration and enforcement of this Amendment or any other document executed and/or delivered in connection therewith.

(c) The Borrower and each other Loan Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee, and will not assert in any proceeding any counterclaim or crossclaim against any Releasee, in each case on the basis of any Claim released, remised and discharged by the Borrower or any other Loan Party pursuant to Section 2.5(a) hereof. If the Borrower, any other Loan Party or any of its successors, assigns or other legal representatives violates the foregoing covenant, the Borrower and each other Loan Party, each for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

Section 2.6 Lender Authorization. The Lenders hereby authorize the Administrative Agent to amend that certain Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases, Assignment of Production, Financing Statement, Fixture Filing and As-Extracted Collateral Filing (Indiana) dated as of August 29, 2014 and recorded in Knox County, Indiana as Document No. 2014R04030, as the same has been previously amended, to clarify that only the buildings specifically listed in such Mortgage shall be encumbered by such Mortgage.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed this Amendment as of the day and year first above written.

BORROWER:

HALLADOR ENERGY COMPANY

By: /S/ LAWRENCE D. MARTIN

Name: Lawrence D. Martin

Title: Chief Financial Officer

GUARANTORS:

EDWARDSPORT CONSTRUCTION COMPANY, LLC

GIBSON COUNTY LOGISTICS, LLC

OAKTOWN FUELS MINE NO. 1, LLC

OAKTOWN FUELS MINE NO. 2, LLC

PROSPERITY MINE, LLC

SFI COAL SALES, LLC

SUNRISE COAL, LLC

SUNRISE LAND HOLDINGS, LLC

SUNRISE ADMINISTRATIVE SERVICES, LLC

SYCAMORE COAL, INC.

By: _____

Name: Lawrence D. Martin

Title: President

SUMMIT TERMINAL, LLC

HALLADOR POWER COMPANY, LLC

By: _____

Name: Lawrence D. Martin

Title: Vice President

RAILPOINT SOLUTIONS, LLC

By: _____

Name: Heather L. Tryon

Title: Manager

PLEDGORS:

HALLADOR SANDS, LLC

By: _____
Name: Lawrence D. Martin
Title: Vice President

HOURGLASS SANDS, LLC

By: _____
Name: Lawrence D. Martin
Title: Vice President

[Signature Page to Hallador Credit Agreement Tenth Amendment]

PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent and as Lender

By: _____
Name:
Title:

[Signature Page to Hallador Credit Agreement Tenth Amendment]

as Lender

By: _____
Name:
Title:

[If second signature is required:]

By: _____
Name:
Title:

[Signature Page to Hallador Credit Agreement Tenth Amendment]

EXHIBIT A

Amended Credit Agreement

[See attached]

[Signature Page to Hallador Credit Agreement Tenth Amendment]

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

by and among

HALLADOR ENERGY COMPANY

and

THE GUARANTORS PARTY HERETO

and

THE LENDERS PARTY HERETO

and

**PNC BANK, NATIONAL ASSOCIATION,
as Administrative Agent**

**PNC CAPITAL MARKETS LLC,
as Joint Lead Arranger and Sole Bookrunner**

**UMB BANK, N.A.
and
THE HUNTINGTON NATIONAL BANK,
as Joint Lead Arrangers and Co-Syndication Agents**

**KEYBANK NATIONAL ASSOCIATION
and
OLD NATIONAL BANK,
as Co-Documentation Agents**

**Dated as of May 21, 2018,
as amended as of March 13, 2023**

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THIRD AMENDED AND RESTATED CREDIT AGREEMENT

THIS THIRD AMENDED AND RESTATED CREDIT AGREEMENT (as hereafter amended, the “**Agreement**”) is dated as of May 21, 2018, and amended as of March 13, 2023, and is made by and among **HALLADOR ENERGY COMPANY**, a Colorado corporation (the “**Borrower**”), each of the **GUARANTORS** (as hereinafter defined), the **LENDERS** (as hereinafter defined), and **PNC BANK, NATIONAL ASSOCIATION**, in its capacity as administrative agent for the Lenders under this Agreement (hereinafter referred to in such capacity as the “**Administrative Agent**”).

WHEREAS, the Agreement has been modified by the Tenth Amendment, *inter alia*, to replace the LIBOR Rate with the Term SOFR Rate with respect to the Revolving Credit Loans and Term Loans hereunder (other than the Initial Term Loans);

WHEREAS, (x) immediately prior to the effectiveness of the Tenth Amendment, Revolving Credit Loans in an aggregate principal amount of \$96,700,000 were outstanding (the “**Tenth Amendment Pre-Existing Revolving Credit Loans**”), which bear interest immediately prior to the Tenth Amendment Effective Date at a rate per annum equal to 8.64% (which represents the LIBOR Rate (the “**Tenth Amendment Existing LIBOR Rate**”) plus the Applicable Margin for Loans to which the LIBOR Rate Option applies (each such term as defined in this Agreement as of immediately prior to effectiveness of the Tenth Amendment)) with a one-month Interest Period ending on March 31, 2023 (the “**Tenth Amendment Existing Interest Period Termination Date**” and such Interest Period, the “**Tenth Amendment Existing Interest Period**”) and (y) a portion of the Tenth Amendment Pre-Existing Revolving Credit Loans in the aggregate amount of \$35,000,000 shall be converted into 2023 Term Loans and \$61,700,000 of the Tenth Amendment Pre-Existing Revolving Credit Loans (the “**Tenth Amendment Existing Revolving Credit Loans**”) shall be outstanding following the effectiveness of the Tenth Amendment.

In consideration of their mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

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:

2014 Credit Agreement shall mean that certain Second Amended and Restated Credit Agreement by and among Sunrise Coal, LLC, certain guarantors party thereto, certain lenders party thereto and PNC, as administrative agent, dated as of August 29, 2014, as amended.

2023 Term Loan shall have the meaning specified in Section 3.3 [2023 Term Loans]; 2023 Term Loans shall mean collectively all of the 2023 Term Loans.

2023 Term Loan Lenders shall mean the financial institutions named on Schedule 1.1(B) (as amended or supplemented from time to time) and their respective successors and assigns as permitted hereunder and designated as having made a 2023 Term Loans, each of which is referred to herein as a 2023 Term Loan Lender.

Additional Debt Incurrence Event shall mean the incurrence by the Borrower or any of its Subsidiaries of Indebtedness in an aggregate principal amount of \$3,000,000 or greater after the Seventh Amendment Effective Date.

Additional Reporting Period shall mean the period commencing on the Seventh Amendment Effective Date and ending on the earlier of (i) the receipt by the Administrative Agent of a Compliance Certificate showing that the Leverage Ratio of the Loan Parties as of the most recently ended fiscal quarter is less than 2.25 to 1.00 and (ii) the repayment in full of all outstanding Term Loans and the reduction by the Borrower of the Revolving Credit Commitments to an aggregate amount not to exceed \$75,000,000.

Administrative Agent shall mean PNC Bank, National Association, and its successors and assigns, in its capacity as administrative agent hereunder.

Administrative Agent's Fee shall have the meaning specified in Section 10.9 [Administrative Agent's Fee].

Administrative Agent's Letter shall have the meaning specified in Section 10.9 [Administrative Agent's Fee].

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

Affiliate as to any Person shall mean 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 5% or more of any class of the voting or other equity interests of such Person, or (iii) 5% 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. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

Ancillary Security Documents shall mean all documents, instruments, environmental reports, agreements, endorsements, policies and certificates requested by the Administrative Agent and customarily delivered by any property owner in connection with a mortgage financing. Without limiting the generality of the foregoing, examples of Ancillary Security Documents would include insurance policies (other than title insurance) or certificates regarding any collateral, lien searches, estoppel letters, flood insurance certifications, environmental audits which shall meet the Administrative Agent's minimum requirements for phase I environmental assessments or phase II environmental assessments, as applicable, opinions of counsel and the like.

Anti-Terrorism Laws shall mean any Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such Laws, all as amended, supplemented or replaced from time to time.

Applicable Commitment Fee Rate shall mean the percentage rate per annum based on the Leverage Ratio as of the most recent fiscal quarter ended according to the pricing grid on Schedule 1.1(A) below the heading “Commitment Fee.”

Applicable Letter of Credit Fee Rate shall mean the percentage rate per annum based on the Leverage Ratio as of the most recent fiscal quarter ended according to the pricing grid on Schedule 1.1(A) below the heading “Letter of Credit Fee.”

Applicable Margin shall mean, as applicable:

(A) the percentage spread to be added to the Base Rate applicable to Revolving Credit Loans under the Base Rate Option based on the Leverage Ratio as of the most recent fiscal quarter ended according to the pricing grid on Schedule 1.1(A) below the heading “Base Rate Spread”,

(B) the percentage spread to be added to the Base Rate applicable to Term Loans under the Base Rate Option based on the Leverage Ratio as of the most recent fiscal quarter ended according to the pricing grid on Schedule 1.1(A) below the heading “Base Rate Spread”,

(C) the percentage spread to be added to the Term SOFR Rate applicable to Revolving Credit Loans under the Term SOFR Rate Option based on the Leverage Ratio as of the most recent fiscal quarter ended according to the pricing grid on Schedule 1.1(A) below the heading “Term SOFR Rate Spread”,

(D) the percentage spread to be added to the LIBOR Rate applicable to Initial Term Loans under the LIBOR Rate Option based on the Leverage Ratio as of the most recent fiscal quarter ended according to the pricing grid on Schedule 1.1(A) below the heading “LIBOR Rate Spread”, or

(E) the percentage spread to be added to the Term SOFR Rate applicable to 2023 Term Loans under the Term SOFR Rate Option based on the Leverage Ratio as of the most recent fiscal quarter ended according to the pricing grid on Schedule 1.1(A) below the heading “Term SOFR Rate Spread”.

Approved Fund shall mean any Person (other than a natural person) 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.

Assignment and Assumption means an assignment and assumption entered into by a Lender and an assignee permitted under Section 11.8 [Successors and Assigns], in substantially the form of Exhibit 1.1(A).

Authorized Officer shall mean, with respect to any Loan Party, the Chief Executive Officer, President, Chief Financial Officer, Treasurer or Assistant Treasurer of such Loan Party, any manager 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 the Loan Parties 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.

Availability shall mean, as of the date of determination, an amount, which equals the sum of (i) the amount of cash or cash equivalents of the Loan Parties as of such date that is not subject to any Lien or other restriction limiting the availability of such funds to repay the Loans, and (ii) the difference (if a positive number) between the amount of the Revolving Credit Commitments as of such date, less the Blocked Amount, less the Revolving Facility Usage as of such date, which may be borrowed at such time by the Borrower in accordance with Section 7.2 and will not result (on a Pro Forma Basis) in a breach of a financial or other covenant contained in this Agreement.

Bail-In Action shall mean 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 shall mean (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 shall mean, 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) (A) with respect to Initial Term Loans, the Daily LIBOR Rate, plus 100 basis points (1.0%) and (B) with respect to the Revolving Credit Loans and 2023 Term Loans, 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 otherwise determined pursuant to this definition would be less than 1.50%, then such rate shall be deemed to be 1.50%. Any change in the Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs.

Base Rate Option shall mean the option of the Borrower to have Loans bear interest at the rate and under the terms set forth in Section 4.1.1(i) [Revolving Credit Base Rate Option], Section 4.1.2(a)(i) [Initial Term Loan Base Rate Option] or Section 4.1.2(b)(i) [2023 Term Loan Base Rate Option], as applicable.

Beneficial Owner shall mean, for the Borrower, each of the following: (a) each individual, if any, who, directly or indirectly, owns 25% or more of the Borrower's equity interests; and (b) a single individual with significant responsibility to control, manage, or direct such Borrower.

Benefit Plan shall mean any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

Black Lung Act shall mean, collectively, the Black Lung Benefits Revenue Act of 1977, as amended and the Black Lung Benefits Reform Act of 1977, as amended.

Blocked Amount shall mean (i) prior to the Seventh Amendment Effective Date, \$0, (ii) from the Seventh Amendment Effective Date until the Additional Debt Incurrence Event, \$10,000,000 and (iii) thereafter, \$0.

Borrower shall mean Hallador Energy Company, a corporation organized and existing under the laws of the State of Colorado.

Borrowing Date shall mean, with respect to any Loan, the date for the making thereof or the renewal or conversion thereof at or to the same or a different Interest Rate Option, which shall be a Business Day.

Borrowing Tranche shall mean specified portions of Loans outstanding as follows: (i) any Loans to which a LIBOR Rate Option applies which become subject to the same Interest Rate Option under the same Loan Request by the Borrower and which have the same Interest Period shall constitute one Borrowing Tranche, (ii) any Loans to which a Term SOFR Rate Option applies which become subject to the same Interest Rate Option under the same Loan Request by the Borrower and which have the same Interest Period shall constitute one Borrowing Tranche, and (iii) all Loans to which a Base Rate Option applies shall constitute one Borrowing Tranche.

Business Day shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed for business in Pittsburgh, Pennsylvania and (x) if the applicable Business Day relates to the request for, or the continuation or conversion of, any Loan to which the LIBOR Rate Option applies, such day must also be a day on which dealings are carried on in the London interbank market or (y) if the applicable Business Day is 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, such day must also be a U.S. Government Securities Business Day.

Capital Stock shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

CARES Act shall mean the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, as amended from time to time, and as interpreted by the SBA.

Cash Flow Forecast Deadline has the meaning specified in Section 8.3.5 [Projected Cash Flow Statements].

Cash Management Agreements shall have the meaning specified in Section 2.6.6 [Swing Loans Under Cash Management Agreements].

Cash Surplus shall mean any unrestricted cash or cash equivalents of the Borrower and the other Loan Parties in excess of \$10,000,000, in the aggregate, at any time; provided that any cash or cash equivalents of the Borrower and the other Loan Parties shall be excluded from the determination of "Cash Surplus" to the extent that the Borrower or such other Loan Party is holding proceeds from a PPP Loan which (i) are being held by the Borrower or such other Loan Party for paying qualified expenses under the Paycheck Protection Program and (ii) has not been deemed disqualified for forgiveness of such Indebtedness under the Paycheck Protection Program.

CEA shall mean 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 shall mean, for the Borrower, a certificate in substantially the form of Exhibit 1.1(B) hereto (as amended or modified by Administrative Agent from time to time in its reasonable discretion), certifying, among other things, the Beneficial Owner of the Borrower.

CFTC shall mean the Commodity Futures Trading Commission.

Change in Law shall mean the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Official Body or (iii) 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 mean any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 25% of the Capital Stock of the Borrower.

CIP Regulations shall have the meaning specified in Section 10.11 [No Reliance on Administrative Agent’s Customer Identification Program].

Closing Date shall mean the Business Day on which the first Loan shall be made, which shall be May 21, 2018.

Coal Act shall mean the Coal Industry Retiree Health Benefits Act of 1992, as amended.

Code shall mean 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 shall mean the collateral under the (i) Security Agreement (ii) Pledge Agreement, (iii) Collateral Assignment or (iv) Mortgages, other than the Excluded Collateral.

Collateral Assignment shall mean the Collateral Assignment in the form of Exhibit 1.1(C).

Collateral Documents shall have the meaning assigned to that term in Section 6.1.11 [Liens in Collateral].

Commitment shall mean as to any Lender the aggregate of its Revolving Credit Commitment and Initial Term Loan Commitment and, in the case of PNC, its Swing Loan Commitment, and Commitments shall mean the aggregate of the Revolving Credit Commitments, Initial Term Loan Commitments and Swing Loan Commitment of all of the Lenders.

Commitment Fee shall have the meaning specified in Section 2.3 [Commitment Fees].

Commodity Hedge shall mean a price protection agreement: (i) related to crude oil, diesel fuel, gasoline, propane, heating oil, coal, SO₂ allowances or other commodities used in the ordinary course of business of the Loan Parties and (ii) entered into by the Loan Parties for hedging purposes in the ordinary course of the operations of their business.

Compliance Certificate shall have the meaning specified in Section 8.3.3 [Certificates of Borrower].

Conforming Changes shall mean, 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 shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

Consideration shall mean with respect to any Permitted Acquisition, the aggregate of (without duplication) (i) the cash paid by any of the Loan Parties, directly or indirectly, to the seller in connection therewith, (ii) the Indebtedness incurred or assumed by any of the Loan Parties, whether in favor of the seller or otherwise and whether fixed or contingent, (iii) any Guaranty given or incurred by any Loan Party in connection therewith, and (iv) any other consideration given or obligation incurred by any of the Loan Parties in connection therewith.

Consolidated EBITDA for any period of determination shall mean for the Loan Parties (i) the sum of Consolidated Net Income (but excluding the effect of non-cash compensation expenses related to common stock and other equity securities issued to employees), depreciation, depletion, amortization, other non-cash charges to net income, interest expense, and income tax expense, plus (ii) costs and fees incurred in connection with the closing of the transactions contemplated by this Agreement and the administration (including in connection with any waiver, amendment, supplementation or other modification thereto of the Loan Documents) of the Loan Documents, minus (iii) non-cash credits to net income for such period determined and consolidated in accordance with GAAP. Notwithstanding the foregoing, (i) the Loan Parties may include the Net Specified Excluded Subsidiary Distribution Amount in the computation of Consolidated EBITDA for the trailing twelve month period if such amount is positive, and (ii) the proceeds of any sales of equity in any Specified Excluded Subsidiary made in accordance with Section 8.2.7(vii) [Dispositions of Assets or Subsidiaries] shall not be included in the computation of Consolidated EBITDA. Consolidated EBITDA shall be calculated on a Pro Forma Basis except for purposes of calculating Excess Cash Flow and for purposes of calculating compliance with Section 8.2.5(iii)(c) [Dividends and Related Distributions] and Section 8.2.15 [Minimum Debt Service Coverage Ratio].

Consolidated Funded Debt shall mean, without duplication, total Indebtedness for Borrowed Money of the Loan Parties, determined and consolidated in accordance with GAAP and calculated on a Pro Forma Basis.

Consolidated Net Income shall mean, for any period, the aggregate net income (or loss) of the Loan Parties for such period determined on a consolidated basis in conformity with GAAP, provided that the following (without duplication) will be excluded in computing Consolidated Net Income:

- (a) the net income (or loss) of any Person other than a Borrower or Restricted Subsidiary (including any joint venture that is not a Restricted Subsidiary);
- (b) the net income (or loss) of any Person (other than any Loan Party) to the extent that the declaration or payment of dividends or similar distributions by such Person of its net income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Person or its stockholders, unless such restriction with respect to the payment of dividends or in similar distributions has been legally waived;
- (c) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to asset sales or other dispositions, in each case other than in the ordinary course of business;
- (d) any net after-tax extraordinary gains or losses; and
- (e) the cumulative effect of a change in accounting principles.

Contamination shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Real Property, which pursuant to Environmental Laws requires notification or reporting to an Official Body, or which pursuant to Environmental Laws requires the investigation, cleanup, removal, remediation, containment, abatement of or other response action or which otherwise constitutes a violation of Environmental Laws.

Convertible Debt shall mean any debt instrument convertible into or exchangeable or exercisable for any equity interests.

Covered Entity shall mean (a) the Borrower, each of Borrower's Subsidiaries, all Guarantors and all pledgors of Collateral, and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 50% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

Daily LIBOR Rate shall mean, for any day, the rate per annum determined by the Administrative Agent by dividing (x) the Published Rate by (y) a number equal to 1.00 *minus* the LIBOR Reserve Percentage on such day. Notwithstanding the foregoing, if the Daily LIBOR Rate as determined above would be less than one half of one percent (0.50%), such rate shall be deemed to be one half of one percent (0.50%) for purposes of this Agreement.

Daily Simple SOFR shall mean, 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 Service Coverage Ratio shall mean, as of any date of determination, the ratio of (A) Consolidated EBITDA of the Loan Parties, divided by (B) the sum of (i) scheduled principal reductions on the Term Loans and principal reductions on Indebtedness (other than principal reductions on the Revolving Credit Loans) of the Loan Parties, plus (ii) interest expense of the Loan Parties required to be paid, each calculated as of the end of each fiscal quarter for the four fiscal quarters then ended, in each case of the Loan Parties for such period determined and consolidated in accordance with GAAP, as measured on a rolling four quarter basis. For purposes of this definition, the computation of interest expense shall exclude (i) during the Pre-Forgiveness Period, the interest expense of any PPP Loan, and (ii) thereafter, the interest expense of any PPP Loan other than interest expense on the amount that is not forgivable pursuant to the terms of the CARES Act.

Defaulting Lender shall mean any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swing Loans or (iii) pay over to the Administrative Agent, the Issuing Lender, PNC Bank (as the Swing Loan Lender) or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within two Business Days after request by the Administrative Agent or the Borrower, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swing Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent's or the Borrower's receipt of such certification in form and substance satisfactory to the Administrative Agent or the Borrower, as the case may be, (d) has become the subject of a Bankruptcy Event or (e) has failed at any time to comply with the provisions of Section 5.3 [Sharing of Payments by Lenders] with respect to purchasing participations from the other Lenders, whereby such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its Ratable Share of such payments due and payable to all of the Lenders.

As used in this definition and in Section 2.10 [Defaulting Lenders], the term "Bankruptcy Event" means, with respect to any Person, such Person or such Person's direct or indirect parent company becoming the subject of a bankruptcy or insolvency proceeding, or having had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person's direct or indirect parent company by an Official Body or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Official Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

Dollar, Dollars, U.S. Dollars and the symbol \$ shall mean lawful money of the United States of America.

Drawing Date shall have the meaning specified in Section 2.9.3 [Disbursements, Reimbursement].

Duration Fee shall have the meaning specified in Section 2.11.

Duration Fee Payment Date shall mean each of September 30, 2023, December 31, 2023 and March 31, 2024.

EEA Financial Institution shall mean (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 shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

EEA Resolution Authority shall mean 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 shall mean 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.

Eighth Amendment shall mean the Eighth Amendment to the Third Amended and Restated Credit Agreement, dated as of the Eighth Amendment Effective Date, by and among the Borrower, the Guarantors party thereto, the Administrative Agent and the Lenders party thereto.

Eighth Amendment Consenting Lenders shall mean, collectively, each Lender that provided a written counterpart to the Eighth Amendment to the Administrative Agent (or its counsel) prior to the Eighth Amendment Effective Date.

Eighth Amendment Effective Date shall mean August 5, 2022.

Eighth Amendment Exempted Equity Issuance shall have the meaning specified in Section 5.7.3 [Equity Issuances].

Eligible Contract Participant shall mean an “eligible contract participant” as defined in the CEA and regulations thereunder.

Eligibility Date shall mean, 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).

Environmental Complaint shall mean any written complaint by any Person or Official Body setting forth a cause of action for personal injury or property damage, natural resource damage, contribution or indemnity for response costs, civil or administrative penalties, criminal fines or penalties, or declaratory or equitable relief arising under any Environmental Laws or any order, notice of violation, citation, subpoena, request for information or other written notice or demand of any type issued by an Official Body pursuant to any Environmental Laws.

Environmental Laws shall mean all federal, state, local and foreign Laws and any consent decrees, settlement agreements, judgments, orders, directives or policies having the force and effect of law issued by or entered into with an Official Body pertaining or relating to: (i) pollution or pollution control; (ii) protection of human health or the environment; (iii) employee safety in the workplace; (iv) the presence, use, management, generation, manufacture, processing, extraction, treatment, recycling, refining, reclamation, labeling, transport, storage, collection, distribution, disposal or release or threat of release of Regulated Substances; (v) the presence of Contamination; (vi) the protection of endangered or threatened species and (vii) the protection of Environmentally Sensitive Areas.

Environmentally Sensitive Area shall mean (i) any wetland as defined by applicable Environmental Laws; (ii) any area designated as a coastal zone pursuant to applicable Laws, including Environmental Laws; (iii) any area of historic or archeological significance or scenic area as defined or designated by applicable Laws, including Environmental Laws; (iv) habitats of endangered species or threatened species as designated by applicable Laws, including Environmental Laws or (v) a floodplain or other flood hazard area as defined pursuant to any applicable Laws.

Equity Issuances shall mean issuances of equity of a Loan Party that result in cash proceeds and shall specifically exclude (a) any issuance of equity to employees, officers, or directors of any Loan Party that is issued in connection with such person’s compensation, (b) the issuance of equity of Borrower in order to finance the purchase consideration (or a portion thereof) in connection with a Permitted Acquisition, and (c) in the event that any Loan Party or any of its Subsidiaries forms any Subsidiary in accordance with the terms hereof, the issuance by such Subsidiary of equity to any such Loan Party or such Subsidiary, as applicable.

ERISA shall mean 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 Event shall mean (a) with respect to a Pension Plan, a reportable event under Section 4043 of ERISA as to which event (after taking into account notice waivers provided for in the regulations) there is a duty to give notice to the PBGC; (b) a withdrawal by Borrower or any member of the ERISA Group from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by Borrower or any member of the ERISA Group from a Multiemployer Plan, notification that a Multiemployer Plan is in reorganization, or occurrence of an event described in Section 4041A(a) of ERISA that results in the termination of a Multiemployer Plan; (d) the filing of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan amendment as a termination under Section 4041(e) of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any member of the ERISA Group.

ERISA Group shall mean, 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 and all other entities which, together with the Borrower, are treated as a single employer under Section 414 of the Code or Section 4001(b)(1) of ERISA.

Erroneous Payment has the meaning assigned to it in Section 10.12(a).

Erroneous Payment Notice has the meaning assigned to it in Section 10.12(a).

EU Bail-In Legislation Schedule shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

Eurocurrency Liabilities shall have the meaning ascribed to such term in the definition of LIBOR Reserve Percentage set forth herein.

Event of Default shall mean any of the events described in Section 9.1 [Events of Default] and referred to therein as an “Event of Default.”

Excess Cash Flow shall be computed as of the close of each fiscal quarter by taking the difference between Consolidated EBITDA and the sum of (a) Fixed Charges and (b) mandatory prepayments of the Loans made in connection with any Equity Issuance in accordance with Section 5.7.3 [Mandatory Prepayments; Equity Issuances] for such fiscal quarter. All determinations of Excess Cash Flow shall be based on the immediately preceding fiscal quarter and shall be made following the delivery by the Borrower to the Administrative Agent of the Borrower’s financial statements for such preceding quarter (or, in the case of the fourth quarter of any fiscal year, the financial statements for the fiscal year ending as of the last day of such fiscal quarter) pursuant to Section 8.3.1 [Quarterly Financial Statements] or 8.3.2 [Annual Financial Statements], as applicable.

Excluded Collateral shall mean the following:

- (1) any lease, license, contract, property rights, equipment, joint venture interests, or agreement to which a Loan Party is a party or any of its rights or interests thereunder if and for so long as the grant of a security interest therein shall constitute or result in (A) the abandonment, invalidation or unenforceability of any right, title or interest of such Loan Party therein or (B) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity), provided however that, in the case of either (A) or (B) above, such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (A) or (B) above,
- (2) any of the outstanding equity interests of any Subsidiary not organized under the laws of the United States or any State or a political subdivision thereof in excess of 65% of the voting power of all classes of equity interests of such Subsidiary entitled to vote,
- (3) the outstanding equity interests of any Excluded Subsidiary (other than equity interests of (ii) Hallador Sands and each of its Subsidiaries to the extent owned by a Loan Party or its Subsidiaries and (ii) Hallador Renewables),
- (4) all assets owned by any Excluded Subsidiary (other than the outstanding equity interests of Hallador Sands and each of its Subsidiaries to the extent owned by a Loan Party or its Subsidiaries),
- (5) all interests in real property of Summit Terminal, both owned and leased, and the surface and mineral rights, interests, licenses, easements, rights of way, water rights, and other interests of Summit Terminal,
- (6) assets of the Loan Parties that the Administrative Agent reasonably determines that the benefits of obtaining such Collateral are outweighed by the costs or burdens of providing the same, or
- (7) all interests of Borrower in and to any oil and gas leases which exist as of the Closing Date.

Excluded Hedge Liability or Liabilities shall mean, 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 Subsidiaries shall mean Sunrise Energy, LLC, an Indiana limited liability company, Sunrise Indemnity, Inc., a Delaware corporation, and the Specified Excluded Subsidiaries, with each being an Excluded Subsidiary.

Excluded Taxes shall mean 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, (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (a) 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 (b) that are Other Connection Taxes, (ii) 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 (a) such Lender acquires such interest in such Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.6.2 [Replacement of a Lender]) or (b) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.9.7 [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, (iii) Taxes attributable to such Recipient's failure to comply with Section 5.9.7 [Status of Lenders], and (iv) 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).

Executive Order No. 13224 shall mean the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

Expiration Date shall mean May 31, 2024.

Existing Letters of Credit shall have the meaning assigned to that term in Section 2.9 [Letter of Credit Subfacility].

FATCA shall mean 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.

Federal Funds Effective Rate for any day shall mean 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 NYFRB (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 “Federal Funds Effective Rate” as of the date of this Agreement; provided, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the “Federal Funds Effective Rate” for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

First Amendment shall mean that certain First Amendment to Credit Agreement dated as of the First Amendment Closing Date.

First Amendment Closing Date shall mean March 26, 2019.

Fixed Charge Coverage Ratio shall mean the ratio of (i) Consolidated EBITDA to (ii) Fixed Charges.

Fixed Charges shall mean for any period of determination the sum of the Loan Parties’ (i) interest expense, (ii) income taxes due and payable, (iii) current and other scheduled principal installments on Indebtedness (as adjusted for prepayments); provided that for the avoidance of doubt, any conversion of the Revolving Credit Loans into 2023 Term Loans on the Tenth Amendment Effective Date shall not constitute an installment on Indebtedness for purposes of this clause (iii), (iv) capital expenditure payments or capitalized lease payments, (v) dividends and distributions payments made by the Borrower, and (vi) other mandatory prepayments of the Loans made in connection with any Specified Excluded Subsidiary Distributions in accordance with Section 5.7.1 [Mandatory Prepayments; Specified Excluded Subsidiary Distributions], for such period determined and consolidated in accordance with GAAP, and calculated on a Pro Forma Basis.

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.

Foreign Lender shall mean (i) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (ii) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

Foreign Subsidiaries shall mean, for any Person, each Subsidiary of such Person that is incorporated or organized under the laws of any jurisdiction other than the United States of America or any state or territory thereof.

GAAP shall mean 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.

Guarantor shall mean each of the Restricted Subsidiaries and each other Person which joins this Agreement as a Guarantor after the date hereof.

Guarantor Joinder shall mean a joinder by a Person as a Guarantor under the Loan Documents in the form of Exhibit 1.1(G)(1).

Guaranty of any Person shall mean 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, including any agreement to indemnify or hold harmless any other Person, any performance bond or other suretyship arrangement and any other form of assurance against loss, except endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business.

Guaranty Agreement shall mean the Continuing Agreement of Guaranty and Suretyship in substantially the form of Exhibit 1.1(G)(2) executed and delivered by each of the Guarantors to the Administrative Agent for the benefit of the Lenders.

Hallador Renewables shall mean Hallador Renewables, LLC, a Delaware limited liability company, and any successor or assign.

Hallador Sands shall mean Hallador Sands, LLC, a Delaware limited liability company, and any successor or assign.

Hedge Liabilities shall mean the Interest Rate Hedge Liabilities.

High Point shall mean High Point Land Holdings, LLC, a Delaware limited liability company.

Hourglass Sands shall mean Hourglass Sands, LLC, a Delaware limited liability company.

Indebtedness shall mean, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (i) borrowed money, (ii) amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (iii) reimbursement obligations (contingent or otherwise) under any letter of credit agreement, (iv) obligations under any currency swap agreement, interest rate swap, cap, collar or floor agreement or other interest rate management device, (v) any other transaction (including forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements (but not including trade payables and accrued expenses incurred in the ordinary course of business which are not represented by a promissory note or other evidence of indebtedness and which are not more than thirty (30) days past due), or (vi) any Guaranty of Indebtedness for borrowed money.

Indebtedness for Borrowed Money shall mean, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (i) borrowed money, (ii) amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (iii) the unreimbursed amount of all drafts drawn under letters of credit issued for the account of such Person and the undrawn stated amount of all letters of credit issued for the account of such Person, (iv) obligations with respect to capitalized leases, or (v) any Guaranty of Indebtedness of the type described in clauses (i) through (iv) above.

Indemnified Taxes shall mean (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 shall have the meaning specified in Section 11.3.2 [Indemnification by the Borrower].

Indemnity shall mean the Indemnity Agreement in the form of Exhibit 1.1(I)(1) relating to possible environmental liabilities associated with any of the owned or leased real property of the Loan Parties or their Subsidiaries.

Information shall mean 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 or the Issuing Lender on a non-confidential basis prior to disclosure by the Loan Parties or any of their Subsidiaries.

Initial Term Loan shall have the meaning specified in Section 3.1 [Initial Term Loan Commitments]; Initial Term Loans shall mean collectively all of the Initial Term Loans.

Initial Term Loan Commitment shall mean, as to any Lender, the amount that, as of the Closing Date, was set forth opposite its name on Schedule 1.1(B) (as in effect on such date) in the column labeled "Amount of Commitment for Term Loans," as such Commitment is thereafter assigned or modified, and Initial Term Loan Commitments shall mean the aggregate Initial Term Loan Commitments of all of the Lenders.

Initial Term Loan Lenders shall mean the financial institutions named on Schedule 1.1 (B) (as amended or supplemented from time to time) and their respective successors and assigns as permitted hereunder and designated as having an Initial Term Loan Commitment, each of which is referred to herein as an Initial Term Loan Lender.

Insolvency Proceeding shall mean, 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.

Intercompany Subordination Agreement shall mean a Subordination Agreement among the Loan Parties in the form attached hereto as Exhibit 1.1(I)(2).

Intercreditor Agreement means an intercreditor agreement, by and among the Administrative Agent, the Loan Parties and the agent or other representative with respect to Indebtedness that is permitted under Section 8.2.1(xviii) and permitted to be secured under clause (xvi) of the definition of Permitted Liens, providing that the Liens securing such Indebtedness shall have the ranking described in clause (xvi) of the definition of Permitted Liens and containing other customary terms, in form and substance reasonably satisfactory to the Administrative Agent.

Interest Period shall mean the period of time selected by the Borrower in connection with (and to apply to) any election permitted hereunder by the Borrower to have Loans bear interest under the LIBOR Rate Option or Term SOFR Rate Option. Subject to the last sentence of this definition, such period shall be (x) with respect to Loans bearing interest under the LIBOR Rate Option, one, two, three or six Months, as selected by the Borrower and (y) with respect to Loans bearing interest under the Term SOFR Rate Option, one or three Months, as selected by the Borrower. Such Interest Period shall commence on the effective date of such Interest Rate Option, which shall be (i) the Borrowing Date if the Borrower is requesting new Loans, or (ii) the date of renewal or conversion to the LIBOR Rate Option or Term SOFR Rate Option if the Borrower is renewing or converting to the LIBOR Rate Option or 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, and (B) the Borrower shall not select, convert to or renew an Interest Period for any portion of the Loans that would end after the Expiration Date or the applicable Maturity Date.

Interest Rate Hedge shall mean an interest rate exchange, collar, cap, swap, adjustable strike cap, adjustable strike corridor or similar agreements entered into by the Loan Parties or their Subsidiaries in order to provide protection to, or minimize the impact upon, the Borrower, the Guarantor and/or their Subsidiaries of increasing floating rates of interest applicable to Indebtedness.

Interest Rate Hedge Liabilities shall have the meaning ascribed to such term in the definition of Lender Provided Interest Rate Hedge.

Interest Rate Option shall mean any LIBOR Rate Option, Base Rate Option or Term SOFR Rate Option.

IRS shall mean the United States Internal Revenue Service.

ISP98 shall have the meaning specified in Section 11.11.1 [Governing Law].

Issuing Lender means PNC Bank, in its individual capacity as issuer of Letters of Credit hereunder, and any other Lender that Borrower, Administrative Agent and such other Lender may agree may from time to time issue Letters of Credit hereunder.

Joint Venture shall mean a corporation, partnership, limited liability company or other entities in which any Person other than the Loan Parties and their Subsidiaries holds, directly or indirectly, an equity interest.

Law shall mean any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond, judgment, authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Official Body, foreign or domestic.

Lender Provided Commodity Hedge shall mean a Commodity Hedge which is entered into with any Lender or its Affiliate and with respect to which such Lender confirms to Administrative Agent in writing prior to the execution thereof that it (i) is documented in a standard International Swaps and Derivatives Association Master Agreement or another reasonable and customary manner, (ii) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner, and (iii) is entered into for hedging purposes (rather than speculative) purposes. The liabilities owing to the provider of any Lender Provided Commodity Hedge (the "**Commodity Hedge Liabilities**") by any Loan Party that is party to such Lender Provided Commodity 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, and otherwise treated as Obligations for purposes of the other Loan Documents, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the Commodity 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 9.2.5 [Application of Proceeds].

Lender Provided Interest Rate Hedge shall mean an Interest Rate Hedge which is provided by any Lender or its Affiliate and with respect to which such Lender confirms to Administrative Agent in writing prior to the execution thereof that it: (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 provider of 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, and otherwise treated as Obligations for purposes of the other Loan Documents, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the 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 9.2.5 [Application of Proceeds].

Lenders shall mean 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 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.

Lessor Consents shall have the meaning specified in Section 7.1.1(vii) [Deliveries].

Letter of Credit shall have the meaning specified in Section 2.9.1 [Issuance of Letters of Credit].

Letter of Credit Borrowing shall have the meaning specified in Section 2.9.3 [Disbursements, Reimbursement].

Letter of Credit Fee shall have the meaning specified in Section 2.9.2 [Letter of Credit Fees].

Letter of Credit Obligation means, as of any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit on such date (if any Letter of Credit shall increase in amount automatically in the future, such aggregate amount available to be drawn shall currently give effect to any such future increase) plus the aggregate Reimbursement Obligations and Letter of Credit Borrowings on such date.

Letter of Credit Sublimit shall have the meaning specified in Section 2.9.1 [Issuance of Letters of Credit].

Leverage Ratio shall mean, as of the end of any date of determination, the ratio of (A) Consolidated Funded Debt of the Loan Parties on such date to (B) Consolidated EBITDA (i) for the four fiscal quarters then ending if such date is a fiscal quarter end or (ii) for the four fiscal quarters most recently ended if such date is not a fiscal quarter end. For purposes of this definition, Consolidated Funded Debt of the Loan Parties shall exclude (i) during the Pre-Forgiveness Period, the aggregate principal amount of the PPP Loan and (ii) thereafter, the aggregate principal amount of the PPP Loan other than the amount that is not forgivable pursuant to the terms of the CARES Act.

LIBOR Rate shall mean, with respect to the Loans comprising any Borrowing Tranche to which the LIBOR Rate Option applies for any Interest Period, the interest rate per annum determined by the Administrative Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (i) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which US dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by the Administrative Agent as an authorized information vendor for the purpose of displaying rates at which US dollar deposits are offered by leading banks in the London interbank deposit market (a "LIBOR Alternate Source"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such Borrowing Tranche and having a borrowing date and a maturity comparable to such Interest Period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by the Administrative Agent at such time (which determination shall be conclusive absent manifest error)), by (ii) a number equal to 1.00 minus the LIBOR Reserve Percentage. Notwithstanding the foregoing, if the LIBOR Rate as determined under any method above would be less than one half percent (0.50%), such rate shall be deemed to be one half percent (0.50%) for purposes of this Agreement.

The LIBOR Rate shall be adjusted with respect to any Loan to which the LIBOR Rate Option applies that is outstanding on the effective date of any change in the LIBOR Reserve Percentage as of such effective date. The Administrative Agent shall give prompt notice to the Borrower of the LIBOR Rate as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

LIBOR Rate Option shall mean the option of the Borrower to have Loans bear interest at the rate and under the terms set forth in Section 4.1.2(a)(ii) [Initial Term Loan LIBOR Rate Option].

LIBOR Reserve Percentage shall mean as of any day the maximum percentage in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to Eurocurrency funding (currently referred to as “**Eurocurrency Liabilities**”).

LIBOR Termination Date shall have the meaning specified in Section 4.5.6 [Successor LIBOR Rate Index].

Lien shall mean 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).

Loan Documents shall mean this Agreement, the Administrative Agent’s Letter, the Collateral Assignment, the Guaranty Agreement, the Indemnity, the Intercompany Subordination Agreement, the Mortgages, the Notes, the Pledge Agreement, the Security Agreement, any Intercreditor Agreement, any other agreement designated by the Administrative Agent and the Borrower as a Loan Document, and any other instruments, certificates or documents delivered in connection herewith or therewith.

Loan Parties shall mean the Borrower and the Guarantors.

Loan Request shall have the meaning specified in Section 2.5 [Revolving Credit Loan Requests; Swing Loan Requests].

Loans shall mean collectively and Loan shall mean separately all Revolving Credit Loans, Swing Loans and the Term Loans or any Revolving Credit Loan, Swing Loan or Term Loan.

Material Adverse Change shall mean 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 Loan Document, (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations of the Loan Parties taken as a whole, (c) impairs materially or could reasonably be expected to impair materially the ability of the Loan Parties taken as a whole to duly and punctually pay or perform any of the Obligations, or (d) impairs materially or could reasonably be expected to impair materially the ability 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.

Maturity Date shall mean (a) with respect to the Initial Term Loans, March 31, 2023 and (b) with respect to the 2023 Term Loans, March 31, 2024.

Merom Purchase Agreement shall mean that certain Asset Purchase Agreement dated as of February 14, 2022, by and between Hoosier Energy Rural Electric Cooperative, Inc., a rural electric membership corporation organized and existing under the laws of the State of Indiana, as Seller, and Hallador Power Company, LLC, a Delaware limited liability company, as Purchaser, as the same may be amended, supplemented or otherwise modified (i) by an amendment in form and substance consistent with the draft amendment attached to the Ninth Amendment as Exhibit C, with any immaterial changes thereto, (ii) in a manner that could not reasonably be expected to be materially adverse to the interests of the Lenders, it being understood that any extension with respect to the closing date set forth therein shall not be adverse to the interests of the Lenders, or (ii) with the prior written consent of the Administrative Agent.

MISO Letter of Credit shall mean the letter of credit with a face amount of up to \$6,000,000 to be issued by PNC Bank, National Association in favor of Midcontinent Independent System Operator after the Ninth Amendment Effective Date, and any letter of credit issued in replacement or substitution thereof.

Month, with respect to an Interest Period under the LIBOR Rate Option or the Term SOFR Rate Option, shall mean the interval between the days in consecutive calendar months numerically corresponding to the first day of such Interest Period. If any LIBOR Rate or Term SOFR Rate Interest Period begins on a day of a calendar month for which there is no numerically corresponding day in the month in which such Interest Period is to end, the final month of such Interest Period shall be deemed to end on the last Business Day of such final month.

Mortgage or Mortgages shall mean each Mortgage and each Mortgage Amendment in substantially the form of Exhibit 1.1(M)(1) and Exhibit 1.1(M)(2) executed and delivered by the Loan Parties to the Administrative Agent for the benefit of the Lenders with respect to the Real Property that is owned by any of the Loan Parties, or with respect to the Real Property that is leased by any of the Loan Parties and that includes surface rights and significant facilities of any of the Loan Parties, including any amendments thereto but not including any leased office space.

Multiemployer Plan shall mean 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.

Net Specified Excluded Subsidiary Distribution Amount shall mean, for any period of time, an amount equal to the difference between the Specified Excluded Subsidiary Distributions less the aggregate amount of investments made into any Specified Excluded Subsidiary by any Loan Party.

Ninth Amendment shall mean the Ninth Amendment to the Third Amended and Restated Credit Agreement, dated as of September 28, 2022, by and among the Borrower, the Guarantors party thereto, the Administrative Agent and the Lenders party thereto.

Ninth Amendment Effective Date shall mean September 28, 2022.

Non-Consenting Lender shall have the meaning specified in Section 11.1 [Modifications, Amendments or Waivers].

Non-Qualifying Party shall mean any Loan Party that fails for any reason to qualify as an Eligible Contract Participant on the Effective Date of the applicable Swap.

Notes shall mean, collectively, and Note shall mean separately, the promissory notes in the form of Exhibit 1.1(N)(1) evidencing the Revolving Credit Loans, in the form of Exhibit 1.1(N)(2) evidencing the Swing Loan, and in the form of Exhibit 1.1(N)(3) evidencing the Term Loans.

Notices shall have the meaning specified in Section 11.5 [Notices; Effectiveness; Electronic Communication].

NYFRB shall mean the Federal Reserve Bank of New York.

Obligation shall mean 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 (i) this Agreement, the Notes, the Letters of Credit, the Administrative Agent’s Letter or any other Loan Document whether to the Administrative Agent, any of the Lenders or their Affiliates or other persons provided for under such Loan Documents, (ii) any Lender Provided Interest Rate Hedge, and (iii) any Other Lender Provided Financial Service Products. Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall not include any Excluded Hedge Liabilities.

Official Body shall mean the government of the United States of America or 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).

Order shall have the meaning specified in Section 2.9.9 [Liability for Acts and Omissions].

Origination Date shall mean the earlier of (i) the date on which the PPP Loan is advanced or (ii) June 30, 2020.

Other Connection Taxes shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient (or an agent or affiliate thereof) 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 Products shall mean agreements or other arrangements under which any Lender or Affiliate of a Lender 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, (f) cash management, including controlled disbursement, accounts or services, (g) foreign currency exchange, or (h) Lender Provided Commodity Hedge.

Other Taxes shall mean 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 5.6.2 [Replacement of a Lender]).

Overnight Bank Funding Rate shall mean, 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 NYFRB, 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 NYFRB (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 has the meaning specified in Section 11.8.4 [Participations].

Participant Register shall have the meaning specified in Section 11.8.4 [Participations].

Participation Advance shall have the meaning specified in Section 2.9.3 [Disbursements, Reimbursement].

Paycheck Protection Program shall mean the Paycheck Protection Program of the CARES Act which provides for the forgiveness of a loan under such program for qualified expenses incurred during the period required by such program commencing on the date on which such PPP Loan is advanced.

Payment Date shall mean (a) with respect to Revolving Credit Loans, the first day of each calendar quarter after the date hereof and on the Expiration Date, or upon acceleration of the Notes, and (b) with respect to Term Loans, the first day of each calendar quarter after the date hereof and on the applicable Maturity Date, or upon acceleration of the Notes.

Payment In Full and Paid In Full shall mean payment in full in cash of the Loans and other Obligations hereunder (other than Unasserted Obligations), termination of the Commitments and expiration or termination of all Letters of Credit or cash collateralization of any unexpired Letters of Credit.

PBGC shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

Pension Plan shall mean at any time an “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA) (including a “multiple employer plan” as described in Sections 4063 and 4064 of ERISA, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 or Section 430 of the Code and either (i) is sponsored, maintained or contributed to 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 sponsored, maintained or contributed to 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, or in the case of a “multiple employer” or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

Permitted Acquisition shall have the meaning assigned to that term in Section 8.2.6 [Liquidations, Mergers, Consolidations, Acquisitions].

Permitted Investments shall mean:

- (i) direct obligations of the United States of America or any agency or instrumentality thereof or obligations backed by the full faith and credit of the United States of America maturing in twelve (12) months or less from the date of acquisition;
- (ii) commercial paper maturing in 180 days or less rated not lower than A-1, by Standard & Poor's or P-1 by Moody's Investors Service, Inc. on the date of acquisition;
- (iii) demand deposits, time deposits or certificates of deposit maturing within one year in commercial banks whose obligations are rated A-1, A or the equivalent or better by Standard & Poor's on the date of acquisition;
- (iv) money market or mutual funds whose investments are limited to those types of investments described in clauses (i) (iii) above;
- (v) investments made under the Cash Management Agreements or under cash management agreements with any other Lenders; and
- (vi) Permitted Acquisitions.

Permitted Liens shall mean:

- (i) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable;
- (ii) Pledges or deposits made in the ordinary course of business to secure payment of workmen's compensation, or to participate in any fund in connection with workmen's compensation, unemployment insurance, old-age pensions or other social security programs;
- (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 payments that are not yet due and payable or in default;
- (iv) Good-faith pledges or deposits made in the ordinary course of business to secure performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amount due thereunder, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business;

(v) Encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property, none of which materially impairs the intended 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, security interests and mortgages in favor of the Administrative Agent for the benefit of the Lenders and their Affiliates securing the Obligations (including obligations in connection with Lender Provided Interest Rate Hedges and Other Lender Provided Financial Service Products);

(vii) Liens on property leased by any Loan Party or Subsidiary of such Loan Party under capital and operating leases;

(viii) Any Lien existing on the date of this Agreement and described on Schedule 1.1(P), provided that the principal amount secured thereby is not hereafter increased, and no additional assets become subject to such Lien;

(ix) Purchase Money Security Interests; provided that the aggregate amount of loans and deferred payments secured by such Purchase Money Security Interests shall not exceed \$5,000,000 (excluding for the purpose of this computation any loans or deferred payments secured by Liens described on Schedule 1.1(P));

(x) 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 either has not commenced or 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 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) Defects of title to, real or personal property;

(3) Claims or Liens of mechanics, materialmen, warehousemen, carriers, or other statutory nonconsensual Liens incurred in the ordinary course of business or the ordinary course of construction, and in either case such claims or liens do not result in a Material Adverse Change; or

(4) Liens resulting from final judgments or orders described in Section 9.1.7 [Final Judgments or Orders];

(xi) Judgment Liens not constituting an Event of Default;

(xii) Liens securing Indebtedness that will be repaid with the first advances under this Agreement;

(xiii) Liens existing on any property prior to the acquisition thereof by a Loan Party or any Subsidiary thereof including pursuant to a Permitted Acquisition; provided that (1) such Lien is not created in contemplation of or in connection with such acquisition or such Permitted Acquisition, as applicable, (2) such Lien shall not apply to any other property of the Loan Parties or any Subsidiary thereof and (3) such Lien secures only Indebtedness permitted under Sections 8.2.1(xiii) and 8.2.1(xiv) on the date of such acquisition or Permitted Acquisition, as the case may be;

(xiv) precautionary Liens on accounts receivable and related assets subject to sales or assignments permitted under Section 8.2.7(iv) [Dispositions of Assets or Subsidiaries];

(xv) Liens that are replacements of Permitted Liens so long as the replacement Liens only encumber those assets that secured the original Indebtedness;

(xvi) Liens securing Indebtedness in an aggregate principal amount not to exceed \$15,000,000 that is permitted pursuant to Section 8.2.1(xviii); provided that (i) prior to or concurrently with the incurrence of such secured Indebtedness, the Borrower shall have incurred, issued or sold unsecured Convertible Debt that is permitted pursuant to Section 8.2.1(xviii) and/or Equity Issuances, in an aggregate amount of not less than \$5,000,000, on or after Eighth Amendment Effective Date, (ii) such Liens shall not attach to any assets that are not Collateral, (iii) such Liens shall be subject to an Intercreditor Agreement and (iv) such Liens shall either (x) rank pari passu with, or junior to, the Liens on the Collateral securing the Obligations, pursuant to an Intercreditor Agreement or (y) solely attach to Equipment (as defined in the Security Agreement) that is approved by the Administrative Agent in its sole discretion and the Proceeds (as defined in the Security Agreement) thereof and may rank senior to the Liens securing the Obligations pursuant to an Intercreditor Agreement;

(xvii) Liens on cash, cash collateral, cash deposits and deposit accounts that are or solely contain proceeds from any draw upon the MISO Letter of Credit; and

(xviii) Liens established on or prior to December 27, 2022 on cash collateral securing obligations under power purchase agreements in an aggregate amount not to exceed \$20,000,000.

Person shall mean 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.

Pledge Agreement shall mean the Pledge Agreement in substantially the form of Exhibit 1.1(P) executed and delivered by the Loan Parties and Hallador Sands and certain of its Subsidiaries to the Administrative Agent for the benefit of the Lenders.

PNC Bank shall mean PNC Bank, National Association, its successors and assigns.

Potential Default shall mean any event or condition which with notice or passage of time, or both, would constitute an Event of Default.

PPP Loan shall mean that certain unsecured, non-recourse covered Indebtedness incurred by a Loan Party under the CARES Act on the Origination Date, in an aggregate principal amount not to exceed \$10,000,000.00 at any time outstanding, so long as (a) the proceeds of such Indebtedness are used solely for the purposes intended under the Paycheck Protection Program for expenses incurred in accordance with such plan, (b) such Indebtedness is on terms and conditions required by the terms of the Paycheck Protection Program and (c) the Loan Party shall have provided the Administrative Agent with a certificate promptly upon entering into such Indebtedness, confirming that (i) a true, correct and complete copy of the PPP Loan Documents have been delivered to the Administrative Agent and (ii) the Loan Party intends to use the proceeds of the PPP Loan for purposes which qualify for the forgiveness of such Indebtedness in accordance with the terms of the Paycheck Protection Program.

PPP Loan Documents shall mean those certain loan documents evidencing the PPP Loan.

Pre-Forgiveness Period shall mean the date from and including the Origination Date to and including the date upon which any portion of the aggregate principal amount of the PPP Loan has been determined to be ineligible for forgiveness pursuant to the terms of the CARES Act.

Prime Rate shall mean 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 commercial borrowers or others by the Administrative Agent. Any change in the Prime Rate shall take effect at the opening of business on the day such change is announced.

Principal Office shall mean the main banking office of the Administrative Agent in Pittsburgh, Pennsylvania.

Prior Security Interest shall mean a valid and enforceable perfected first-priority security interest under the Uniform Commercial Code in the Collateral which is subject only to statutory Liens for taxes not yet due and payable or Purchase Money Security Interests.

Pro Forma Basis shall mean:

- (a) any material investment, Permitted Acquisition or disposition of all or substantially all of the assets or Capital Stock of any Restricted Subsidiary or of any division or product line or coal or other mine or mineral reserves, and any dividend or distribution on, or re-purchases of, Capital Stock of the Borrower made or to be made by any Loan Party during the applicable reference period or subsequent to such reference period and on or prior to the date of determination will be given pro forma effect as if it had occurred on the first day of the applicable reference period;
- (b) any Person that is a Restricted Subsidiary on the date of determination will be deemed to have been a Restricted Subsidiary at all times during such reference period;
- (c) any Person that is not a Restricted Subsidiary on the date of determination will be deemed not to have been a Restricted Subsidiary at any time during such reference period;
- (d) Fixed Charges shall be calculated after giving pro forma effect to incurrences and repayments of Indebtedness (other than ordinary course working capital borrowings and repayments under revolving credit facilities) during the applicable reference period or subsequent to such reference period and on or prior to the date of determination to the extent in connection with any transaction referred to in clause (a) above as if it had occurred on the first day of the applicable reference period; and
- (e) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the calculation date had been the applicable rate for the entire period (taking into account the effect on such interest rate of any Lender Provided Interest Rate Hedge or Lender Provided Commodity Hedge applicable to such Indebtedness).

For purposes of this definition, whenever pro forma effect is given to a transaction, the pro forma calculations shall be made in good faith by an Authorized Officer of the Borrower and in a manner consistent with Article 11 of Regulation S-X of the Securities Act, as set forth in a certificate of an Authorized Officer of Borrower (with supporting calculations) and reasonably acceptable to the Administrative Agent. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility (to the extent required to be computed on a pro forma basis) shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Borrower may designate. For the avoidance of doubt, Fixed Charges for purposes of calculating Excess Cash Flow shall not be calculated on a Pro Forma Basis.

Published Rate shall mean the rate of interest published each Business Day in *The Wall Street Journal* "Money Rates" listing under the caption "London Interbank Offered Rates" for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the rate at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market for a one month period as published in another publication selected by the Administrative Agent).

Purchase Money Security Interest shall mean Liens upon tangible personal property securing loans (or capital leases) to any Loan Party or Subsidiary of such Loan Party or deferred payments by such Loan Party or Subsidiary for the purchase of such tangible personal property.

Qualified ECP Loan Party shall mean 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 shall mean:

(i) with respect to a Lender’s obligation to make Revolving Credit Loans, participate in Letters of Credit and other Letter of Credit Obligations, and receive payments, interest, and fees related thereto, the proportion that such Lender’s Revolving Credit Commitment bears to the Revolving Credit Commitments of all of the Lenders, provided however that if the Revolving Credit Commitments have terminated or expired, the Ratable Shares for purposes of this clause shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments.

(ii) with respect to a Lender’s obligation to make Initial Term Loans and receive payments, interest, and fees related thereto, the proportion that such Lender’s Initial Term Loans bears to the Initial Term Loans of all of the Lenders.

(iii) with respect to a Lender’s obligation to make 2023 Term Loans and receive payments, interest, and fees related thereto, the proportion that such Lender’s 2023 Term Loans bears to the 2023 Term Loans of all of the Lenders.

(iv) with respect to all other matters as to a particular Lender, the percentage obtained by dividing (i) such Lender’s Revolving Credit Commitment plus Term Loans of such Lender, by (ii) the sum of the aggregate amount of the Revolving Credit Commitments plus Term Loans of all Lenders; provided however that if the Revolving Credit Commitments have terminated or expired, the computation in this clause shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments, and not on the current amount of the Revolving Credit Commitments and provided further in the case of Section 2.10 [Defaulting Lenders] when a Defaulting Lender shall exist, “Ratable Share” shall mean the percentage of the aggregate Commitments and 2023 Term Loans (disregarding any Defaulting Lender’s Commitment and 2023 Term Loan) represented by such Lender’s Commitment.

Real Property shall mean all interests in real property, both owned and leased, and the surface, coal, and mineral rights, interests, licenses, easements, right of ways, water rights, coal leases, and other interests of each Loan Party (other than Summit Terminal) associated with the properties described on Schedule 1.1(R), which shall be encumbered by a Mortgage, as described on Schedule 1.1(R).

Recipient shall mean (i) the Administrative Agent, (ii) any Lender and (iii) the Issuing Lender, as applicable.

Regulated Substances shall mean, without limitation, any substance, material or waste, regardless of its form or nature, defined under Environmental 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”, “municipal waste”, “mixed waste”, “infectious waste”, “chemotherapeutic waste”, “medical waste”, “regulated substance” or any other material, substance or waste, regardless of its form or nature, which otherwise is regulated by Environmental Laws.

Reimbursement Obligation shall have the meaning specified in Section 2.9.3 [Disbursements, Reimbursement].

Related Parties shall mean, 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.

Relevant Governmental Body shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

Relief Proceeding shall mean any proceeding seeking a decree or order for relief in respect of any Loan Party or Subsidiary of a Loan Party in a voluntary or involuntary case under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Loan Party or Subsidiary of a Loan Party for any substantial part of its property, or for the winding-up or liquidation of its affairs, or an assignment for the benefit of its creditors.

Reportable Compliance Event shall mean that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

Required Environmental Notices shall mean all notices, reports, plans, forms or other filings which are required pursuant to Environmental Laws or Required Environmental Permits to be submitted to an Official Body or which otherwise must be maintained.

Required Environmental Permits shall mean all permits, licenses, bonds, consents, approvals or authorizations required under Environmental Laws to own, occupy or maintain the Real Property.

Required Lenders shall mean

(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 (a) the aggregate amount of the Revolving Credit Commitments of the Lenders (excluding any Defaulting Lender) or, after the termination of the Revolving Credit Commitments, the outstanding Revolving Credit Loans and Ratable Share of Letter of Credit Obligations of the Lenders (excluding any Defaulting Lender), and (b) the aggregate outstanding amount of any Term Loans.

Required Mining Permits shall mean all permits, licenses, authorizations, plans, approvals and bonds necessary under the Environmental Laws for the Loan Parties or any Subsidiary to continue to conduct coal mining and related operations on, in or under the Real Property, and any and all other mining properties owned or leased by any such Loan Party or Subsidiary (collectively "Mining Property") substantially in the manner as such operations had been authorized immediately prior to such Loan Party's acquisition of its interests in the Real Property and as may be necessary for such Loan Party to conduct coal mining and related operations on, in or under the Mining Property as described in any plan of operation.

Required Share shall have the meaning assigned to such term in Section 5.11 [Settlement Date Procedures].

Resolution Authority means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Restricted Subsidiaries shall mean any and all existing and hereinafter acquired or created Subsidiaries of the Borrower or any other Loan Party other than the Excluded Subsidiaries.

Revolver Lenders shall mean the financial institutions named on Schedule 1.1(B) and their respective successors and assigns as permitted hereunder and designated as having a Revolving Credit Commitment, each of which is referred to herein as a Revolver Lender.

Revolving Credit Commitment shall mean, as to any Lender at any time, the amount set forth opposite its name on Schedule 1.1(B) as of the Tenth Amendment Effective Date in the column labeled “Revolving Credit Commitment,” as such Commitment is thereafter assigned or modified, and Revolving Credit Commitments shall mean the aggregate Revolving Credit Commitments of all of the Lenders. For the avoidance of doubt, Schedule 1.1(B) shall be amended and restated in its entirety on the Tenth Amendment Effective Date and shall reflect the Revolving Credit Commitments after giving effect to the transactions occurring pursuant to Section 3.3 [2023 Term Loans] on the Tenth Amendment Effective Date.

Revolving Credit Loans shall mean collectively and Revolving Credit Loan shall mean separately all Revolving Credit Loans or any Revolving Credit Loan made by the Lenders or one of the Lenders to the Borrower pursuant to Section 2.1 [Revolving Credit Commitments] or 2.9.3 [Disbursements, Reimbursement].

Revolving Facility Usage shall mean at any time the sum of the outstanding Revolving Credit Loans, Swing Loans and the Letter of Credit Obligations.

Sanctioned Country shall mean a country subject to a sanctions program maintained under any Anti-Terrorism Law.

Sanctioned Person shall mean any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

SBA means the U.S. Small Business Administration or any successor agency.

Second Amendment shall mean that certain Second Amendment to Credit Agreement dated as of the Second Amendment Closing Date.

Second Amendment Closing Date shall mean September 30, 2019.

Securities Act shall mean the Securities Act of 1933.

Security Agreement shall mean the Security Agreement in substantially the form of Exhibit 1.1(S) executed and delivered by each of the Loan Parties to the Administrative Agent for the benefit of the Lenders.

Security Documents shall mean the Security Agreement, the Pledge Agreement, the Collateral Assignment, the Mortgages, deeds of trust, and all other documents, instruments, and agreements sufficient to provide the Administrative Agent for the benefit of the Lenders with a first priority perfected Lien, subject only to Permitted Liens, on the Collateral.

Settlement Date shall mean any Business Day on which the Administrative Agent elects to effect settlement pursuant to Section 5.11 [Settlement Date Procedures].

Seventh Amendment shall mean the Seventh Amendment to the Third Amended and Restated Credit Agreement, dated as of the Seventh Amendment Effective Date, by and among the Borrower, the Guarantors party thereto, the Administrative Agent and the Lenders party thereto.

Seventh Amendment Consenting Lenders shall mean, collectively, each Lender that provided a written counterpart to the Seventh Amendment to the Administrative Agent (or its counsel) prior to the Seventh Amendment Effective Date.

Seventh Amendment Effective Date shall mean May 20, 2022.

Seventh Amendment Exempted Equity Issuance shall have the meaning specified in Section 5.7.3 [Equity Issuances].

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, for Term SOFR Rate, the following:

SOFR Adjustment	Interest Period
10 basis points (0.10%)	For a 1-month Interest Period
15 basis points (0.15%)	For a 3-month Interest Period

SOFR Floor shall mean a rate of interest per annum equal to 50 basis points (0.50%).

Solvent shall mean, 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 (i) 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, (ii) 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, (iii) 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, (iv) 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 (v) 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 Excluded Subsidiaries shall mean (i) Hallador Sands and its Subsidiaries and (ii) Hallador Renewables and its Subsidiaries.

Specified Excluded Subsidiary Distributions shall mean 100% of any cash distribution received by a Loan Party from any Specified Excluded Subsidiary, except for such distributions paid with respect to tax liabilities that have accrued due to such party's ownership of any Specified Excluded Subsidiary.

Specified Excluded Subsidiary Investee at any time shall mean any corporation, trust, partnership, any limited liability company or other business entity of which 50% or less (but greater than zero) of the outstanding voting securities or other interests normally entitled to vote for the election of one or more directors or trustees (regardless of any contingency which does or may suspend or dilute the voting rights) is at such time owned directly or indirectly by a Specified Excluded Subsidiary.

Standard & Poor's shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

Statements shall have the meaning specified in Section 6.1.6(i) [Historical Statements].

Subsidiary of any Person at any time shall mean any corporation, trust, partnership, any limited liability company or other business entity (i) of which more than 50% of the outstanding voting securities or other interests normally entitled to vote for the election of one or more directors or trustees (regardless of any contingency which does or may suspend or dilute the voting rights) is at such time owned directly or indirectly by such Person or one or more of such Person's Subsidiaries, or (ii) which is controlled or capable of being controlled by such Person or one or more of such Person's Subsidiaries.

Subsidiary Equity Interests shall have the meaning specified in Section 6.1.2 [Subsidiaries and Owners; Investment Companies].

Summit Terminal shall mean Summit Terminal, LLC, a Delaware limited liability company.

Swap shall mean 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 mean any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap which is also a Lender Provided Interest Rate Hedge or Lender Provided Commodity Hedge.

Swing Loan Commitment shall mean PNC Bank's commitment to make Swing Loans to the Borrower pursuant to Section 2.1.2 [Swing Loan Commitment] hereof in an aggregate principal amount up to \$15,000,000.

Swing Loan Lender shall mean PNC Bank, in its capacity as a lender of Swing Loans.

Swing Loan Note shall mean the Swing Loan Note of the Borrower in the form of Exhibit 1.1(N)(2) evidencing the Swing Loans, together with all amendments, extensions, renewals, replacements, refinancings or refundings thereof in whole or in part.

Swing Loan Request shall mean a request for Swing Loans made in accordance with Section 2.5.2 [Swing Loan Request] hereof.

Swing Loans shall mean collectively and Swing Loan shall mean separately all Swing Loans or any Swing Loan made by PNC Bank to the Borrower pursuant to Section 2.1.2 [Swing Loan Commitment] hereof.

Taxes shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholdings), assessments, fees or other charges imposed by any Official Body, including any interest, additions to tax or penalties applicable thereto.

Tenth Amendment shall mean the Tenth Amendment to the Third Amended and Restated Credit Agreement, dated as of March 13, 2023, by and among the Borrower, the Guarantors party thereto, the Administrative Agent and the Lenders party thereto.

Tenth Amendment Effective Date shall mean March 13, 2023.

Tenth Amendment Existing Interest Period shall have the meaning specified in the Recitals hereof.

Tenth Amendment Existing Interest Period Termination Date shall have the meaning specified in the Recitals hereof.

Tenth Amendment Existing LIBOR Rate shall have the meaning specified in the Recitals hereof.

Tenth Amendment Existing Loan Interest Payment Date shall have the meaning specified in Section 4.1.3 [Tenth Amendment Existing Revolving Credit Loans].

Tenth Amendment Existing Revolving Credit Loans shall have the meaning specified in the Recitals hereof.

Tenth Amendment Consent Fee shall have the meaning specified in Section 4.10 [Tenth Amendment Consent Fee].

Tenth Amendment Consenting Lenders shall mean, collectively, each Lender that provided a written counterpart to the Tenth Amendment to the Administrative Agent (or its counsel) prior to the Tenth Amendment Effective Date.

Tenth Amendment Pre-Existing Revolving Credit Loans shall have the meaning specified in the Recitals hereof.

Term Loans shall mean collectively the 2023 Term Loans and Initial Term Loans and a Term Loan shall mean any of them.

Term Loan Lenders shall mean collectively the 2023 Term Loan Lenders and the Initial Term Loan Lenders and a Term Loan Lender shall mean any of them.

Term SOFR Administrator shall mean 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 shall mean, 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 Option shall mean the option of the Borrower to have Loans bear interest at the rate and under the terms set forth in Section 4.1.1(ii) [Revolving Credit Term SOFR Rate Option] or Section 4.1.2(b)(ii) [2023 Term Loan Term SOFR Rate Option], as applicable.

Term SOFR Reference Rate shall mean the forward-looking term rate based on SOFR.

Third Amendment shall mean that certain Third Amendment to Credit Agreement dated as of the Third Amendment Closing Date.

Third Amendment Closing Date shall mean April 15, 2020.

UCP shall have the meaning specified in Section 11.11.1 [Governing Law].

Unasserted Obligations shall mean contingent indemnification obligations (other than Letter of Credit Obligations) under the Loan Documents to the extent no claim giving rise thereto has been asserted.

UK Financial Institution shall mean 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.

USA Patriot Act shall mean 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 shall mean 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 shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate shall have the meaning specified in Section 5.9.7 [Status of Lenders].

Weighted Average Life to Maturity means, when applied to any Indebtedness 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 Indebtedness.

Withholding Agent shall mean 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 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; (iii) article, section, subsection, clause, schedule and exhibit references are to this Agreement or other Loan Document, as the case may be, unless otherwise specified; (iv) reference to any Person includes such Person’s successors and assigns; (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; (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, and (ix) unless otherwise specified, all references herein to times of day shall be references to Eastern Standard Time or Eastern Daylight Time, as applicable.

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; provided, however, that all accounting terms used in Section 8.2 [Negative Covenants] (and all defined terms used in the definition of any accounting term used in Section 8.2 [Negative Covenants]) shall have the meaning given to such terms (and defined terms) under GAAP as in effect on the date hereof applied on a basis consistent with those used in preparing Statements referred to in Section 6.1.6(i) [Historical Statements]. Notwithstanding the foregoing, if the Borrower notifies the Administrative Agent in writing that the Borrower wishes to amend any financial covenant in Section 8.2 [Negative Covenants] of this Agreement, any related definition and/or the definition of the term Leverage Ratio for purposes of interest and Letter of Credit Fee determinations to eliminate the effect of any change in GAAP occurring after the Closing Date on the operation of such financial covenants and/or interest or Letter of Credit Fee determinations (or if the Administrative Agent notifies the Borrower in writing that the Required Lenders wish to amend any financial covenant in Section 8.2 [Negative Covenants], any related definition and/or the definition of the term Leverage Ratio for purposes of interest and Letter of Credit Fee determinations to eliminate the effect of any such change in GAAP), then the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratios or requirements 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, the Loan Parties’ compliance with such covenants and/or the definition of the term Leverage Ratio for purposes of interest and Letter of Credit Fee determinations shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenants or definitions are amended in a manner satisfactory to the Borrower and the Required Lenders, and the Loan Parties shall provide to the Administrative Agent, when they deliver their financial statements pursuant to Sections 8.3.1 [Quarterly Financial Statements] and 8.3.2 [Annual Financial Statements] of this Agreement, such reconciliation statements as shall be reasonably requested by the Administrative Agent.

1.4 LIBOR and Benchmark Replacement Notification. Section 4.5.6 [Successor LIBOR Rate Index] of this Agreement provides a mechanism for determining an alternative rate of interest in the event that the London interbank offered rate is no longer available or in certain other circumstances; Section 4.5.7 [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 will notify the Borrower that the Administrative Agent has determined that the circumstances under Section 4.5.6(i) exist as promptly as practicable thereafter and in advance of any change to the reference rate upon which the interest rate on Loans under the LIBOR Rate Option is based. The Administrative Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate, Term SOFR Rate or other rates in the definition of “LIBOR Rate” or with respect to any alternative or successor rate thereto, or replacement rate therefor.

2. REVOLVING CREDIT AND SWING LOAN FACILITIES

2.1 Revolving Credit Commitments.

2.1.1 Revolving Credit Loans. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, each Lender severally agrees to make Revolving Credit Loans to the Borrower at any time or from time to time on or after the date hereof to the Expiration Date; provided that after giving effect to such Loan (i) the aggregate amount of Revolving Credit Loans from such Lender shall not exceed such Lender's Revolving Credit Commitment minus such Lender's Ratable Share of the outstanding Swing Loans and Letter of Credit Obligations and (ii) the Revolving Facility Usage shall not exceed the Revolving Credit Commitments *minus* the Blocked Amount. Within such limits of time and amount and subject to the other provisions of this Agreement, the Borrower may borrow, repay and reborrow pursuant to this Section 2.1.

2.1.2 Swing Loan Commitment. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, and in order to facilitate loans and repayments between Settlement Dates, PNC Bank may, at its option, cancelable at any time for any reason whatsoever, make swing loans (the "**Swing Loans**") to the Borrower at any time or from time to time after the date hereof to, but not including, the Expiration Date, in an aggregate principal amount up to but not in excess of the Swing Loan Commitment, provided that the aggregate principal amount of PNC Bank's Swing Loans and the Revolving Credit Loans of all the Lenders at any one time outstanding shall not exceed the Revolving Credit Commitments of all the Lenders *minus* the Blocked Amount. Within such limits of time and amount and subject to the other provisions of this Agreement, the Borrower may borrow, repay and reborrow pursuant to this Section 2.1.2.

2.2 Nature of Lenders' Obligations with Respect to Revolving Credit Loans. Each Lender shall be obligated to participate in each request for Revolving Credit Loans pursuant to Section 2.5 [Revolving Credit Loan Requests; Swing Loan Requests] in accordance with its Ratable Share. The aggregate of each Lender's Revolving Credit Loans outstanding hereunder to the Borrower at any time shall never exceed its Revolving Credit Commitment minus its Ratable Share of the outstanding Swing Loans and Letter of Credit Obligations. The obligations of each Lender hereunder are several. The failure of any Lender to perform its obligations hereunder shall not affect the Obligations of the Borrower to any other party nor shall any other party be liable for the failure of such Lender to perform its obligations hereunder. The Lenders shall have no obligation to make Revolving Credit Loans hereunder on or after the Expiration Date.

2.3 Commitment Fees. Accruing from the date hereof until the Expiration Date, the Borrower agrees to pay to the Administrative Agent for the account of each Lender according to its Ratable Share, a nonrefundable commitment fee (the "**Commitment Fee**") equal to the Applicable Commitment Fee Rate (computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed) times the average daily difference between the amount of (i) the Revolving Credit Commitments and (ii) the Revolving Facility Usage (provided however, that solely in connection with determining the share of each Lender in the Commitment Fee, the Revolving Facility Usage with respect to the portion of the Commitment Fee allocated to PNC shall include the full amount of the outstanding Swing Loans, and with respect to the portion of the Commitment Fee allocated by the Administrative Agent to all of the Lenders other than PNC, such portion of the Commitment Fee shall be calculated (according to each such Lender's Ratable Share) as if the Revolving Facility Usage excludes the outstanding Swing Loans); provided, further, that any Commitment Fee accrued with respect to the Revolving Credit 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 Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such Commitment Fee shall otherwise have been due and payable by the Borrower prior to such time; and provided further that no Commitment Fee shall accrue with respect to the Revolving Credit Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Subject to the proviso in the directly preceding sentence, all Commitment Fees shall be payable in arrears on each Payment Date.

2.4 Reduction or Termination of Revolving Credit Commitments. The Borrower shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent, from time to time, to terminate or reduce the aggregate amount of the Revolving Credit Commitments (ratably among the Lenders in proportion to their Ratable Shares); provided that no such reduction of Revolving Credit Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Credit Loans made on the effective date thereof, the Revolving Facility Usage would exceed the aggregate Revolving Credit Commitments of the Lenders. Any such reduction shall be in an amount equal to \$10,000,000, or a whole multiple thereof, and shall reduce permanently the Revolving Credit Commitments then in effect. Any such termination or reduction shall be accompanied by prepayment of the Notes, together with outstanding Commitment Fees, and the full amount of interest accrued on the principal sum to be prepaid (and all amounts referred to in Section 5.10 [Indemnity] hereof) to the extent necessary to cause the aggregate Revolving Facility Usage after giving effect to such prepayments to be equal to or less than the Revolving Credit Commitments as so reduced or terminated. Any notice to terminate or reduce the Revolving Credit Commitments under this Section 2.4 shall be irrevocable.

2.5 Revolving Credit Loan Requests; Swing Loan Requests.

2.5.1 Revolving Credit Loan Requests. Except as otherwise provided herein (and subject to Section 4.6 [Selection of Interest Rate Options]), the Borrower may from time to time prior to the Expiration Date request the Lenders to make Revolving Credit Loans, or renew or convert the Interest Rate Option applicable to existing Revolving Credit Loans pursuant to Section 4.3 [Interest Periods], by delivering to the Administrative Agent, not later than 10:00 a.m., (i) three (3) Business Days prior to the proposed Borrowing Date with respect to the making of Revolving Credit Loans to which the Term SOFR Rate Option applies or the conversion to or the renewal of the Term SOFR Rate Option for any Loans; and (ii) one (1) Business Day prior to either the proposed Borrowing Date with respect to the making of a Revolving Credit Loan to which the Base Rate Option applies or the last day of the preceding Interest Period with respect to the conversion to the Base Rate Option for any Loan, of a duly completed request therefor substantially in the form of Exhibit 2.5.1 or a request by telephone immediately confirmed in writing by letter, facsimile or telex in such form (each, a "**Loan Request**"), it being understood that the Administrative Agent may rely on the authority of any individual making such a telephonic request without the necessity of receipt of such written confirmation. Each Loan Request shall be irrevocable and shall specify the aggregate amount of the proposed Loans comprising each Borrowing Tranche, and, if applicable, the Interest Period, which amounts shall be in integral multiples of \$500,000 and not less than \$1,000,000 for each Borrowing Tranche under the Term SOFR Rate Option and in integral multiples of \$100,000 and not less than the lesser of \$500,000 or the maximum amount available for Borrowing Tranches under the Base Rate Option.

2.5.2 Swing Loan Requests. Except as otherwise provided herein, the Borrower may from time to time prior to the Expiration Date request PNC Bank to make Swing Loans by delivery to PNC Bank not later than 12:00 p.m. Pittsburgh time on the proposed Borrowing Date of a duly completed request therefor substantially in the form of Exhibit 2.5.2 hereto or a request by telephone immediately confirmed in writing by letter, facsimile or telex (each, a “**Swing Loan Request**”), it being understood that the Administrative Agent may rely on the authority of any individual making such a telephonic request without the necessity of receipt of such written confirmation. Each Swing Loan Request shall be irrevocable and shall specify the proposed Borrowing Date and the principal amount of such Swing Loan, which shall be not less than \$100,000.

2.6 Making Revolving Credit Loans and Swing Loans; Presumptions by the Administrative Agent; Repayment of Revolving Credit Loans; Borrowings to Repay Swing Loans.

2.6.1 Making Revolving Credit Loans. The Administrative Agent shall, promptly after receipt by it of a Loan Request pursuant to Section 2.5 [Revolving Credit Loan Requests; Swing Loan Requests], notify the Lenders of its receipt of such Loan Request specifying the information provided by the Borrower and the apportionment among the Lenders of the requested Revolving Credit Loans as determined by the Administrative Agent in accordance with Section 2.2 [Nature of Lenders’ Obligations with Respect to Revolving Credit Loans]. Each Lender shall remit the principal amount of each Revolving Credit Loan to the Administrative Agent such that the Administrative Agent is able to, and the Administrative Agent shall, to the extent the Lenders have made funds available to it for such purpose and subject to Section 7.2 [Each Loan or Letter of Credit], fund such Revolving Credit Loans to the Borrower in U.S. Dollars and immediately available funds at the Principal Office prior to 2:00 p.m., on the applicable Borrowing Date; provided that if any Lender fails to remit such funds to the Administrative Agent in a timely manner, the Administrative Agent may elect in its sole discretion to fund with its own funds the Revolving Credit Loans of such Lender on such Borrowing Date, and such Lender shall be subject to the repayment obligation in Section 2.6.2 [Presumptions by the Administrative Agent].

2.6.2 Presumptions by the Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Loan that such Lender will not make available to the Administrative Agent such Lender's share of such Loan, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.6.1 [Making Revolving Credit Loans] 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 Loan 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 Federal Funds Effective 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 such Lender pays its share of the applicable Loan to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan. 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.

2.6.3 Making Swing Loans. So long as PNC Bank elects to make Swing Loans, PNC Bank shall, after receipt by it of a Swing Loan Request pursuant to Section 2.5.2, [Swing Loan Requests] fund such Swing Loan to the Borrower in U.S. Dollars and immediately available funds at the Principal Office prior to 2:00 p.m. Pittsburgh time on the Borrowing Date.

2.6.4 Repayment of Revolving Credit Loans and Swing Loans. The Borrower shall repay the Revolving Credit Loans and Swing Loans together with all outstanding interest thereon on the Expiration Date.

2.6.5 Borrowings to Repay Swing Loans. PNC Bank may, at its option, exercisable at any time for any reason whatsoever, demand repayment of the Swing Loans, and each Lender shall make a Revolving Credit Loan in an amount equal to such Lenders' Ratable Share of the aggregate principal amount of the outstanding Swing Loans, plus, if PNC Bank so requests, accrued interest thereon, provided that no Lender shall be obligated in any event to make Revolving Credit Loans in excess of its Revolving Credit Commitment minus its Ratable Share of Letter of Credit Obligations. Revolving Credit Loans made pursuant to the preceding sentence shall bear interest at the Base Rate Option and shall be deemed to have been properly requested in accordance with Section 2.5.1 [Revolving Credit Loan Requests] without regard to any of the requirements of that provision. PNC Bank shall provide notice to the Lenders (which may be telephonic or written notice by letter, facsimile or telex) that such Revolving Credit Loans are to be made under this Section 2.6.5 and of the apportionment among the Lenders, and the Lenders shall be unconditionally obligated to fund such Revolving Credit Loans (whether or not the conditions specified in Section 2.5.1 [Revolving Credit Loan Requests] are then satisfied) by the time PNC Bank so requests, which shall not be earlier than 3:00 p.m. Pittsburgh time on the Business Day next after the date the Lenders receive such notice from PNC Bank.

2.6.6 Swing Loans Under Cash Management Agreements. In addition to making Swing Loans pursuant to the foregoing provisions of Section 2.6.3 [Making Swing Loans], without the requirement for a specific request from the Borrower pursuant to Section 2.5.2 [Swing Loan Requests], PNC Bank may make Swing Loans to the Borrower in accordance with the provisions of the agreements between the Borrower and PNC Bank relating to the Borrower's deposit, sweep and other accounts at PNC Bank and related arrangements and agreements regarding the management and investment of the Borrower's cash assets as in effect from time to time (the "**Cash Management Agreements**") to the extent of the daily aggregate net negative balance in the Borrower's accounts which are subject to the provisions of the Cash Management Agreements. Swing Loans made pursuant to this Section 2.6.6 in accordance with the provisions of the Cash Management Agreements shall (i) be subject to the limitations as to aggregate amount set forth in Section 2.1.2 [Swing Loan Commitment], (ii) not be subject to the limitations as to individual amount set forth in Section 2.5.2 [Swing Loan Requests], (iii) be payable by the Borrower, both as to principal and interest, at the rates and times set forth in the Cash Management Agreements (but in no event later than the Expiration Date), (iv) not be made at any time after PNC Bank has received written notice of the occurrence of an Event of Default and so long as such Event of Default shall continue to exist, or, unless consented to by the Required Lenders, a Potential Default and so long as such shall continue to exist, (v) if not repaid by the Borrower in accordance with the provisions of the Cash Management Agreements, be subject to each Lender's obligation pursuant to Section 2.6.5 [Borrowings to Repay Swing Loans], and (vi) except as provided in the foregoing subsections (i) through (v), be subject to all of the terms and conditions of this Section 2.6.6.

2.7 Notes. The Obligation of the Borrower to repay the aggregate unpaid principal amount of the Revolving Credit Loans and Swing Loans made to it by each Lender, together with interest thereon, shall be evidenced by a revolving credit Note and a swing Note, dated the Closing Date payable to the order of such Lender in a face amount equal to the Revolving Credit Commitment or Swing Loan Commitment, as applicable, of such Lender.

2.8 Use of Proceeds. The proceeds of the Loans shall be used to refinance existing Indebtedness under the 2014 Credit Agreement and for general corporate purposes including ongoing working capital, capital expenditures, Permitted Acquisitions and to pay fees and expenses related to the closing of this Agreement.

2.9 Letter of Credit Subfacility.

2.9.1 Issuance of Letters of Credit. On the Closing Date, the outstanding letters of credit previously issued by any Lender under the 2014 Credit Agreement that are set forth on Schedule 2.9 (the "Existing Letters of Credit") will automatically, without any action on the part of any Person, be deemed to be Letters of Credit issued hereunder for the account of the Borrower for all purposes of this Agreement and the other Loan Documents. Borrower may at any time prior to the Expiration Date request the issuance of a standby or trade letter of credit (each a "**Letter of Credit**") on behalf of itself or another Loan Party, or the amendment or extension of an existing Letter of Credit, by delivering or having such other Loan Party deliver to the Issuing Lender (with a copy to the Administrative Agent) a completed application and agreement for letters of credit, or request for such amendment or extension, as applicable, in such form as the Issuing Lender may specify from time to time by no later than 10:00 a.m. at least five (5) Business Days, or such shorter period as may be agreed to by the Issuing Lender, in advance of the proposed date of issuance. Promptly after receipt of any letter of credit application, the Issuing Lender shall confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit application and if not, such Issuing Lender will provide Administrative Agent with a copy thereof.

Unless the Issuing Lender has received notice from any Lender, Administrative Agent or any Loan Party, at least one day prior to the requested date of issuance, amendment or extension of the applicable Letter of Credit, that one or more applicable conditions in Section 7 [Conditions of Lending and Issuance of Letters of Credit] is not satisfied, then, subject to the terms and conditions hereof and in reliance on the agreements of the other Lenders set forth in this Section 2.9, the Issuing Lender or any of the Issuing Lender's Affiliates will issue a Letter of Credit or agree to such amendment or extension, provided that each Letter of Credit shall (A) have a maximum maturity of twelve (12) months from the date of issuance, and (B) in no event expire later than the Expiration Date and provided further that in no event shall (i) the Letter of Credit Obligations exceed, at any one time, \$30,000,000 (the "**Letter of Credit Sublimit**") or (ii) the Revolving Facility Usage exceed, at any one time, the Revolving Credit Commitments *minus* the Blocked Amount. Each request by the Borrower for the issuance, amendment or extension of a Letter of Credit shall be deemed to be a representation by the Borrower that it shall be in compliance with the preceding sentence and with Section 7 [Conditions of Lending and Issuance of Letters of Credit] after giving effect to the requested issuance, amendment or extension of such Letter of Credit. Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to the beneficiary thereof, the applicable Issuing Lender will also deliver to Borrower and Administrative Agent a true and complete copy of such Letter of Credit or amendment.

Notwithstanding Section 2.9.1, the Issuing Lender shall not be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Official Body or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing the Letter of Credit, or any Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Official Body with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the Issuing Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it, or (ii) the issuance of the Letter of Credit would violate one or more policies of the Issuing Lender applicable to letters of credit generally.

2.9.2 Letter of Credit Fees. The Borrower shall pay (i) to the Administrative Agent for the ratable account of the Lenders a fee (the “**Letter of Credit Fee**”) equal to the Applicable Letter of Credit Fee Rate, and (ii) to the Issuing Lender for its own account a fronting fee equal to 0.25% per annum (in each case computed on the basis of a year of 360 days and actual days elapsed), which fees shall be computed on the daily average Letter of Credit Obligations and shall be payable quarterly in arrears on each Payment Date following issuance of each Letter of Credit. The Borrower shall also pay to the Issuing Lender for the Issuing Lender’s sole account the Issuing Lender’s then in effect customary fees and administrative expenses payable with respect to the Letters of Credit as the Issuing Lender may generally charge or incur from time to time in connection with the issuance, maintenance, amendment (if any), assignment or transfer (if any), negotiation, and administration of Letters of Credit.

2.9.3 Disbursements, Reimbursement. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Lender a participation in such Letter of Credit (including the Existing Letters of Credit) and each drawing thereunder in an amount equal to such Lender’s Ratable Share of the maximum amount available to be drawn under such Letter of Credit and the amount of such drawing, respectively.

2.9.3.1 In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the Issuing Lender will promptly notify the Borrower and the Administrative Agent thereof. Provided that it shall have received such notice, the Borrower shall reimburse (such obligation to reimburse the Issuing Lender shall sometimes be referred to as a “**Reimbursement Obligation**”) the Issuing Lender prior to 12:00 noon, Pittsburgh time on each date that an amount is paid by the Issuing Lender under any Letter of Credit (each such date, a “**Drawing Date**”) by paying to the Administrative Agent for the account of the Issuing Lender an amount equal to the amount so paid by the Issuing Lender. In the event the Borrower fails to reimburse the Issuing Lender (through the Administrative Agent) for the full amount of any drawing under any Letter of Credit by 12:00 noon, Pittsburgh time, on the Drawing Date, the Administrative Agent will promptly notify each Lender thereof, and the Borrower shall be deemed to have requested that Revolving Credit Loans be made by the Lenders under the Base Rate Option to be disbursed on the Drawing Date under such Letter of Credit, subject to the amount of the unutilized portion of the Revolving Credit Commitment and subject to the conditions set forth in Section 7.2 [Each Loan or Letter of Credit] other than any notice requirements. Any notice given by the Administrative Agent or Issuing Lender pursuant to this Section 2.9.3.1 may be oral if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

2.9.3.2 Each Lender shall upon any notice pursuant to Section 2.9.3.1 make available to the Administrative Agent for the account of the Issuing Lender an amount in immediately available funds equal to its Ratable Share of the amount of the drawing, whereupon the participating Lenders shall (subject to Section 2.9.3 [Disbursement; Reimbursement]) each be deemed to have made a Revolving Credit Loan under the Base Rate Option to the Borrower in that amount. If any Lender so notified fails to make available to the Administrative Agent for the account of the Issuing Lender the amount of such Lender’s Ratable Share of such amount by no later than 2:00 p.m., Pittsburgh time on the Drawing Date, then interest shall accrue on such Lender’s obligation to make such payment, from the Drawing Date to the date on which such Lender makes such payment (i) at a rate per annum equal to the Federal Funds Effective Rate during the first three (3) days following the Drawing Date and (ii) at a rate per annum equal to the rate applicable to Loans under the Base Rate Option on and after the fourth day following the Drawing Date. The Administrative Agent and the Issuing Lender will promptly give notice (as described in Section 2.9.3.1 above) of the occurrence of the Drawing Date, but failure of the Administrative Agent or the Issuing Lender to give any such notice on the Drawing Date or in sufficient time to enable any Lender to effect such payment on such date shall not relieve such Lender from its obligation under this Section 2.9.3.2.

2.9.3.3 With respect to any unreimbursed drawing that is not converted into Revolving Credit Loans under the Base Rate Option to the Borrower in whole or in part as contemplated by Section 2.9.3.1, because of the Borrower's failure to satisfy the conditions set forth in Section 7.2 [Each Loan or Letter of Credit] other than any notice requirements, or for any other reason, the Borrower shall be deemed to have incurred from the Issuing Lender a borrowing (each a "**Letter of Credit Borrowing**") in the amount of such drawing. Such Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the rate per annum applicable to the Revolving Credit Loans under the Base Rate Option. Each Lender's payment to the Administrative Agent for the account of the Issuing Lender pursuant to Section 2.9.3 [Disbursements, Reimbursement] shall be deemed to be a payment in respect of its participation in such Letter of Credit Borrowing (each a "**Participation Advance**") from such Lender in satisfaction of its participation obligation under this Section 2.9.3.

2.9.4 Repayment of Participation Advances.

2.9.4.1 Upon (and only upon) receipt by the Administrative Agent for the account of the Issuing Lender of immediately available funds from the Borrower (i) in reimbursement of any payment made by the Issuing Lender under the Letter of Credit with respect to which any Lender has made a Participation Advance to the Administrative Agent, or (ii) in payment of interest on such a payment made by the Issuing Lender under such a Letter of Credit, the Administrative Agent on behalf of the Issuing Lender will pay to each Lender, in the same funds as those received by the Administrative Agent, the amount of such Lender's Ratable Share of such funds, except the Administrative Agent shall retain for the account of the Issuing Lender the amount of the Ratable Share of such funds of any Lender that did not make a Participation Advance in respect of such payment by the Issuing Lender.

2.9.4.2 If the Administrative Agent is required at any time to return to any Loan Party, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of any payment made by any Loan Party to the Administrative Agent for the account of the Issuing Lender pursuant to this Section in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each Lender shall, on demand of the Administrative Agent, forthwith return to the Administrative Agent for the account of the Issuing Lender the amount of its Ratable Share of any amounts so returned by the Administrative Agent plus interest thereon from the date such demand is made to the date such amounts are returned by such Lender to the Administrative Agent, at a rate per annum equal to the Federal Funds Effective Rate in effect from time to time.

2.9.5 Documentation. Each Loan Party agrees to be bound by the terms of the Issuing Lender's application and agreement for letters of credit and the Issuing Lender's written regulations and customary practices relating to letters of credit, though such interpretation may be different from such Loan Party's own. In the event of a conflict between such application or agreement and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct, the Issuing Lender shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following any Loan Party's instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

2.9.6 Determinations to Honor Drawing Requests. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, the Issuing Lender shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit.

2.9.7 Nature of Participation and Reimbursement Obligations. Each Lender's obligation in accordance with this Agreement to make the Revolving Credit Loans or Participation Advances, as contemplated by Section 2.9.3 [Disbursements, Reimbursement], as a result of a drawing under a Letter of Credit, and the Obligations of the Borrower to reimburse the Issuing Lender upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Section 2.9 under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Issuing Lender or any of its Affiliates, the Borrower or any other Person for any reason whatsoever, or which any Loan Party may have against the Issuing Lender or any of its Affiliates, any Lender or any other Person for any reason whatsoever;

(ii) the failure of any Loan Party or any other Person to comply, in connection with a Letter of Credit Borrowing, with the conditions set forth in Sections 2.1 [Revolving Credit Commitments], 2.5 [Revolving Credit Loan Requests; Swing Loan Requests], 2.6 [Making Revolving Credit Loans and Swing Loans; Etc.] or 7.2 [Each Loan or Letter of Credit] or as otherwise set forth in this Agreement for the making of a Revolving Credit Loan, it being acknowledged that such conditions are not required for the making of a Letter of Credit Borrowing and the obligation of the Lenders to make Participation Advances under Section 2.9.3 [Disbursements, Reimbursement];

(iii) any lack of validity or enforceability of any Letter of Credit;

(iv) any claim of breach of warranty that might be made by any Loan Party or any Lender against any beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, crossclaim, defense or other right which any Loan Party or any Lender may have at any time against a beneficiary, successor beneficiary any transferee or assignee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), the Issuing Lender or its Affiliates or any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Loan Party or Subsidiaries of a Loan Party and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit, or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provision of services relating to a Letter of Credit, in each case even if the Issuing Lender or any of its Affiliates has been notified thereof;

(vi) payment by the Issuing Lender or any of its Affiliates under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit;

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by the Issuing Lender or any of its Affiliates to issue any Letter of Credit in the form requested by any Loan Party, unless the Issuing Lender has received written notice from such Loan Party of such failure within three Business Days after the Issuing Lender shall have furnished such Loan Party and the Administrative Agent a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

- (ix) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Loan Party or Subsidiaries of a Loan Party;
- (x) any breach of this Agreement or any other Loan Document by any party thereto;
- (xi) the occurrence or continuance of an Insolvency Proceeding with respect to any Loan Party;
- (xii) the fact that an Event of Default or a Potential Default shall have occurred and be continuing;
- (xiii) the fact that the Expiration Date shall have passed or this Agreement or the Commitments hereunder shall have been terminated; and
- (xiv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

2.9.8 Indemnity. The Borrower hereby agrees to protect, indemnify, pay and save harmless the Issuing Lender and any of its Affiliates that has issued a Letter of Credit from and against any and all claims, demands, liabilities, damages, taxes, penalties, interest, judgments, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel and allocated costs of internal counsel) which the Issuing Lender or any of its Affiliates may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit, other than as a result of (A) the gross negligence or willful misconduct of the Issuing Lender as determined by a final non-appealable judgment of a court of competent jurisdiction or (B) the wrongful dishonor by the Issuing Lender or any of Issuing Lender's Affiliates of a proper demand for payment made under any Letter of Credit, except if such dishonor resulted from any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Official Body.

2.9.9 Liability for Acts and Omissions. As between any Loan Party and the Issuing Lender, or the Issuing Lender's Affiliates, such Loan Party assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender shall not be responsible for any of the following, including any losses or damages to any Loan Party or other Person or property relating therefrom: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if the Issuing Lender or its Affiliates shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of any Loan Party against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among any Loan Party and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Lender or the its Affiliates, as applicable, including any act or omission of any Official Body, and none of the above shall affect or impair, or prevent the vesting of, any of the Issuing Lender's or its Affiliates rights or powers hereunder. Nothing in the preceding sentence shall relieve the Issuing Lender from liability for the Issuing Lender's gross negligence or willful misconduct in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall the Issuing Lender or its Affiliates be liable to any Loan Party for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

Without limiting the generality of the foregoing, the Issuing Lender and each of its Affiliates (i) may rely on any oral or other communication believed in good faith by the Issuing Lender or such Affiliate to have been authorized or given by or on behalf of the applicant for a Letter of Credit, (ii) may honor any presentation if the documents presented appear on their face substantially to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by the Issuing Lender or its Affiliate; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on the Issuing Lender or its Affiliate in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a carrier or any similar document (each an "**Order**") and honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by the Issuing Lender or its Affiliates under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not put the Issuing Lender or its Affiliates under any resulting liability to the Borrower or any Lender.

2.9.10 Issuing Lender Reporting Requirements. Each Issuing Lender shall, on the first Business Day of each month, provide to Administrative Agent and Borrower a schedule of the Letters of Credit issued by it, in form and substance satisfactory to Administrative Agent, showing the date of issuance of each Letter of Credit, the account party, the original face amount (if any), and the expiration date of any Letter of Credit outstanding at any time during the preceding month, and any other information relating to such Letter of Credit that the Administrative Agent may request.

2.10 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(i) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.3 [Commitment Fees];

(ii) the Commitment and outstanding Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 11.1 [Modifications, Amendments or Waivers]); provided, that this clause (ii) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(iii) if any Swing Loans are outstanding or any Letter of Credit Obligations exist at the time such Lender becomes a Defaulting Lender, then:

(a) all or any part of the outstanding Swing Loans and Letter of Credit Obligations of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Ratable Shares but only to the extent that (x) the Revolving Facility Usage does not exceed the total of all non-Defaulting Lenders' Revolving Credit Commitments, and (y) no Potential Default or Event of Default has occurred and is continuing at such time;

(b) if the reallocation described in clause (a) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such outstanding Swing Loans, and (y) second, cash collateralize for the benefit of the Issuing Lender the Borrower's obligations corresponding to such Defaulting Lender's Letter of Credit Obligations (after giving effect to any partial reallocation pursuant to clause (a) above) in a deposit account held at the Administrative Agent for so long as such Letter of Credit Obligations are outstanding;

(c) if the Borrower cash collateralizes any portion of such Defaulting Lender's Letter of Credit Obligations pursuant to clause (b) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.9.2 [Letter of Credit Fees] with respect to such Defaulting Lender's Letter of Credit Obligations during the period such Defaulting Lender's Letter of Credit Obligations are cash collateralized;

(d) if the Letter of Credit Obligations of the non-Defaulting Lenders are reallocated pursuant to clause (a) above, then the fees payable to the Lenders pursuant to Section 2.9.2 [Letter of Credit Fees] shall be adjusted in accordance with such non-Defaulting Lenders' Ratable Share; and

(e) if all or any portion of such Defaulting Lender's Letter of Credit Obligations are neither reallocated nor cash collateralized pursuant to clause (a) or (b) above, then, without prejudice to any rights or remedies of the Issuing Lender or any other Lender hereunder, all Letter of Credit Fees payable under Section 2.9.2 [Letter of Credit Fees] with respect to such Defaulting Lender's Letter of Credit Obligations shall be payable to the Issuing Lender (and not to such Defaulting Lender) until and to the extent that such Letter of Credit Obligations are reallocated and/or cash collateralized; and

(iv) so long as such Lender is a Defaulting Lender, PNC Bank shall not be required to fund any Swing Loans and the Issuing Lender shall not be required to issue, amend or increase any Letter of Credit, unless the Issuing Lender is satisfied that the related exposure and the Defaulting Lender's then outstanding Letter of Credit Obligations will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.10(iii), and participating interests in any newly made Swing Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.10(iii)(a) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event with respect to a parent company of any Lender shall occur following the date hereof and for so long as such event shall continue, or (ii) PNC Bank or the Issuing Lender has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, PNC Bank shall not be required to fund any Swing Loan and the Issuing Lender shall not be required to issue, amend or increase any Letter of Credit, unless PNC Bank or the Issuing Lender, as the case may be, shall have entered into arrangements with the Borrower or such Lender, satisfactory to PNC Bank or the Issuing Lender, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower, PNC Bank and the Issuing Lender agree in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Administrative Agent will so notify the parties hereto, and the Ratable Share of the Swing Loans and Letter of Credit Obligations of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment, and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swing Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Ratable Share.

2.11 Duration Fees. On each Duration Fee Payment Date, the Borrower shall pay to the Administrative Agent for the account of each Lender according to its Ratable Share, a nonrefundable duration fee (a “**Duration Fee**”) equal to 1.00% times the sum (a) of such Lender’s Revolving Credit Commitments as of such Duration Fee Payment Date plus (b) the outstanding principal amount of such Lender’s 2023 Term Loan as of such Duration Fee Payment Date.

3. TERM LOANS

3.1 Initial Term Loan Commitments. Subject to the terms and conditions hereof, and relying upon the representations and warranties herein set forth, each Initial Term Loan Lender severally agrees to make a term loan (the “**Initial Term Loan**”) to the Borrower on the Closing Date in such principal amount as the Borrower shall request up to, but not exceeding such Initial Term Loan Lender’s Initial Term Loan Commitment. The aggregate principal amount of each Initial Term Loan Lender’s Initial Term Loan as of the Tenth Amendment Effective Date is listed on Schedule 1.1(B) opposite such Initial Term Loan Lender’s name.

3.2 Nature of Lenders’ Obligations with Respect to Initial Term Loans; Repayment Terms. The obligations of each Initial Term Loan Lender to make an Initial Term Loan to the Borrower shall be in the proportion that such Initial Term Loan Lender’s Initial Term Loan Commitment bears to the Initial Term Loan Commitments of all Initial Term Loan Lenders to the Borrower, but each Initial Term Loan Lender’s Initial Term Loan to the Borrower shall never exceed its Initial Term Loan Commitment. The failure of any Initial Term Loan Lender to make an Initial Term Loan shall not relieve any other Initial Term Loan Lender of its obligations to make an Initial Term Loan nor shall it impose any additional liability on any other Lender hereunder. The Lenders shall have no obligation to make Initial Term Loans hereunder after the Closing Date. The Initial 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 [Initial Term Loan Commitments]. Payments of principal on the Initial Term Loans shall be on the first Business Day following each fiscal quarter end of the Borrower and on the applicable Maturity Date in the amount indicated below:

Fiscal Quarters Ending	Amount Equal to the Applicable Percentage Set Forth Below of the Initial Term Loan
June 30, 2018 through March 31, 2019	3.75%
June 30, 2019 through March 31, 2020	5.00%
June 30, 2020 through March 31, 2022	6.25%
June 30, 2022 through March 31, 2023	3.75%
Maturity Date for Initial Term Loans	Any and all outstanding principal and interest

provided that the payment for the fiscal quarter ended June 30, 2022 shall be made on the earlier of (i) the incurrence by the Borrower or any of its Subsidiaries of Indebtedness in an aggregate principal amount of \$15,000,000 or greater after (and not on or prior to) the Seventh Amendment Effective Date and (ii) July 1, 2022.

3.3 **2023 Term Loans.** Subject to the terms and conditions hereof, and relying upon the representations and warranties herein set forth, on the Tenth Amendment Effective Date, Revolving Credit Loans of each Revolver Lender outstanding immediately prior to the Tenth Amendment Effective Date shall be converted into a term loan deemed made to the Borrower on a cashless basis (a “**2023 Term Loan**”) in a principal amount set forth opposite such Revolving Lender’s name on Schedule 1.1(B) in the column labeled “Amount of 2023 Term Loans” (such amount as to such Revolving Lender, the “**Converted Amount**”), and each Revolver Lender hereby agrees to such conversion and shall thereafter be, with respect to its 2023 Term Loan, a 2023 Term Loan Lender and shall hold such 2023 Term Loan. Notwithstanding anything to the contrary herein, (a) the Borrower shall pay all accrued and unpaid interest, Commitment Fees and Letter of Credit Fees and other amounts in respect of the Converted Amount of Revolving Credit Loans (and the Revolving Credit Commitments underlying such Revolving Credit Loans) of each Revolver Lender on the Tenth Amendment Existing Interest Period Termination Date and (b) Revolving Credit Commitment of each Revolver Lender on the Tenth Amendment Effective Date shall be reduced by an amount equal to the Converted Amount of its Revolving Credit Loans. In order to evidence the conversion contemplated in this Section 3.3 [2023 Term Loans], upon the occurrence of the Tenth Amendment Effective Date, the Administrative Agent, the Revolver Lenders and 2023 Term Loan Lenders agree that the Administrative Agent will record in the register maintained in accordance with Section 11.8.3 [Register] the 2023 Term Loans of each 2023 Term Loan Lender, pursuant to Section 11.8.3 [Register] to reflect (a) the Converted Amount of Revolving Credit Loans of each Revolver Lender as no longer outstanding and (b) that each Revolver Lender will become a 2023 Term Loan Lender hereunder in respect of its Converted Amount of 2023 Term Loans after having acquired them (on a cashless basis). Upon the Administrative Agent marking the recording in the register, each Revolver Lender shall, with respect to its 2023 Term Loans, be a “2023 Term Loan Lender” pursuant to, and for all purposes under, this Agreement. The Administrative Agent’s determination, entry and completion of the register shall be conclusive, in each case, absent clearly demonstrable error. It is acknowledged and agreed among the Borrower, the Administrative Agent and each Revolver Lender that each Revolver Lender has agreed to accept 2023 Term Loans in a principal amount equal to its Converted Amount as satisfaction in full of its right to receive the principal payment on such Converted Amount of Revolving Credit Loans.

3.4 Nature of Lenders' Obligations with Respect to 2023 Term Loans; Repayment Terms. The 2023 Term Loan Lenders shall have no obligation to make, convert or exchange into 2023 Term Loans hereunder other than expressly set forth in Section 3.3 [2023 Term Loans]. Once all or any portion of the principal of any 2023 Term Loans is repaid or prepaid, it may not be reborrowed. Payments of principal on the 2023 Term Loans shall be on the dates set forth below and on the applicable Maturity Date in the amounts indicated below:

Date	Amount of 2023 Term Loans
June 30, 2023	\$10,000,000
September 30, 2023	\$10,000,000
December 31, 2023	\$10,000,000
Maturity Date for 2023 Term Loans	Any and all outstanding principal and interest

4. INTEREST RATES

4.1 Interest Rate Options. The Borrower shall pay interest in respect of (x) the outstanding unpaid principal amount of the Revolving Credit Loans and 2023 Term Loans as selected by it from the Base Rate Option or Term SOFR Rate Option set forth below applicable to the Revolving Credit Loans or 2023 Term Loans and (y) the outstanding unpaid principal amount of the Initial Term Loans as selected by it from the Base Rate Option or LIBOR Rate Option set forth below applicable to the Initial 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 five (5) Borrowing Tranches in the aggregate among all of the Loans that bear interest under the LIBOR Rate Option and more than five (5) Borrowing Tranches in the aggregate among all of the Loans that bear interest under the Term SOFR Rate Option; provided further that if an Event of Default or Potential Default exists and is continuing, the Borrower may not request, convert to, or renew the LIBOR Rate Option and the Term SOFR Rate Option for any Loans and the Required Lenders may demand that all existing Borrowing Tranches bearing interest under the LIBOR Rate Option and the Term SOFR Rate Option shall be converted immediately to the Base Rate Option, subject to the obligation of the Borrower to pay any indemnity under Section 5.10 [Indemnity] in connection with such conversion and provided further that after the Tenth Amendment Effective Date the Borrower may not request, convert to, or renew the LIBOR Rate Option for any Initial Term Loans. 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.

4.1.1 Revolving Credit Interest Rate Options; Swing Line Interest Rate. The Borrower shall have the right to select from the following Interest Rate Options applicable to the Revolving Credit Loans (except as provided in Section 4.1.3 [Tenth Amendment Existing Revolving Credit Loans] with respect to the Tenth Amendment Existing Revolving Credit Loans through the Tenth Amendment Existing Loan Interest Payment Date):

(i) Revolving Credit 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) Revolving Credit 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.

Subject to Section 4.4 [Interest After Default], only the Base Rate Option applicable to Revolving Credit Loans shall apply to the Swing Loans.

4.1.2 Term Loan Interest Rate Options.

(a) The Borrower shall have the right to select from the following Interest Rate Options applicable to the Initial Term Loans (subject to Section 4.1 [Interest Rate Options]):

(i) Initial 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) Initial Term Loan LIBOR Rate Option: A rate per annum (computed on the basis of a year of 360 days and actual days elapsed) equal to the LIBOR Rate as determined for each applicable Interest Period plus the Applicable Margin.

(b) The Borrower shall have the right to select from the following Interest Rate Options applicable to the 2023 Term Loans:

(i) 2023 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) 2023 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.

4.1.3 Tenth Amendment Existing Revolving Credit Loans.

With respect to the Tenth Amendment Existing Revolving Credit Loans, from the Tenth Amendment Effective Date until the earlier of (x) the repayment of such Tenth Amendment Existing Revolving Credit Loans and (y) the Tenth Amendment Existing Interest Period Termination Date (such earlier date with respect to the Tenth Amendment Existing Revolving Credit Loans, the “**Tenth Amendment Existing Loan Interest Payment Date**”), the Tenth Amendment Existing Revolving Credit Loans shall bear interest at the Tenth Amendment Existing LIBOR Rate plus the Applicable Margin (as such term is amended by the Tenth Amendment), subject to any increase after an Event of Default pursuant to Section 4.4 [Interest After Default]. On the Tenth Amendment Existing Loan Interest Payment Date, the Borrower shall pay interest in respect of the Tenth Amendment Existing Revolving Credit Loans accrued from the beginning of the Tenth Amendment Existing Interest Period to the Tenth Amendment Existing Loan Interest Payment Date at the interest rate equal to the sum of (x) the Tenth Amendment Existing LIBOR Rate plus the Applicable Margin (as defined in this Agreement as of immediately prior to effectiveness of the Tenth Amendment) for the period from the beginning of the Tenth Amendment Existing Interest Period through (and including) the date immediately preceding the Tenth Amendment Effective Date and (y) the Tenth Amendment Existing LIBOR Rate plus the Applicable Margin (as such term is amended by the Tenth Amendment) for the period from (and including) the Tenth Amendment Effective Date to the Tenth Amendment Existing Loan Interest Payment Date. On the Tenth Amendment Existing Interest Period Termination Date with respect to the Tenth Amendment Existing Revolving Credit Loans, any Tenth Amendment Existing Revolving Credit Loans that remain outstanding shall be converted to Revolving Credit Loans at either the Base Rate Option or the Term SOFR Rate Option, as selected by the Borrower in accordance with Section 2.5.1. In the event that the Borrower does not provide notice of conversion to the Term SOFR Rate Option to the Administrative Agent prior to 10:00 a.m., three (3) Business Days prior to the Tenth Amendment Existing Interest Period Termination Date, the Borrower shall be deemed to have elected to convert Tenth Amendment Existing Revolving Credit Loans to the Base Rate Option and the Tenth Amendment Existing Revolving Credit Loans shall automatically be converted to Revolving Credit Loans at the Base Rate Option on the Tenth Amendment Existing Interest Period Termination Date.

4.2 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.

4.3 Interest Periods. At any time when the Borrower shall select, convert to or renew a LIBOR Rate Option or Term SOFR Rate Option, the Borrower shall notify the Administrative Agent thereof at least three (3) Business Days prior to the effective date of such LIBOR Rate Option or Term SOFR Rate Option, as applicable, by delivering a Loan Request. The notice shall specify an Interest Period during which such Interest Rate Option shall apply. Notwithstanding the preceding sentence, the following provisions shall apply to any selection of, renewal of, or conversion to a LIBOR Rate Option or Term SOFR Rate Option:

4.3.1 Amount of Borrowing Tranche. Each Borrowing Tranche of Loans under the LIBOR Rate Option or the Term SOFR Rate Option shall be in integral multiples of \$500,000 and not less than \$1,000,000; and

4.3.2 Renewals. In the case of the renewal of a LIBOR Rate Option or a Term SOFR Rate Option at the end of an Interest Period, the first day of the new Interest Period shall be the last day of the preceding Interest Period, without duplication in payment of interest for such day.

4.4 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:

4.4.1 Letter of Credit Fees, Interest Rate. The Letter of Credit Fees and the rate of interest for each Loan otherwise applicable pursuant to Section 2.9.2 [Letter of Credit Fees] or Section 4.1 [Interest Rate Options], respectively, shall be increased by 2.0% per annum;

4.4.2 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 under the Base Rate Option plus an additional 2.0% per annum from the time such Obligation becomes due and payable and until it is Paid In Full; and

4.4.3 Acknowledgment. The Borrower acknowledges that the increase in rates referred to in this Section 4.4 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.

4.5 Rate Unascertainable; Illegality; Increased Costs; Deposits Not Available.

4.5.1 LIBOR Rate Unascertainable. If on any date on which a LIBOR Rate would otherwise be determined, the Administrative Agent shall have determined that:

- (i) adequate and reasonable means do not exist for ascertaining such LIBOR Rate, or
- (ii) a contingency has occurred which materially and adversely affects the London interbank market relating to the establishment of the LIBOR Rate,

then the Administrative Agent shall have the rights specified in Section 4.5.5 [Administrative Agent's and Lender's Rights].

4.5.2 LIBOR Rate Illegality; Increased Costs; Deposits Not Available. If at any time any Lender shall have determined that:

(i) the making, maintenance or funding of any Loan to which a LIBOR Rate Option applies 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), or

(ii) such LIBOR Rate Option will not adequately and fairly reflect the cost to such Lender of the establishment or maintenance of any such Loan, or

(iii) after making all reasonable efforts, deposits of the relevant amount in Dollars for the relevant Interest Period for a Loan, or to banks generally, to which a LIBOR Rate Option applies, respectively, are not available to such Lender with respect to such Loan, or to banks generally, in the interbank Eurodollar market,

then the Administrative Agent shall have the rights specified in Section 4.5.5 [Administrative Agent's and Lender's Rights].

4.5.3 Term SOFR Rate 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) any Lender determines that for any reason in connection with any request for a Loan under the Term SOFR Rate Option 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 such Lender has provided notice of such determination to the Administrative Agent,

then the Administrative Agent shall have the rights specified in Section 4.5.5 [Administrative Agent's and Lender's Rights].

4.5.4 Term SOFR 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 Loan under the Term SOFR Rate Option, 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 4.5.5 [Administrative Agent's and Lender's Rights].

4.5.5 Administrative Agent's and Lender's Rights. In the case of any event specified in Section 4.5.1 [LIBOR Rate Unascertainable] or Section 4.5.3 [Term SOFR Rate Unascertainable; Increased Costs] above, the Administrative Agent shall promptly so notify the Lenders and the Borrower thereof, and in the case of an event specified in Section 4.5.2 [LIBOR Rate Illegality; Increased Costs; Deposits Not Available] or Section 4.5.4 [Term SOFR 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 (A) the Lenders, in the case of such notice given by the Administrative Agent, or (B) such Lender, in the case of such notice given by such Lender, to allow the Borrower to select, convert to or renew a LIBOR Rate Option or Term SOFR Rate Option, as applicable, shall be suspended 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. If at any time the Administrative Agent makes a determination under Section 4.5.1 [LIBOR Rate Unascertainable] or Section 4.5.3 [Term SOFR Rate Unascertainable; Increased Costs] and the Borrower has previously notified the Administrative Agent of its selection of, conversion to or renewal of a LIBOR Rate Option or Term SOFR Rate Option, as applicable, and such Interest Rate Option has not yet gone into effect, such notification shall be deemed to provide for selection of, conversion to or renewal of the Base Rate Option otherwise available with respect to such Loans. If any Lender notifies the Administrative Agent of a determination under Section 4.5.2 [LIBOR Rate Illegality; Increased Costs; Deposits Not Available] or Section 4.5.4 [Term SOFR Illegality] above, 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 LIBOR Rate Option or a SOFR Rate Option, as applicable, applies, on the date specified in such notice either convert such Loan to the Base Rate Option otherwise available with respect to such Loan or prepay such Loan in accordance with Section 5.6 [Voluntary Prepayments]. Absent due notice from the Borrower of conversion or prepayment, such Loan shall automatically be converted to the Base Rate Option otherwise available with respect to such Loan upon such specified date.

4.5.6 Successor LIBOR Rate Index.

(i) LIBOR Rate Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if the Administrative Agent determines that a LIBOR Rate Transition Event or an Early Opt-in Event has occurred, the Administrative Agent and the Borrower may amend this Agreement to replace the LIBOR Rate with a LIBOR Rate Replacement; and any such amendment will become effective at 5:00 p.m. New York City time on the fifth (5th) Business Day after the Administrative Agent has provided such proposed amendment to all Lenders, so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Until the LIBOR Rate Replacement is effective, each advance, conversion and renewal of a Loan under the LIBOR Rate Option will continue to bear interest with reference to the LIBOR Rate; provided however, during a LIBOR Rate Unavailability Period (i) any pending selection of, conversion to or renewal of a Loan bearing interest under the LIBOR Rate Option that has not yet gone into effect shall be deemed to be a selection of, conversion to or renewal of the Base Rate Option with respect to such Loan, (ii) all outstanding Loans bearing interest under the LIBOR Rate Option shall automatically be converted to the Base Rate Option at the expiration of the existing Interest Period (or sooner, if Administrative Agent cannot continue to lawfully maintain such affected Loan under the LIBOR Rate Option) and (iii) the component of the Base Rate based upon the LIBOR Rate will not be used in any determination of the Base Rate.

(ii) LIBOR Rate Replacement Conforming Changes. In connection with the implementation of a LIBOR Rate Replacement, the Administrative Agent will have the right to make LIBOR Rate Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Rate Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any LIBOR Rate Replacement, (ii) the effectiveness of any LIBOR Rate Replacement Conforming Changes and (iii) the commencement of any LIBOR Rate Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or the Lenders pursuant to this Section 4.5.6 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, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 4.5.6.

(iv) Certain Defined Terms. As used in this Section 4.5.6:

“LIBOR Rate Replacement” means the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBOR Rate for U.S. dollar-denominated credit facilities and (b) the LIBOR Rate Replacement Adjustment; provided that, if the LIBOR Rate Replacement as so determined would be less than zero, the LIBOR Rate Replacement will be deemed to be zero for the purposes of this Agreement.

“LIBOR Rate Replacement Adjustment” means, with respect to any replacement of the LIBOR Rate with an alternate benchmark rate for each applicable Interest Period, 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 (a) giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBOR Rate with the applicable LIBOR Rate Replacement (excluding such spread adjustment) by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for such replacement of the LIBOR Rate for U.S. dollar-denominated credit facilities at such time and (b) which may also reflect adjustments to account for (i) the effects of the transition from the LIBOR Rate to the LIBOR Rate Replacement and (ii) yield- or risk-based differences between the LIBOR Rate and the LIBOR Rate Replacement.

“LIBOR Rate Replacement Conforming Changes” means, with respect to any LIBOR Rate Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such LIBOR Rate 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 LIBOR Rate Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

“LIBOR Rate Replacement Date” means the earlier to occur of the following events with respect to the LIBOR Rate:

(1) in the case of clause (1) or (2) of the definition of “LIBOR Rate Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the LIBOR Rate permanently or indefinitely ceases to provide the LIBOR Rate; or

(2) in the case of clause (3) of the definition of “LIBOR Rate Transition Event,” the date of the public statement or publication of information referenced therein.

“LIBOR Rate Transition Event” means the occurrence of one or more of the following events with respect to the LIBOR Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the LIBOR Rate announcing that such administrator has ceased or will cease to provide the LIBOR Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate;

(2) a public statement or publication of information by a Governmental Authority having jurisdiction over the Administrative Agent, the regulatory supervisor for the administrator of the LIBOR Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBOR Rate, a resolution authority with jurisdiction over the administrator for the LIBOR Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBOR Rate, which states that the administrator of the LIBOR Rate has ceased or will cease to provide the LIBOR Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Rate or a Governmental Authority having jurisdiction over the Administrative Agent announcing that the LIBOR Rate is no longer representative.

“LIBOR Rate Unavailability Period” means, if a LIBOR Rate Transition Event and its related LIBOR Rate Replacement Date have occurred with respect to the LIBOR Rate and solely to the extent that the LIBOR Rate has not been replaced with a LIBOR Rate Replacement, the period (x) beginning at the time that such LIBOR Rate Replacement Date has occurred if, at such time, no LIBOR Rate Replacement has replaced the LIBOR Rate for all purposes hereunder in accordance with Section 4.5.6 and (y) ending at the time that a LIBOR Rate Replacement has replaced the LIBOR Rate for all purposes hereunder pursuant to Section 4.5.6.

“Early Opt-in Event” means a determination by the Administrative Agent that U.S. dollar- denominated credit facilities being executed at such time, or that include language similar to that contained in this Section 4.5.6, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBOR Rate.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

4.5.7 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 4.5.7 [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 4.5.7, 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 4.5.7.

(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 the Term SOFR Rate, the Borrower may revoke any pending request for a Loan bearing interest based on such rate or conversion to or continuation of Loans bearing interest based on such rate 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 the Base Rate Option to be applicable to such Loans. 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, SOFR and 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 for a 1-month Interest Period;

(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 clause (2) above 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 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.

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 4.5.7 [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 4.5.7 [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.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

4.6 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 LIBOR Rate Option or the Term SOFR Rate Option at the expiration of an existing Interest Period applicable to such Borrowing Tranche in accordance with the provisions of Section 4.3 [Interest Periods], the Borrower shall be deemed to have converted such Borrowing Tranche to the Base Rate Option, as applicable to Revolving Credit Loans or Term Loans as the case may be, commencing upon the last day of the existing Interest Period.

4.7 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.

4.8 Seventh Amendment Consent Fee. Without duplication of the obligations set forth in any applicable fee letter, as consideration for the Seventh Amendment Consenting Lenders providing their consent to the Seventh Amendment, the Borrower shall pay to the Administrative Agent, for the account of each Seventh Amendment Consenting Lender, a consent fee (the “**Consent Fee**”) in an amount equal to 37.5 basis points *multiplied* by the aggregate amount of such Seventh Amendment Consenting Lender’s Initial Term Loans and Revolving Credit Commitments as of the Seventh Amendment Effective Date. The Consent Fee shall be due and payable in full on the earlier of (i) the repayment in full of the Initial Term Loans outstanding on the Seventh Amendment Effective Date, (ii) the termination or other refinancing of the Revolving Credit Commitments, (iii) the Maturity Date for the Initial Term Loans and (iv) the issuance by the Borrower and/or any of its Subsidiaries of Indebtedness and/or Equity Issuances (excluding any conversion or exchange of Convertible Debt into equity interests) in an aggregate amount of \$15,000,000 or greater after (and not on or prior to) the Seventh Amendment Effective Date.

4.9 Eighth Amendment Consent Fee. Without duplication of the obligations set forth in any applicable fee letter, as consideration for the Eighth Amendment Consenting Lenders providing their consent to the Eighth Amendment, the Borrower shall pay to the Administrative Agent, for the account of each Eighth Amendment Consenting Lender, a consent fee (the “**Consent Fee**”) in an amount equal to 10.0 basis points *multiplied* by the aggregate amount of such Eighth Amendment Consenting Lender’s Initial Term Loans and Revolving Credit Commitments as of the Eighth Amendment Effective Date. The Consent Fee shall be due and payable in full on the earlier of (i) the repayment in full of the Initial Term Loans outstanding on the Eighth Amendment Effective Date, (ii) the termination or other refinancing of the Revolving Credit Commitments, (iii) the Maturity Date for the Initial Term Loans and (iv) the issuance by the Borrower and/or any of its Subsidiaries of Indebtedness and/or Equity Issuances (excluding any conversion or exchange of Convertible Debt into equity interests) in an aggregate amount of \$15,000,000 or greater after (and not on or prior to) the Seventh Amendment Effective Date.

4.10 Tenth Amendment Consent Fee. Without duplication of the obligations set forth in any applicable fee letter, as consideration for the Tenth Amendment Consenting Lenders providing their consent to the Tenth Amendment, the Borrower shall pay to the Administrative Agent, for the account of each Tenth Amendment Consenting Lender, a consent fee (the “**Tenth Amendment Consent Fee**”) in an amount previously communicated to the Borrower. The Consent Fee shall be due and payable in full on the Tenth Amendment Effective Date.

5. PAYMENTS

5.1 Payments. All payments and prepayments to be made in respect of principal, interest, Commitment Fees, Duration Fees, Letter of Credit Fees, Administrative Agent’s Fee or other fees or amounts due from the Borrower hereunder shall be payable prior to 1:00 p.m. 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 PNC Bank with respect to the Swing Loans and for the ratable accounts of the Lenders with respect to the Revolving Credit Loans, Initial Term Loans or 2023 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 1:00 p.m. 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 Federal Funds Effective 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 and each Lender’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 and shall be deemed an “account stated”.

5.2 Pro Rata Treatment of Lenders. Each borrowing of Revolving Credit Loans 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, Commitment Fees, Duration Fees, Letter of Credit Fees, or other fees (except for the Administrative Agent’s Fee and the Issuing Lender’s fronting fee) shall (except as otherwise may be provided with respect to a Defaulting Lender and except as provided in Section 4.5.5 [Administrative Agent’s and Lender’s Rights] in the case of an event specified in Sections 4.5 [Rate Unascertainable; Illegality; Increased Costs; Deposits Not Available], 5.6.2 [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, Commitment Fees, Duration Fees and Letter of Credit Fees, as set forth in this Agreement. Notwithstanding any of the foregoing, each borrowing or payment or prepayment by the Borrower of principal, interest, fees or other amounts from the Borrower with respect to Swing Loans shall be made by or to PNC Bank according to Section 2.6.5 [Borrowings to Repay Swing Loans].

5.3 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff, counterclaim or banker's lien, 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 5.3 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 or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or Participation Advances to any assignee or participant, other than to any Loan Party thereof (as to which the provisions of this Section 5.3 shall apply).

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.

5.4 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 or the Issuing Lender 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 or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing 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 Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

5.5 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 LIBOR Rate Option or the Term SOFR Rate Option applies shall be due and payable on the last day of each Interest Period for those Loans and, if such Interest Period is longer than three (3) Months, also on the 90th day of such Interest Period. Interest on mandatory prepayments of principal under Section 5.7 [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 Expiration Date, applicable Maturity Date, upon acceleration or otherwise).

5.6 Voluntary Prepayments.

5.6.1 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 5.6.2 [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. at least one (1) Business Day prior to the date of prepayment of the Revolving Credit Loans, Initial Term Loans or 2023 Term Loans or no later than 1:00 p.m., Pittsburgh time, on the date of prepayment of Swing Loans, setting forth the following information:

- (i) the date, which shall be a Business Day, on which the proposed prepayment is to be made;
- (a) a statement indicating the application of the prepayment between the Revolving Credit Loans, Initial Term Loans, 2023 Term Loans and Swing Loans;
- (b) with respect to any prepayment of any Loans subject to the LIBOR Rate Option or the Term SOFR Rate Option, a statement indicating the application of the prepayment between the LIBOR Rate Option tranches or the Term SOFR Rate Option tranches; and
- (c) the total principal amount of such prepayment, which shall not be less than: (i) \$100,000 for any Swing Loan, or (ii) \$100,000 for any Revolving Credit Loan.

All prepayment notices shall be irrevocable. The principal amount of the Loans for which a prepayment notice is given, together with interest on such principal amount except with respect to Loans to which the Base Rate Option applies, 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. All Initial Term Loan and 2023 Term Loan prepayments permitted pursuant to this Section 5.6.1 [Right to Prepay] shall be applied to the unpaid installments of principal of the Initial Term Loans or 2023 Term Loans, respectively, in the inverse order of scheduled maturities. Except as provided in Section 4.5.5 [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 Loans to which the Base Rate Option applies, then to Loans to which the LIBOR Rate Option or the Term SOFR Rate Option applies. Any prepayment hereunder shall be subject to the Borrower's Obligation to indemnify the Lenders under Section 5.10 [Indemnity].

5.6.2 Replacement of a Lender. In the event any Lender (i) gives notice under Section 4.5 [Rate Unascertainable; Illegality; Increased Costs; Deposits Not Available], (ii) requests compensation under Section 5.8 [Increased Costs], or requires the Borrower to pay any Indemnified Taxes or additional amount to any Lender or any Official Body for the account of any Lender pursuant to Section 5.9 [Taxes], (iii) is a Defaulting Lender, (iv) becomes subject to the control of an Official Body (other than normal and customary supervision), or (v) is a Non-Consenting Lender referred to in Section 11.1 [Modifications, Amendments or Waivers] then in any such event the Borrower may, at its sole expense, 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 11.8 [Successors and Assigns]), all of its interests, rights (other than existing rights to payment pursuant to Sections 5.8 [Increased Costs] or 5.9 [Taxes]) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.8 [Successors and Assigns];

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and Participation Advances, 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);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.8.1 [Increased Costs Generally] 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; and

(iv) such assignment does not conflict with applicable Law.

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.

5.6.3 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 reasonable 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 any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

5.7 Mandatory Prepayments.

5.7.1 Specified Excluded Subsidiary Distributions. At any time when the Leverage Ratio as determined as of the end of the most recent fiscal quarter is greater than or equal to 2.0 to 1.0, the Borrower shall make a mandatory prepayment of principal equal to all Specified Excluded Subsidiary Distributions within ten (10) days of the receipt by any Loan Party of such cash distributions; provided that no mandatory prepayment of principal shall be required under this Section 5.7.1 for Specified Excluded Subsidiary Distributions made by Hourglass Sands in an aggregate principal amount not in excess of \$650,000.

5.7.2 Excess Cash Flow. Commencing with the fiscal quarter ending December 31, 2022, and for each fiscal quarter thereafter, the Borrower shall apply an amount equal to 50% of Excess Cash Flow for the immediately preceding fiscal quarter to permanently reduce the aggregate amount of the Revolving Credit Commitments (ratably among the Lenders in proportion to their Ratable Shares); provided that no such reduction of Revolving Credit Commitments shall be required following the reduction of the aggregate Revolving Credit Commitments to \$75,000,000. In the case of any such reduction of Revolving Credit Commitments that causes the Revolving Facility Usage to exceed the aggregate Revolving Credit Commitments of the Lenders, the Borrower shall prepay Revolving Credit Loans (together with the outstanding Commitment Fees and interest accrued on the principal sum to be prepaid (and all amounts referred to in Section 5.10 [Indemnity] hereof)), to the extent necessary to cause the aggregate Revolving Facility Usage after giving effect to such prepayments to be equal to or less than the Revolving Credit Commitments as so reduced. Each prepayment required by this Section 5.7.2 shall be made by the Borrower within ten (10) days of delivery of the Borrower's financial statements for the preceding fiscal quarter (or, in the case of the fourth quarter of any fiscal year, the financial statements for the fiscal year ending as of the last day of such fiscal quarter) and each reduction of the Revolving Credit Commitments required by this Section 5.7.2 shall be effective upon delivery of the Compliance Certificate to the Administrative Agent with respect to the applicable fiscal quarter.

5.7.3 Equity Issuances. At any time when the Leverage Ratio as determined as of the end of the most recent fiscal quarter is greater than or equal to 2.0 to 1.0, the Borrower shall make a mandatory prepayment of principal equal to 100% of the after tax net cash proceeds received by any Loan Party in connection with any Equity Issuances within ten (10) days of the receipt of such proceeds; provided, however, that (A) no mandatory prepayment shall be required under this Section 5.7.3 with respect to (i) any Equity Issuances made on or after the Seventh Amendment Effective Date and on or prior to June 30, 2022 in an aggregate amount not to exceed (x) \$25,000,000 *less* (y) the aggregate principal amount of Convertible Debt incurred, issued or sold by the Borrower or its Subsidiaries on or after May 2, 2022 and on or prior to the date of such Equity Issuance (any Equity Issuance described in this clause (i), a “Seventh Amendment Exempted Equity Issuance”) and (ii) any Equity Issuances in the form of a conversion or exchange of Convertible Debt for equity interests in an aggregate amount not to exceed (x) \$25,000,000 *less* (y) the aggregate amount of Seventh Amendment Exempted Equity Issuances; provided that such Convertible Debt was incurred, issued or sold on or after May 2, 2022 and on or prior to June 30, 2022, (B) no mandatory prepayment shall be required under this Section 5.7.3 with respect to (i) any Equity Issuances made on or after the Eighth Amendment Effective Date and on or prior to October 31, 2022 in an aggregate amount not to exceed (x) \$20,000,000 *less* (y) the aggregate principal amount of Indebtedness incurred, issued or sold by the Borrower or its Subsidiaries pursuant to Section 8.2.1(xviii) on or after the Eighth Amendment Effective Date and on or prior to the date of such Equity Issuance (any Equity Issuance described in this clause (i), an “Eighth Amendment Exempted Equity Issuance”) and (ii) any Equity Issuances in the form of a conversion or exchange of Convertible Debt for equity interests in an aggregate amount not to exceed (x) \$20,000,000 *less* (y) the aggregate amount of Eighth Amendment Exempted Equity Issuances and Indebtedness (other than the Convertible Debt so converting or exchanging) incurred, issued or sold by the Borrower or its Subsidiaries pursuant to Section 8.2.1(xviii) on or after the Eighth Amendment Effective Date and on or prior to the date of such conversion or exchange; provided that such Convertible Debt was incurred, issued or sold on or after July 29, 2022 and on or prior to October 31, 2022, and (C) no mandatory prepayment shall be required under this Section 5.7.3 with respect to any Equity Issuances made after the Tenth Amendment Effective Date and prior to June 30, 2023. For the avoidance of doubt, the incurrence, issuance or sale of any Convertible Debt shall be deemed an issuance of Indebtedness and not an Equity Issuance for purposes of this Section 5.7.3; provided, however, that the conversion or exchange of Convertible Debt into equity interests shall be an Equity Issuance.

5.7.4 Dispositions of any Specified Excluded Subsidiary. At any time when the Leverage Ratio as determined as of the end of the most recent fiscal quarter is greater than or equal to 2.0 to 1.0, the Borrower shall make a mandatory prepayment of principal equal to 100% of the after tax net cash proceeds received by any Loan Party in connection with the sale of such party’s interest in any Specified Excluded Subsidiary within 10 days of the receipt of such proceeds.

5.7.5 Cash Surplus. If on any Business Day the Borrower or any other Loan Party have any Cash Surplus on such date, then the Borrower shall prepay the Revolving Credit Loans on or before the third Business Day following such date in an amount equal to such Cash Surplus.

5.7.6 Application Among Interest Rate Options. Except as set forth in Section 5.7.2 and 5.7.5, all prepayments required pursuant to this Section 5.7 shall first be applied *pro rata* to the outstanding principal balances of the 2023 Term Loans and Initial Term Loans in inverse order to the scheduled principal payments and then to the outstanding principal balance of the Revolving Credit Loans. After giving effect to the first sentence of this Section 5.7.6, all prepayments shall next be applied among the Interest Rate Options to the principal amount of the Loans subject to the Base Rate Option, then *pro rata* to Loans subject to a LIBOR Rate Option and Term SOFR Rate Option. In accordance with Section 5.10 [Indemnity], the Borrower shall indemnify the Lenders for any loss or expense, incurred with respect to any such prepayments (other than prepayments pursuant to Section 5.7.5 [Cash Surplus]) applied against Loans subject to a LIBOR Rate Option or a Term SOFR Rate Option on any day other than the last day of the applicable Interest Period. All prepayments of the Term Loans required pursuant to this Section 5.7 may not be reborrowed.

5.8 Increased Costs.

5.8.1 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 (except any reserve requirement reflected in the LIBOR Rate) or the Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) 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, the Issuing Lender 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, the Issuing Lender 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, the Issuing Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Issuing Lender or other Recipient, the Borrower will pay to such Lender, the Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered.

5.8.2 Capital Requirements. If any Lender or the Issuing Lender determines that any Change in Law affecting such Lender or the Issuing Lender or any lending office of such Lender or such Lender's or the Issuing 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 or the Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for any such reduction suffered.

5.8.3 Certificates for Reimbursement; Repayment of Outstanding Loans; Borrowing of New Loans. A certificate of a Lender or the Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or the Issuing Lender or its holding company, as the case may be, as specified in Sections 5.8.1 [Increased Costs Generally] or 5.8.2 [Capital Requirements] and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

5.8.4 Delay in Requests. Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to this Section 5.8.4 shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the Issuing Lender pursuant to this Section 5.8.4 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the Issuing Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing 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.

5.9.1 Issuing Lender. For purposes of this Section 5.9, the term “Lender” includes the Issuing Lender and the term “applicable Law” includes FATCA.

5.9.2 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.

5.9.3 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.

5.9.4 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.

5.9.5 Indemnification by the Lenders. 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 11.8.4 [Participations] 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 5.9.5.

5.9.6 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.

5.9.7 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 set forth in Sections 5.9.7(ii)(b)(A), (ii)(b)(B) and (ii)(b)(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, in the event that the Borrower is a U.S. Borrower,

(a) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(b) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN 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 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;

(B) executed originals of IRS Form W-8ECI;

(C) 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 5.9.7(A) 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 originals of IRS Form W-8BEN; or

(D) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 5.9.7(B) or Exhibit 5.9.7(C), 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 5.9.7(D) on behalf of each such direct and indirect partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(d) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. 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.

5.9.8 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 incurred in connection with obtaining such refund, shall repay to such indemnified party the amount paid over pursuant to this Section 5.9.8 (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 5.9.8), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.9.8 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This 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.

5.9.9 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 loss of anticipated profits, any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract) which such Lender sustains or incurs as a consequence of any:

(i) except with respect to any prepayment under Section 5.7.5 [Cash Surplus], payment, prepayment, conversion or renewal of any Loan to which a LIBOR Rate Option or a Term SOFR Rate Option applies on a day other than the last day of the corresponding Interest Period (whether or not such payment or prepayment is mandatory, voluntary or automatic and whether or not such payment or prepayment is then due),

(ii) attempt by the Borrower to revoke (expressly, by later inconsistent notices or otherwise) in whole or part any Loan Requests under Section 2.5 [Revolving Credit Loan Requests; Swing Loan Requests] or Section 4.3 [Interest Periods] or notice relating to prepayments under Section 5.6 [Voluntary Prepayments], or

(iii) default by the Borrower in the performance or observance of any covenant or condition contained in this Agreement or any other Loan Document, including any failure of the Borrower to pay when due (by acceleration or otherwise) any principal, interest, Commitment Fee, Duration Fee or any other amount due hereunder.

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 set forth 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 Settlement Date Procedures. In order to minimize the transfer of funds between the Lenders and the Administrative Agent, the Borrower may borrow, repay and reborrow Swing Loans and PNC Bank may make Swing Loans as provided in Section 2.1.2 [Swing Loan Commitments] hereof during the period between Settlement Dates. The Administrative Agent shall notify each Lender of its Ratable Share of the total of the Revolving Credit Loans and the Swing Loans (each a “**Required Share**”). On such Settlement Date, each Lender shall pay to the Administrative Agent the amount equal to the difference between its Required Share and its Revolving Credit Loans, and the Administrative Agent shall pay to each Lender its Ratable Share of all payments made by the Borrower to the Administrative Agent with respect to the Revolving Credit Loans. The Administrative Agent shall also effect settlement in accordance with the foregoing sentence on the proposed Borrowing Dates for Revolving Credit Loans and on any mandatory prepayment date as provided for herein and may at its option effect settlement on any other Business Day. These settlement procedures are established solely as a matter of administrative convenience, and nothing contained in this Section 5.11 shall relieve the Lenders of their obligations to fund Revolving Credit Loans on dates other than a Settlement Date pursuant to Section 2.1.2 [Swing Loan Commitment]. The Administrative Agent may at any time at its option for any reason whatsoever require each Lender to pay immediately to the Administrative Agent such Lender’s Ratable Share of the outstanding Revolving Credit Loans and each Lender may at any time require the Administrative Agent to pay immediately to such Lender its Ratable Share of all payments made by the Borrower to the Administrative Agent with respect to the Revolving Credit Loans.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties. The Loan Parties, jointly and severally, represent and warrant to the Administrative Agent and each of the Lenders as follows:

6.1.1 Organization and Qualification; Power and Authority; Compliance With Laws; Title to Properties; Event of Default. Each Loan Party and each Specified Excluded Subsidiary (i) is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct, (iii) is duly licensed or qualified and in good standing in each jurisdiction listed on Schedule 6.1.1 and in all other jurisdictions 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, except where such failure would not constitute a Material Adverse Change (iv) 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 Indebtedness 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, (v) is in compliance in all material respects with all applicable Laws (other than Environmental Laws which are specifically addressed in Section 6.1.14 [Environmental Matters]) in all jurisdictions in which such Loan Party or Specified Excluded Subsidiary is presently or will be doing business except where the failure to do so would not constitute a Material Adverse Change, and (vi) has good and marketable title to or valid leasehold interest in all material properties, assets and other rights which it purports to own or lease or which are reflected as owned or leased on its books and records, free and clear of all Liens and encumbrances except Permitted Liens. No Event of Default or Potential Default exists or is continuing.

6.1.2 Subsidiaries and Owners; Investment Companies; Schedule 6.1.2 states (i) the name of each of the Borrower's and each other Loan Party's Subsidiaries, its jurisdiction of organization and the amount, percentage and type of equity interests in such Subsidiary (the "**Subsidiary Equity Interests**"), (ii) the name of each holder of an equity interest in the Borrower, the amount, percentage and type of such equity interest (the "**Borrower Equity Interests**"), and (iii) any options, warrants or other rights outstanding to purchase any such equity interests referred to in clause (i) or (ii) (collectively the "**Equity Interests**"). The Borrower, each other Loan Party and each Specified Excluded Subsidiary has good and marketable title to all of the Subsidiary Equity Interests it purports to own, free and clear in each case of any Lien and all such Subsidiary Equity Interests have been validly issued, fully paid and nonassessable. None of the Loan Parties or Specified Excluded Subsidiaries is an "investment company" registered or required to be registered under the Investment Company Act of 1940 or under the "control" of an "investment company" as such terms are defined in the Investment Company Act of 1940 and shall not become such an "investment company" or under such "control." None of the Loan Parties is a "holding company" or any "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 2005, as amended. None of the Loan Parties is subject to any other federal or state statute or regulation limiting its ability to incur Indebtedness for borrowed money (other than any limitation in the CARES Act in respect of the borrowing of PPP Loans).

6.1.3 Validity and Binding Effect. This Agreement and each of the other Loan Documents (i) has been duly and validly executed and delivered by each Loan Party, and (ii) constitutes, or will constitute, legal, valid and binding obligations of each such Loan Party which is or will be a party thereto, enforceable against such Loan Party in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws in effect from time to time relating to or affecting the enforcement of creditors' rights generally and by general principles of equity.

6.1.4 No Conflict; Material Agreements; Consents. 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 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 such Loan Party or (ii) any Law or any material agreement or instrument or order, writ, judgment, injunction or decree to which such Loan Party or any Specified Excluded Subsidiary is a party or by which it is bound or to which it is subject, or result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of such Loan Party or any Specified Excluded Subsidiary (other than Liens granted under the Loan Documents). There is no default under such material agreement (referred to above) and none of the Loan Parties or Specified Excluded Subsidiaries is bound by any contractual obligation, or subject to any restriction in any organization document, or any requirement of Law which could result in a Material Adverse Change. Except as set forth on Schedule 6.1.4, no consent, approval, exemption, order or authorization of, or a registration or filing with, any Official Body or any other Person is required by any Law or any agreement in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents.

6.1.5 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against such Loan Party or any Specified Excluded Subsidiary at law or in equity before any Official Body which individually or in the aggregate may result in any Material Adverse Change. None of the Loan Parties or Specified Excluded Subsidiaries is in violation of any order, writ, injunction or any decree of any Official Body which may result in any Material Adverse Change.

6.1.6 Financial Statements.

(i) Historical Statements. The Borrower has delivered to the Administrative Agent copies of its production reports, balance sheet, income statement and cash flow statement for and as of the end of the fiscal year ended December 31, 2017 (all such annual reports and statements being collectively referred to as the “**Statements**”). The Statements were compiled from the books and records maintained by the Borrower’s management, are correct and complete and fairly represent the financial condition of the Borrower and its Subsidiaries as of the respective dates thereof and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied, subject (in the case of the interim statements) to normal year-end audit adjustments.

(ii) Accuracy of Financial Statements. None of the Loan Parties or Specified Excluded Subsidiaries has any liabilities, contingent or otherwise, or forward or long-term commitments that are not disclosed in the Statements or in the notes thereto, and except as disclosed therein there are no unrealized or anticipated losses from any commitments of any Loan Party which may cause a Material Adverse Change. Since December 31, 2017, no Material Adverse Change has occurred.

6.1.7 Margin Stock. None of the Loan Parties or Specified Excluded Subsidiaries 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. None of the Loan Parties or Specified Excluded Subsidiaries holds or intends to hold margin stock in such amounts that more than 25% of the reasonable value of the assets of any such Loan Party or any Specified Excluded Subsidiary are or will be represented by margin stock.

6.1.8 Full Disclosure. Neither this Agreement nor any other Loan Document, nor any certificate, statement, agreement or other documents furnished to the Administrative Agent or any Lender in connection herewith or therewith, contains 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 misleading. There is no fact known to any Loan Party which materially adversely affects the business, property, assets, financial condition, or results of operations of any such Loan Party or any Specified Excluded Subsidiary which has not been set forth in this Agreement or in the certificates, statements, agreements or other documents furnished in writing to the Administrative Agent and the Lenders prior to or at the date hereof in connection with the transactions contemplated hereby.

6.1.9 Taxes. All material federal, state, local and other tax returns required to have been filed with respect to each Loan Party or any Specified Excluded Subsidiary have been filed, and payment or adequate provision has been made for the payment of all taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that such taxes, fees, assessments and other charges 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.

6.1.10 Patents, Trademarks, Copyrights, Licenses, Etc. None of the Loan Parties or Specified Excluded Subsidiaries owns or possesses any material patents, trademarks, service marks, trade names, or copyrights. Each Loan Party owns or possesses all the material licenses, registrations, franchises, permits and rights necessary to own and operate its properties and to carry on its business as presently conducted and planned to be conducted by such Loan Party or Specified Excluded Subsidiary, without known possible, alleged or actual conflict with the rights of others.

6.1.11 Liens in the Collateral. The Liens in all material Collateral granted to the Administrative Agent for the benefit of the Lenders pursuant to the Collateral Assignment, the Pledge Agreement, the Security Agreement and the Mortgages (collectively, the “**Collateral Documents**”) constitute and will continue to constitute first priority perfected Liens subject to Permitted Liens. All filing fees and other expenses in connection with the perfection of such Liens have been or will be paid by the Borrower.

6.1.12 Insurance. The properties of the Loan Parties and the Specified Excluded Subsidiaries are insured pursuant to policies and other bonds which are valid and in full force and effect and which provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each such Loan Party and each Specified Excluded Subsidiary in accordance with prudent business practice in the industry of such Loan Party or such Specified Excluded Subsidiary. Each Loan Party has taken all actions required under the Flood Laws and/or requested by the Administrative Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing the Administrative Agent with the address and/or GPS coordinates of each structure located upon any real property that will be subject to a mortgage in favor of the Administrative Agent, for the benefit of the Lenders, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral.

6.1.13 ERISA Compliance. (i) Each Pension Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state Laws. Each Pension Plan that is intended to qualify under Section 401(a) of the Code has received from the IRS a favorable determination or opinion letter, which has not by its terms expired, that such Pension Plan is so qualified, or such Pension Plan is entitled to rely on an IRS advisory or opinion letter with respect to an IRS-approved master and prototype or volume submitter plan, or a timely application for such determination or opinion letter is currently being processed by the IRS with respect thereto; and, to the best knowledge of Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. Borrower and each member of the ERISA Group have made all required contributions to each Pension Plan subject to Sections 412 or 430 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Sections 412 or 430 of the Code has been made with respect to any Pension Plan.

(ii) No ERISA Event has occurred or is reasonably expected to occur; (a) no Pension Plan has any unfunded pension liability (i.e. excess of benefit liabilities over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan for the applicable plan year); (b) neither Borrower nor any member of the ERISA Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (c) neither Borrower nor any member of the ERISA Group has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA with respect to a Multiemployer Plan; (d) neither Borrower nor any member of the ERISA Group has received notice pursuant to Section 4242(a)(1)(B) of ERISA that a Multiemployer Plan is in reorganization and that additional contributions are due to the Multiemployer Plan pursuant to Section 4243 of ERISA; and (e) neither Borrower nor any member of the ERISA Group has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

6.1.14 Environmental Matters. Except for those items described on Schedule 6.1.14, none of which items, individually or collectively, could be reasonably expected to result in a Material Adverse Change:

(i) None of the Loan Parties has received any Environmental Complaint, whether directed or issued to any such Loan Party or relating or pertaining to activities undertaken by any prior owner, operator or occupant of the Real Property, which would result in a Material Adverse Change, and has no reason to believe that it might receive an Environmental Complaint that would result in a Material Adverse Change.

(ii) No activity of any Loan Party at the Real Property is being conducted in violation of any Environmental Law or Required Environmental Permit, which such activity would result in a Material Adverse Change, and to the knowledge of any such Loan Party, no activity of any prior owner, operator or occupant of the Real Property has caused an on-going violation of any Environmental Law, which such activity would result in a Material Adverse Change.

(iii) There are no Regulated Substances present on, in, under, or emanating from, or, to any such Loan Party's knowledge, emanating to, the Real Property or any portion thereof which result in Contamination, which such Contamination would result in a Material Adverse Change.

(iv) Each Loan Party has all Required Environmental Permits, the absence of which would result in a Material Adverse Change, and all such Required Environmental Permits are in full force and effect.

(v) Each Loan Party has submitted to an Official Body and/or maintains, as appropriate, all Required Environmental Notices where the failure to submit and/or maintain such Required Environmental Notices would result in a Material Adverse Change.

(vi) No structures, improvements, equipment, fixtures, impoundments, pits, lagoons or aboveground or underground storage tanks located on the Real Property contain or use, except in compliance with Environmental Laws and Required Environmental Permits, Regulated Substances or otherwise are operated or maintained except in compliance with Environmental Laws and Required Environmental Permits where such failure to contain, or the use of, Regulated Substances or the noncompliance with Environmental Laws or Required Environmental Permits, would result in a Material Adverse Change. To the knowledge of each Loan Party, no structures, improvements, equipment, fixtures, impoundments, pits, lagoons or aboveground or underground storage tanks of prior owners, operators or occupants of the Real Property contained or used, except in compliance with Environmental Laws, Regulated Substances or otherwise were operated or maintained by any such prior owner, operator or occupant except in compliance with Environmental Laws where such failure to contain, or the use of, Regulated Substances or the noncompliance with Environmental Laws or Required Environmental Permits, would result in a Material Adverse Change.

(vii) To the knowledge of each Loan Party, no facility or site to which any such Loan Party, either directly or indirectly by a third party, has sent Regulated Substances for storage, treatment, disposal or other management is identified in writing or proposed in writing to be identified on any list of contaminated properties or other properties which pursuant to Environmental Laws are the subject of an investigation, cleanup, removal, remediation or other response action by an Official Body where such investigation, cleanup, removal, remediation or other response by an Official Body would result in a Material Adverse Change.

(viii) No portion of the Real Property is identified in writing or, to the knowledge of any Loan Party, proposed to be identified in writing on any list of contaminated properties or other properties which pursuant to Environmental Laws are the subject of an investigation or remediation action by an Official Body where such investigation or remediation action by an Official Body would result in a Material Adverse Change, nor to the knowledge of any such Loan Party, is any property adjoining or in the proximity of the Real Property so identified or proposed to be identified on any such list where such identification or proposed identification would result in an investigation or remediation action by an Official Body that would result in a Material Adverse Change.

(ix) No portion of the Real Property constitutes an Environmentally Sensitive Area where the inclusion of such portion of the Real Property constituting an Environmentally Sensitive Area would result in a Material Adverse Change.

(x) No lien or other encumbrance authorized by Environmental Laws exists against the Real Property and none of the Loan Parties has any reason to believe that such a lien or encumbrance may be imposed where such lien or encumbrance would result in a Material Adverse Change.

6.1.15 Solvency. The Borrower is Solvent, and the Loan Parties, determined on a consolidated basis with their Subsidiaries, are Solvent. After giving effect to the transactions contemplated by the Loan Documents on the Closing Date, including all Indebtedness incurred thereby, the Liens granted each such Loan Party in connection therewith and the payment of all fees related thereto, each such Loan Party will be Solvent, determined as of the Closing Date.

6.1.16 Employment Matters. Each of the Loan Parties is in compliance with all employment agreements, employment contracts, collective bargaining agreements and other agreements among any such Loan Party and its employees (collectively, "**Labor Contracts**") and all applicable federal, state and local labor and employment Laws including those related to 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, where the failure to comply would constitute 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 such Loan Parties which in any case would constitute a Material Adverse Change.

6.1.17 Title to Properties. A Lien on all Real Property owned by each Loan Party has been granted to the Administrative Agent for the benefit of the Lenders pursuant to a Mortgage and other appropriate Security Documents, except for (a) Real Property acquired by a Loan Party in which a Mortgage and other appropriate Security Documents will be executed and delivered by such Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties within the time frames provided in Section 8.1.11 [Collateral and Additional Collateral; Execution and Delivery of Additional Security Documents] or Section 8.2.9 [Subsidiaries, Partnerships and Joint Ventures], as applicable, and (b) Real Property listed on Schedule 1.1(R) as of the Closing Date upon which a Lien has not yet been granted to the Administrative Agent for the benefit of Lenders, but for which a Mortgage and other appropriate Security Documents will be executed and delivered by such Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties within the time frame provided in Section 8.1.15 [Post Closing Title Insurance and Additional Mortgages]. Each of the Loan Parties and Specified Excluded Subsidiaries has good and sufficient title to or valid leasehold interest in all material properties, assets and other rights that are reflected as owned or leased on its most recent audited balance sheet, free and clear of all Liens except Permitted Liens, and subject to the terms and conditions of the applicable leases. All leases of property are in full force and effect, except for those leases of property where such failure would not result in a Material Adverse Change.

6.1.18 Coal Act; Black Lung Act. To the extent applicable, the Loan Parties and the Specified Excluded Subsidiaries and their “related persons” (as defined in the Coal Act) are in compliance in all material respects with the Coal Act and none of the Loan Parties, Specified Excluded Subsidiaries or their respective related persons has any liability under the Coal Act except with respect to premiums or other payments required thereunder which have been paid when due and except to the extent that the liability thereunder would not reasonably be expected to result in a Material Adverse Change. The Loan Parties are in compliance in all material respects with the Black Lung Act, and none of the Loan Parties 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 and except to the extent that the liability thereunder would not reasonably be expected to result in a Material Adverse Change.

6.1.19 Bonding Capacity. After giving effect to the transactions contemplated by the Loan Documents, the Borrower has a sufficient mine bonding capacity to conduct its operations as projected in accordance with the financial projections of the Borrower and its Subsidiaries provided to the Administrative Agent.

6.1.20 Permit Blockage. No Loan Party has been barred for a period in excess of fourteen (14) consecutive days from receiving surface mining or underground mining permits pursuant to the permit block provisions of the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 et seq., and the regulations promulgated thereto, or any corresponding state laws or regulations.

6.1.21 Anti-Terrorism Laws; EEA Financial Institution. (i) No Covered Entity is a Sanctioned Person, and (ii) no Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law, (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law. No Loan Party is an EEA Financial Institution.

6.1.22 Mining Property. The Loan Parties own or have an interest in all Real Property (whether owned or leased) as necessary for the mining operations and related operations and activities of the Loan Parties as currently conducted.

6.1.23 Certificate of Beneficial Ownership. The Certificate of Beneficial Ownership executed and delivered to Administrative Agent and Lenders for the 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. The Borrower acknowledges and agrees that the Certificate of Beneficial Ownership is one of the Loan Documents.

6.1.24 SBA Compliance. The Loan Parties do not presently engage in (and at all times that a PPP Loan of any Loan Party remains outstanding will not engage in) any activities prohibited by the CARES Act, and no Loan Party will use (directly or indirectly) the proceeds from the PPP Loan for any purpose for which a recipient of a covered loan received under the CARES Act is prohibited under the CARES Act. At all times that a PPP Loan of any Loan Party remains outstanding, the Loan Parties shall take all actions necessary to maintain eligibility under the Paycheck Protection Program established under the CARES Act and shall comply in all material respects with the terms and conditions of the PPP Loan.

6.2 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, the Borrower shall promptly provide the Administrative Agent in writing with such revisions or updates to such Schedule as may be necessary or appropriate to update or correct same; provided, however, that (i) Schedules 1.1(R), 6.1.1, and 6.1.2 shall not be deemed to have been amended, modified or superseded by any such correction 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, in its sole and absolute discretion, shall have accepted in writing such revisions or updates to such Schedules and (ii) all remaining Schedules shall not be deemed to have been amended, modified or superseded by any such correction 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 Required Lenders, in their sole and absolute discretion, shall have accepted in writing such revisions or updates to such Schedule.

7. CONDITIONS OF LENDING AND ISSUANCE OF LETTERS OF CREDIT

The obligation of each Lender to make Loans and of the Issuing Lender to issue Letters of Credit hereunder is subject to the performance by each of the Loan Parties of its Obligations to be performed hereunder at or prior to the making of any such Loans or issuance of such Letters of Credit and to the satisfaction of the following further conditions:

7.1 First Loans and Letters of Credit.

7.1.1 Deliveries. On the Closing Date, the Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) A certificate of each of the Loan Parties signed by an Authorized Officer, dated the Closing Date stating that (w) all representations and warranties of the Loan Parties set forth in this Agreement are true and correct in all material respects, (x) the Loan Parties are in compliance with each of the covenants and conditions hereunder, (y) no Event of Default or Potential Default exists, and (z) no Material Adverse Change has occurred since the date of the last audited financial statements of the Borrower delivered to the Administrative Agent;

(ii) A certificate dated the Closing Date and signed by the Secretary or an Assistant Secretary of each of the Loan Parties, certifying as appropriate as to: (a) all action taken by each Loan Party in connection with this Agreement and the other Loan Documents; (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 or qualified to do business.

(iii) This Agreement and each of the other Loan Documents signed by an Authorized Officer and all appropriate financing statements and appropriate stock powers and certificates evidencing the pledged Collateral, including a pledge of all of the equity in Hourglass Sands and High Point.

(iv) A written opinion of counsel for the Loan Parties, dated the Closing Date and as to the matters set forth in Schedule 7.1.1.

(v) Evidence that adequate insurance, including flood insurance, if applicable, required to be maintained under this Agreement is in full force and effect, with additional insured, mortgagee and lender loss payable special endorsements attached thereto in form and substance satisfactory to the Administrative Agent and its counsel naming the Administrative Agent as additional insured, mortgagee and lender loss payee, and evidence that the Loan Parties have taken all actions required under the Flood Laws and/or requested by the Administrative Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing the Administrative Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a mortgage in favor of the Administrative Agent, for the benefit of the Lenders, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral.

(vi) All material consents, approvals and licenses required to effectuate the transactions contemplated hereby.

(vii) All lessor consents allowing for, among other things, a Lien to be obtained upon any lease of the Borrower of the Real Property, from the lessors of such lease, as required by the Administrative Agent, in its sole discretion, to have such consents, which such consents shall be in form and substance acceptable to the Administrative Agent (the “**Lessor Consents**”).

(viii) To permit the refinancing by the Lenders of the loans outstanding under the 2014 Credit Agreement, (1) the Borrower shall request Loans in an amount sufficient to refinance the loans under the 2014 Credit Agreement by delivering to the Administrative Agent an appropriately completed irrevocable Loan Request not later than 11:00 a.m., on the first Borrowing Date (which shall be the Closing Date) pursuant to which Loans (to which the Base Rate Option applies) are requested; and (2) contemporaneously with the execution and effectiveness of this Agreement and utilizing a portion of the proceeds of the Loans, the Borrower shall pay in full all amounts outstanding under the 2014 Credit Agreement, including all unpaid principal, interest, breakage fees and all other fees and charges thereunder in order to accomplish the amendment and restatement thereof as of the Closing Date. Each Lender that was a bank under the 2014 Credit Agreement, by execution of this Agreement, waives all notice of prepayment of loans and all notice of termination of the commitments under the 2014 Credit Agreement, and consents to such termination and prepayment. In the event that the Borrower submits a Loan Request hereunder, then the Borrower agrees to indemnify the Lenders for any and all liabilities, losses, or expenses arising therefrom in accordance with the standards set forth in Section 5.10 [Indemnity], regardless of whether this Agreement has become effective.

(ix) A Lien search in acceptable scope and with acceptable results.

(x) Evidence that after giving effect to the transactions contemplated by the Loan Documents, the Borrower has a sufficient mine bonding capacity (or other security available for the issuance of permits, including without limitation, letters of credit) to conduct its operations as contemplated in accordance with the financial projections of the Borrower and its Subsidiaries provided to the Administrative Agent.

(xi) Evidence that all of Required Mining Permits with respect to the Loan Parties are in full force and effect in accordance with their terms.

(xii) Audited financial statements of Borrower for the fiscal year ended December 31, 2017, prepared in accordance with GAAP and consolidating schedules for the balance sheet, statement of income, retained earnings and cash flow of the Borrower certified (subject to normal year-end audit adjustments and without footnotes) by the Chief Executive Officer, President or Chief Financial Officer of the Borrower as having been prepared in accordance with GAAP, all as more fully described in Section 8.3.2 [Annual Financial Statements].

(xiii) The projected pro-forma financial projections (including balance sheets and statements of operations and cash flows) of the Borrower for each fiscal year from 2018 through 2021, which shall be satisfactory to the Administrative Agent (including all assumptions).

(xiv) Completion of all necessary FEMA flood zone diligence requirements.

(xv) Satisfactory completion and receipt of all third-party due diligence items, including, but not limited to the Energy Ventures Market Study, each in form and substance satisfactory to the Administrative Agent.

(xvi) An Authorized Officer of each Loan Party, acting in their capacities as such officers, shall have delivered a certificate in form and substance satisfactory to the Administrative Agent as to the capital adequacy and solvency of each Loan Party after giving effect to the transactions contemplated hereby.

(xvii) A review of the amount and nature of all tax, ERISA, employee retirement benefit, environmental and all other contingent liabilities to which the Loan Parties may be subject.

(xviii) The Administrative Agent and each Lender shall have received, in form and substance acceptable to Administrative Agent and each Lender an executed Certificate of Beneficial Ownership and such other documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(xix) A duly completed Compliance Certificate dated as of the Closing Date pursuant to which Borrower certifies that it shall be in compliance on a Pro Forma Basis with the covenants contained in Section 8.2.15 [Minimum Debt Service Coverage Ratio] and Section 8.2.16 [Maximum Leverage Ratio] upon the closing and funding of the Loans hereunder.

(xx) Such other documents in connection with such transactions as the Administrative Agent or its counsel may reasonably request.

7.1.2 Payment of Fees. The Borrower shall have paid all fees and expenses payable on or before the Closing Date or arranged for funding of such fees and expenses out of the proceeds of the initial Loans.

7.2 Each Loan or Letter of Credit. At the time of making any Loans or issuing, extending or increasing any Letters of Credit and after giving effect to the proposed extensions of credit: the representations, warranties and covenants of the Loan Parties shall then be true and no Event of Default or Potential Default shall have occurred and be continuing; the making of the Loans or issuance, extension or increase of such Letter of Credit shall not contravene any Law applicable to any Loan Party or any Specified Excluded Subsidiary, or any of the Lenders; the making of the Loans shall not result in the Borrower or the Loan Parties having any Cash Surplus at such time, and the Borrower shall have delivered to the Administrative Agent a duly executed and completed Loan Request or to the Issuing Lender an application for a Letter of Credit, as the case may be.

8. COVENANTS

The Loan Parties, jointly and severally, covenant and agree that until Payment In Full, the Loan Parties shall comply at all times with the following covenants:

8.1 Affirmative Covenants.

8.1.1 Preservation of Existence, Etc. Each Loan Party shall, and shall cause each Specified Excluded Subsidiary to, maintain its legal existence as a corporation, limited partnership or limited liability company and 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 as otherwise expressly permitted in Section 8.2.6 [Liquidations, Mergers, Consolidations, Acquisitions] or where failure to do so would not result in a Material Adverse Change.

8.1.2 Payment of Liabilities, Including Taxes, Etc. Each Loan Party shall, and shall cause each Specified Excluded Subsidiary to, duly pay and discharge all liabilities to which it is subject or which are asserted against it, promptly as and when the same shall become due and payable, including all taxes, assessments and governmental charges upon it or any of its properties, assets, income or profits, prior to the date on which penalties attach thereto, except to the extent that such liabilities, including taxes, assessments or charges, are being contested in good faith and by appropriate and lawful proceedings diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made.

8.1.3 Maintenance of Insurance. Each Loan Party shall, and shall cause each Specified Excluded Subsidiary 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 and public liability) 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, all as reasonably determined by the Administrative Agent. The Loan Parties shall comply with the covenants and provide the endorsement set forth on Schedule 8.1.3 relating to property and related insurance policies covering the Collateral. Each Loan Party shall take all actions required under the Flood Laws and/or requested by the Administrative Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing the Administrative Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a mortgage in favor of the Administrative Agent, for the benefit of the Lenders, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral, and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Laws.

8.1.4 Maintenance of Properties and Leases. Each Loan Party shall, and shall cause each Specified Excluded Subsidiary to, maintain in good repair, working order and condition (ordinary wear and tear excepted) in accordance with the general practice of other businesses of similar character and size, all of those properties useful or necessary to its business, and from time to time, such Loan Party will make or cause to be made all appropriate repairs, renewals or replacements thereof.

8.1.5 Visitation Rights. Each Loan Party shall, and shall cause each Specified Excluded Subsidiary to, permit any of the officers or authorized employees or representatives of the Administrative Agent or any of the Lenders to visit and inspect 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 any of the Lenders may reasonably request, provided that each Lender shall provide the Borrower and the Administrative Agent with reasonable notice prior to any visit or inspection. In the event any Lender desires to conduct such visit or inspection of any Loan Party, such Lender shall make a reasonable effort to conduct such visit or inspection contemporaneously with any audit to be performed by the Administrative Agent and such visits or inspections shall be subject to customary safety procedures.

8.1.6 Keeping of Records and Books of Account. Each Loan Party shall, and shall cause each Specified Excluded Subsidiary to, maintain and keep proper books of record and account which enable the Loan Parties and the Specified Excluded Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by applicable Laws of any Official Body having jurisdiction over any Loan Party, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs.

8.1.7 Compliance with Laws; Use of Proceeds. Each Loan Party shall, and shall cause each Specified Excluded Subsidiary to, comply with all applicable Laws, including all Environmental Laws, in all material respects; provided that it shall not be deemed to be a violation of this Section 8.1.7 if any failure to comply with any Law would not result in fines, penalties, remediation costs, other similar liabilities or injunctive relief which in the aggregate would constitute a Material Adverse Change. The Loan Parties will use the Letters of Credit and the proceeds of the Loans only in accordance with Section 2.8 [Use of Proceeds] and as permitted by applicable Law. Without limiting the generality of the foregoing, the Loan Parties shall maintain adequate allowances on its books in accordance with GAAP for (i) future costs associated with any lung disease claim alleging pneumoconiosis or silicosis or arising out of exposure or alleged exposure to coal dust or the coal mining environment, (ii) future costs associated with retiree and health care benefits, (iii) future costs associated with reclamation of disturbed acreage, removal of facilities and other closing costs in connection with its mining activities and (iv) future costs associated with other potential environmental liabilities.

8.1.8 Further Assurances. Each Loan Party shall, from time to time, at its expense, faithfully preserve and protect the Administrative Agent's Lien on and Prior Security Interest in the Collateral and all other real and personal property of the Loan Parties whether now owned or hereafter acquired as a continuing first priority perfected Lien, subject only to Permitted Liens, 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.

8.1.9 Anti-Terrorism Laws. (a) No Covered Entity will become a Sanctioned Person, (b) no Covered Entity, either in its own right or through any third party, will (A) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (B) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (C) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (D) use the Loans to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, (c) the funds used to repay the Obligations will not be derived from any unlawful activity, (d) each Covered Entity shall comply with all Anti-Terrorism Laws, and (e) the Borrower shall promptly notify the Agent in writing upon the occurrence of a Reportable Compliance Event.

8.1.10 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 8.1.10 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 8.1.10, 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 8.1.10 shall remain in full force and effect until payment in full of the Obligations and termination of this Agreement and the other Loan Documents. Each Qualified ECP Loan Party intends that this Section 8.1.10 constitute, and this Section 8.1.10 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.

8.1.11 Collateral and Additional Collateral; Execution and Delivery of Additional and Ancillary Security Documents.

(i) Pursuant to the Loan Documents, the Loan Parties and Hallador Sands and its Subsidiaries shall grant, or cause to be granted, to the Administrative Agent, for the benefit of the Lenders, a first priority security interest in and lien on, subject only to Permitted Liens (A) all Collateral, including (i) all equity interests in the Loan Parties (other than Borrower) and Hallador Sands and the equity interests in each Subsidiary of Hallador Sands that is held by such Loan Party or by Hallador Sands or any of its Subsidiaries; (ii) all equity interests owned by the Loan Parties of each existing and subsequently acquired or created Subsidiary including, without limitation, all equity interests in Hallador Sands and each of its Subsidiaries that are held by the Loan Parties or Hallador Sands and the Subsidiaries of Hallador Sands that are wholly owned by a Subsidiary of Hallador Sands in which Hallador Sands directly or indirectly holds 100% of the voting membership interests (but excluding the Loan Parties' equity interests in the other Excluded Subsidiaries), but only up to 65% of the equity interests of any Foreign Subsidiaries; (iii) all equity interests in Hallador Renewables and (iv) all of the other assets of the Loan Parties including all accounts, inventory, as-extracted collateral, fixtures, equipment, investment property, instruments, chattel paper, general intangibles, coal reserves, methane gas reserves, coal bed methane reserves, oil, gas and mineral rights, owned and leased Real Property, leasehold interests, patents and trademarks of each such Loan Parties and (B) all other assets of the Loan Parties, whether owned on the Closing Date or subsequently acquired;

(ii) Without limiting the generality of the foregoing, each applicable Loan Party which owns or leases any real property shall promptly, but in any event within six months of acquiring or leasing such real property (or in the case of any real property acquired by Hallador Power Company, LLC pursuant to the Merom Purchase Agreement, within 60 days of acquiring such real property) (or such later date as the Administrative Agent may approve in its sole discretion), (a) execute and deliver any and all (1) Mortgages or Mortgage Amendments substantially in the form of Exhibit 1.1(M)(1) or Exhibit 1.1(M)(2), as applicable, and (2) other Security Documents and Ancillary Security Documents reasonably requested by the Agent to grant a first priority Lien (subject only to Permitted Liens), (b) with respect to any Real Property on which any Loan Party obtains title insurance, provide the Administrative Agent with notice that it is receiving such title insurance, and, at the Administrative Agent's request, have such title insurer provide the Lenders with a lender's title insurance policy in an equivalent amount on such Real Property, and (c) with respect to any leased Real Property, any Lessor Consents that the Administrative Agent reasonably requests, in such Loan Party's interest in such real property (other than Excluded Collateral), in favor of the Administrative Agent, for the ratable benefit of the Lenders, as security for the Obligations. In furtherance of the foregoing, the Loan Parties shall diligently cooperate with and assist, at their own expense, the Administrative Agent in procuring any and all Mortgages, Security Documents, Ancillary Security Documents and Lessor Consents. Each Loan Party hereby appoints any officer or agent of the Administrative Agent as its true and lawful attorney, for it and in its name, place and stead, to make, execute, deliver, and cause to be recorded or filed any or all such Mortgages, deeds of trust, assignments, pledges, security interests, financing statements and additional documents and agreements relating thereto, granting unto said attorney full power to do any and all things said attorney may consider reasonably necessary or appropriate to be done with respect to the Mortgages as fully and effectively as such Loan Party might or could do, and hereby ratifying and confirming all its said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable for the terms of this Agreement and all transactions hereunder. All reasonable out-of-pocket costs and expenses incurred by the Administrative Agent in connection with the exercise of the rights under this Section 8.1.11(ii) shall be paid by the Loan Parties on demand of the Administrative Agent. The Loan Parties, the Lenders and the Administrative Agent agree that without any further action on the part of any of them, upon execution and/or delivery, the Mortgages, other Security Documents, the Ancillary Security Documents and Lessor Consents shall become Loan Documents and the assets that are subject to the Mortgages and the other Security Documents shall become collateral for the Obligations.

8.1.12 Maintenance of Coal Supply Agreements and Material Contracts. Each Loan Party shall maintain and materially comply with the terms and conditions of all coal supply agreements and material agreement or contract, the nonperformance of which would reasonably be expected to result in a Material Adverse Change.

8.1.13 Maintenance of Licenses, Etc. Each Loan Party shall maintain in full force and effect all licenses, franchises, permits and other authorizations necessary for the ownership and operation of its properties and business if the failure so to maintain the same would constitute a Material Adverse Change.

8.1.14 Maintenance of Permits. Each Loan Party shall maintain all Required Mining Permits in full force and effect in accordance with their terms.

8.1.15 Post Closing Title Insurance and Additional Mortgages. The Loan Parties shall, within thirty (30) days after the Closing Date (or such later date as may be agreed to by Administrative Agent in its sole discretion) provide title insurance and/or title insurance endorsements with respect to all Real Property for which a title insurance policy has previously been issued in favor of the Administrative Agent and in form and substance reasonably satisfactory to the Administrative Agent. The Loan Parties shall, within sixty (60) days after the Closing Date (or such later date as may be agreed to by Administrative Agent in its sole discretion) provide Administrative Agent with the documentation (and take all necessary action to cooperate with the Administrative Agent in furtherance thereof) as required under clause (ii) of Section 8.1.11 [Collateral and Additional Collateral; Execution and Delivery of Additional Security Documents] for any Real Property which is listed on the Schedule 1.1(R) which is attached to this Agreement as of the Closing Date, but for which a Lien on such Real Property has not yet been granted to the Administrative Agent for the benefit of the Lenders pursuant to a Mortgage and other appropriate Security Documents as of the Closing Date.

8.1.16 Certificate of Beneficial Ownership and Other Additional Information. The Loan Parties shall provide to Administrative Agent and the Lenders: (i) upon the reasonable request of Administrative Agent, confirmation of the accuracy of the information set forth in the most recent Certificate of Beneficial Ownership provided to the Administrative Agent and Lenders; (ii) a new Certificate of Beneficial Ownership, in form and substance reasonably acceptable to Administrative Agent and each Lenders, when the individual(s) to be identified as a Beneficial Owner have changed; and (iii) such other information and documentation as may reasonably be requested by Administrative Agent or any Lender from time to time for purposes of compliance by Administrative Agent or such Lender with applicable laws (including without limitation the USA Patriot Act and other “know your customer” and anti-money laundering rules and regulations), and any policy or procedure implemented by Administrative Agent or such Lender to comply therewith.

8.2 Negative Covenants.

8.2.1 Indebtedness. Each of the Loan Parties shall not at any time create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness under the Loan Documents;

(ii) Existing Indebtedness as set forth on Schedule 8.2.1 (including any extensions or renewals thereof; provided there is no increase in the amount thereof or other significant change in the terms thereof unless otherwise specified on Schedule 8.2.1;

(iii) Capitalized and operating leases, subject to the limitations of Section 8.2.14 [Capital Expenditures and Leases];

(iv) Other than as set forth on Schedule 8.2.1, Indebtedness secured by Purchase Money Security Interests not exceeding \$5,000,000 outstanding (in the aggregate) at any time;

(v) Indebtedness of a Loan Party to another Loan Party which is subordinated pursuant to the Intercompany Subordination Agreement;

(vi) Any (i) Lender Provided Interest Rate Hedge, (ii) other Interest Rate Hedge approved by the Administrative Agent or (iii) Indebtedness under any Other Lender Provided Financial Services Product;

(vii) Guaranties permitted under Section 8.2.3 [Guaranties];

(viii) Indebtedness representing deferred compensation to employees incurred in the ordinary course of business;

(ix) Indebtedness to current or former officers, directors, employees, their respective estates, spouses, or former spouses to finance the purchase or redemption of equity interests in the Borrower in aggregate amount not to exceed \$500,000 outstanding in the aggregate at any time;

- (x) Indebtedness in respect of netting services, automated clearinghouse arrangements, overdraft protections, and similar arrangements, in each case in connection with deposit accounts incurred in the ordinary course;
- (xi) Indebtedness consisting of the financing of insurance premiums arising in the ordinary course of business;
- (xii) Indebtedness incurred in respect of warehouse receipts or similar instruments issued or created in the ordinary course of business;
- (xiii) Indebtedness incurred in connection with any PPP Loan;
- (xiv) Indebtedness incurred and/or assumed in connection with a Permitted Acquisition in an amount not to exceed \$5,000,000 in the aggregate for all such Permitted Acquisitions;
- (xv) Obligations in respect of performance, bid, appeal, and surety bonds and performance and completion guaranties and similar obligations (including without limitation, letters of credit posted in lieu of such bonds and obligations) provided by the Loan Parties;
- (xvi) Other unsecured Indebtedness or subordinated debt of the Loan Parties in an aggregate amount outstanding not to exceed \$5,000,000;
- (xvii) Other unsecured Indebtedness of the Loan Parties that is incurred after the Seventh Amendment Effective Date and on or prior to June 30, 2022 in an aggregate amount outstanding not to exceed \$25,000,000; and
- (xviii) Other Indebtedness of the Loan Parties that is incurred after the Eighth Amendment Effective Date and on or prior to October 31, 2022 in an aggregate amount outstanding not to exceed (x) \$20,000,000 *less* (y) the aggregate amount of Eighth Amendment Exempted Equity Issuances made on or prior the date of incurrence of such Indebtedness; provided that the terms of such Indebtedness shall provide that no payments of all or any portion of the principal amount of such Indebtedness shall be made on or prior to the Expiration Date.

8.2.2 Liens. Each of the Loan Parties shall not at any time create, incur, assume or suffer to exist any Lien on any of its property or assets, tangible or intangible, now owned or hereafter acquired, or agree or become liable to do so, except Permitted Liens.

8.2.3 Guaranties. Each of the Loan Parties shall not, at any time, directly or indirectly, become or be liable in respect of any Guaranty, or assume, guarantee, become surety for, endorse or otherwise agree, become or remain directly or contingently liable upon or with respect to any obligation or liability of any other Person, except for (a) Guaranties of Indebtedness of the Loan Parties permitted hereunder, and (b) Guaranties of obligations or liabilities of any Specified Excluded Subsidiary, but only if such Guaranties are not guaranties of anything which is otherwise prohibited under Section 8.2.17 [Restrictions on Specified Excluded Subsidiaries].

8.2.4 Loans and Investments. Each of the Loan Parties shall not at any time make or suffer to remain outstanding any loan or advance to, or purchase, acquire or own any stock, bonds, 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;
- (ii) advances to employees to meet expenses incurred by such employees in the ordinary course of business;
- (iii) Permitted Investments;
- (iv) loans, advances and investments in other Loan Parties;

(v) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(vi) investments and loans not to exceed \$5,000,000 at any time outstanding, provided that the Borrower shall, at least five (5) Business Days prior to such investment or loan, deliver a compliance certificate, in form and substance reasonably satisfactory to the Administrative Agent, certifying that, prior to and immediately after making such investment or loan: (a) the Leverage Ratio (on a Pro Forma Basis) after giving effect thereto, is less than or equal to 2.50 to 1.00, (b) the amount of Availability shall not be less than \$30,000,000 and (c) there shall exist no Event of Default;

- (vii) advances of payroll payments to employees in the ordinary course of business;

(viii) investments or loans in any Specified Excluded Subsidiary not to exceed \$30,000,000 in the aggregate at any time outstanding, provided that the Borrower shall, at least five (5) Business Days prior to such investment or loan, deliver a compliance certificate, in form and substance reasonably satisfactory to the Administrative Agent, certifying that, prior to and immediately after making such investment or loan: (a) the Leverage Ratio (on a Pro Forma Basis) after giving effect thereto, is less than or equal to 2.0 to 1.0, (b) the amount of Availability shall not be less than \$30,000,000 and (c) there shall exist no Event of Default; and

(ix) investments in Sunrise Indemnity, Inc., a Delaware corporation, in an amount equal to the Loan Parties' and their Subsidiaries' required insurance premiums and assessments.

8.2.5 Dividends and Related Distributions. Each of the Loan Parties shall not make or pay, or agree to become or remain liable to make or pay, any dividend or other distribution of any nature (whether in cash, property, securities or otherwise) on account of or in respect of its shares of capital stock, partnership interests or limited liability company interests on account of the purchase, redemption, retirement or acquisition of its shares of capital stock (or warrants, options or rights therefor), partnership interests or limited liability company interests, except (i) subject to Section 8.2.17 [Restrictions on Specified Excluded Subsidiaries], dividends or other distributions payable to another Loan Party, (ii) dividends or other distributions not to exceed \$0.16 per share multiplied by (A) the outstanding shares of Borrower as of the Closing Date (other than equity issued to employees, officers, or directors of any Loan Party that is issued in connection with such person's compensation), plus (B) any shares issued after the Closing Date in connection with any Equity Issuances, at any given time per fiscal year, provided that the Borrower shall, at least five (5) Business Days prior to such dividend or distribution, deliver a compliance certificate, in form and substance reasonably satisfactory to the Administrative Agent certifying that, prior to and immediately after making such dividend or distribution: (a) the Leverage Ratio (on a Pro Forma Basis) after giving effect thereto, is less than or equal to 2.0 to 1.0, (b) the amount of Availability shall not be less than \$30,000,000 and (c) there shall exist no Event of Default; and (iii) dividends or other distributions equal to an amount less than or equal to the Net Specified Excluded Subsidiary Distribution Amount received by the Loan Parties for the trailing twelve month period, provided that prior to making such dividends or distributions, the Borrower shall deliver a compliance certificate, in form and substance reasonable satisfactory to the Administrative Agent, certifying: (a) that the Leverage Ratio for the fiscal quarter most recently ended and the Leverage Ratio (on a Pro Forma Basis) after giving effect thereto, are both less than or equal to 2.0 to 1.0, (b) that the amount of Availability prior to and after giving effect thereto is greater than or equal to \$30,000,000, and (c) that the Fixed Charge Coverage Ratio (on a Pro Forma Basis) after giving effect thereto is greater than or equal to 1.0 to 1.0.

8.2.6 Liquidations, Mergers, Consolidations, Acquisitions. Each of the Loan Parties shall not dissolve, liquidate or wind-up its affairs, or become a party to 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:

(1) any such Loan Party other than the Borrower may consolidate or merge into another Loan Party which is wholly-owned by one or more of the other Loan Parties,

(2) any Loan Party may acquire, whether by purchase or by merger, (A) all of the ownership interests of another Person or (B) substantially all of assets of another Person or of a business or division of another Person (each, including the Transaction, a "Permitted Acquisition"), provided that each of the following requirements is met for each Permitted Acquisition:

(i) if the Loan Parties are acquiring the ownership interests in such Person, such Person shall execute a Guarantor Joinder and join this Agreement as a Guarantor pursuant to Section 8.2.9 [Subsidiaries, Partnerships and Joint Ventures] on or before the date of such Permitted Acquisition;

(ii) the Loan Parties, such Person and its owners, as applicable, shall grant Liens in the assets of or acquired from and stock or other ownership interests in such Person and otherwise comply with Section 8.2.9 [Subsidiaries, Partnerships and Joint Ventures] on or before the date of such Permitted Acquisition;

(iii) the board of directors or other equivalent governing body of such Person shall have approved such Permitted Acquisition;

(iv) the business acquired, or the business conducted by the Person whose ownership interests are being acquired shall comply with Section 8.2.10 [Continuation of or Change in Business];

(v) no Potential Default or Event of Default shall exist immediately prior to and immediately after giving effect to such Permitted Acquisition;

(vi) the Borrower shall demonstrate that it will be in compliance on a Pro Forma Basis with the covenant contained in Section 8.2.16 [Maximum Leverage Ratio] for the four quarter period immediately after giving effect to such Permitted Acquisition by delivering at least five (5) Business Days prior to such Permitted Acquisition a compliance certificate, in form and substance reasonably satisfactory to the Administrative Agent that evidences such compliance, except that for the sole purpose of measuring such Pro Forma Basis compliance, the maximum ratio set forth in Section 8.2.16 [Maximum Leverage Ratio] shall be deemed to be reduced by 0.50;

(vii) the Consideration paid by the Loan Parties for such Permitted Acquisition and all other Permitted Acquisitions made during the period after the Closing Date and the date of such Permitted Acquisition shall not exceed \$50,000,000;

(viii) the Borrower shall demonstrate that prior to and immediately after giving effect to such Permitted Acquisition that the amount of Availability shall be greater than or equal to \$30,000,000; and

(ix) the Loan Parties shall deliver to the Administrative Agent at least five (5) Business Days before such Permitted Acquisition copies of any agreements entered into or proposed to be entered into by such Loan Parties in connection with such Permitted Acquisition and shall deliver to the Administrative Agent such other information about such Person or its assets as the Administrative Agent may reasonably require.

(3) Hallador Power Company, LLC may acquire the Acquired Assets (as defined in the Merom Purchase Agreement) on the terms and subject to the conditions set forth in the Merom Purchase Agreement.

8.2.7 Dispositions of Assets or Subsidiaries. Each of the Loan Parties shall not sell, convey, assign, lease, abandon or otherwise transfer or dispose of, 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 or 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 such Loan Party) which are, or would become, Collateral under any of the Loan Documents, except:

(i) transactions involving the sale of inventory in the ordinary course of business;

(ii) any sale, transfer or lease of assets in the ordinary course of business which are obsolete or no longer necessary or required in the conduct of such Loan Party's or such Subsidiary's business, including the sale, transfer or exchange of any owned or leased Real Property, or the election by the Borrower to terminate or to allow to expire the leases of any Real Property, that the Borrower has determined is not necessary or feasible for use in its mining operations;

(iii) any sale, transfer or lease of assets in the ordinary course of business which are replaced by substitute assets acquired or leased; provided such substitute assets are subject to the Lenders' Prior Security Interest (subject to Permitted Liens);

(iv) any sale of accounts receivable in connection with Alcoa Power Generating Inc. ("Alcoa") in an amount to not exceed \$5,000,000.00 per calendar month pursuant to the terms of that certain Supplier Agreement by and between Sunrise Coal, LLC and Citibank, N.A.;

(v) a disposition of assets acquired in a Permitted Acquisition, within 270 days of such Permitted Acquisition, that are not necessary or required in the conduct of such Loan Party's business;

(vi) any sale, transfer or lease of assets, including Borrower's interests in any Subsidiary other than any Specified Excluded Subsidiary, the aggregate amount of which does not exceed \$10,000,000, other than those specifically excepted pursuant to clauses (i) through (v) above;

(vii) subject to the mandatory prepayment requirements of Section 5.7.4, the sale of equity interests in any Specified Excluded Subsidiary, provided that (A) the Borrower (x) retains at least 51% of the equity interests of such Specified Excluded Subsidiary or (y) sells 100% of its equity interests in such Specified Excluded Subsidiary, (B) the Borrower receives fair market value for the sale of such equity, and (C) 75% or more of the consideration for the sale of such interests in such Specified Excluded Subsidiary shall be in cash and/or cash equivalents; and

(viii) any sale, transfer or lease of assets from one Loan Party to another Loan Party so long as the Loan Parties provide the Administrative Agent with ten (10) days written notice prior to such sale, transfer or lease and, in the event that such assets are or would become Collateral under any of the Loan Documents, the Loan Parties shall cooperate fully in ensuring that a Lien in such assets shall be continued or granted, as applicable, in favor of the Administrative Agent for the benefit of the Lenders and such Loan Party shall take such other steps as the Administrative Agent deems reasonable and/or necessary to faithfully preserve and protect the Administrative Agent's Lien on and Prior Security Interest in, such Collateral unless such Collateral may otherwise be released pursuant to clauses (i) through (vii) of this Section 8.2.7.

8.2.8 Affiliate Transactions. Each of the Loan Parties shall not, and shall not permit any Specified Excluded Subsidiary to, enter into or carry out any transaction with any Affiliate of any Loan Party (including purchasing property or services from or selling property or services to, any Affiliate of any Loan Party) unless such transaction is not otherwise prohibited by this Agreement, is entered into in the ordinary course of business upon fair and reasonable arm's-length terms and conditions which are fully disclosed to the Administrative Agent and is in accordance with all applicable Law.

8.2.9 Subsidiaries, Partnerships and Joint Ventures. Each of the Loan Parties shall not, and shall not permit any of its Subsidiaries to own or create directly or indirectly any Subsidiaries other than (i) any Subsidiary which has joined this Agreement as Guarantor on the Closing Date; (ii) any Subsidiary formed or acquired (as permitted hereunder) after the Closing Date which joins this Agreement as a Guarantor by delivering to the Administrative Agent (A) a signed Guarantor Joinder; (B) documents in the forms described in Section 7.1 [First Loans and Letters of Credit] modified as appropriate; and (C) documents necessary to grant and perfect Prior Security Interests (subject to Permitted Liens) to the Administrative Agent for the benefit of the Lenders in the equity interests of, and Collateral held by, such Subsidiary; and (iii) any Excluded Subsidiary and any Subsidiary formed or acquired by any Excluded Subsidiary, provided, however, that any such Subsidiary of any Excluded Subsidiary shall be subject to the same terms and provisions of this Agreement which are applicable to such Excluded Subsidiary. None of the Loan Parties shall become or agree to become a party to a Joint Venture.

8.2.10 Continuation of or Change in Business. No Loan Party shall engage in any business other than a business that the Loan Parties are engaged in as of the Closing Date (or, in the case of Hallador Power Company, LLC, as of the Seventh Amendment Effective Date) and reasonable extensions thereof, and such Loan Party shall not permit any material change in such business. The Loan Parties shall not permit Hallador Sands or any of its Subsidiaries to engage in any business other than the business that Hallador Sands and its Subsidiaries are engaged in as of the First Amendment Closing Date and reasonable extensions thereof, and the Loan Parties shall not permit any material change in such business. The Loan Parties shall not permit Hallador Renewables or any of its Subsidiaries to engage in any business other than renewable power generation and energy storage and reasonable extensions thereof.

8.2.11 Fiscal Year. The Loan Parties shall not, and shall not permit any Specified Excluded Subsidiary to, change its fiscal year from the twelve-month period beginning January 1 and ending December 31, except with the written consent of the Administrative Agent, such consent not to be unreasonably withheld.

8.2.12 Issuance of Stock. Each of the Loan Parties (other than Borrower) shall not, and shall not permit any Specified Excluded Subsidiary to, issue any additional shares of its capital stock or any options, warrants or other rights in respect thereof.

8.2.13 Changes in Organizational Documents. Each of the Loan Parties shall not, and shall not permit any Specified Excluded Subsidiary 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, limited liability company agreement or other organizational documents without providing at least ten (10) calendar days' prior written notice to the Administrative Agent and the Lenders and, in the event such change would be adverse to the Lenders as determined by the Administrative Agent in its reasonable discretion, obtaining the prior written consent of the Required Lenders.

8.2.14 Capital Expenditures and Leases. Each of the Loan Parties shall not make any payments on account of the purchase or lease of any assets which if purchased would constitute fixed assets or which if leased would constitute a capitalized lease to exceed (i) \$30,000,000 for the 2020 fiscal year, (ii) \$25,000,000 for the 2021 fiscal year, (iii) [reserved], (iv) \$75,000,000 for the 2023 fiscal year and (v) \$25,000,000 for each fiscal year thereafter; provided, however, if such payments made by the Loan Parties in any fiscal year (including the 2020 fiscal year) are less than the amounts permitted for such fiscal year, then the lesser of \$5,000,000 or such unpaid amounts may be added by the Loan Parties to the amounts permitted to be used for payments in future years, it being understood that any carryover amount applicable to a particular succeeding fiscal year shall be expended in such fiscal year first before the applicable non-carry over amount permitted to be expended in such fiscal year is expended.

8.2.15 Minimum Debt Service Coverage Ratio. The Loan Parties shall not at any time permit the Debt Service Coverage Ratio, calculated as of the end of each fiscal quarter for the four fiscal quarters then ended (i) for the fiscal quarter ending March 31, 2020 through the fiscal quarter ending December 31, 2021, to be less than 1.05 to 1.00 and (ii) for the fiscal quarter ending December 31, 2022 and thereafter, to be less than 1.25 to 1.00.

8.2.16 Maximum Leverage Ratio. The Loan Parties shall not at any time permit the Leverage Ratio, calculated as of the end of each fiscal quarter for the four fiscal quarters then ended, to exceed the applicable amounts set forth below:

Fiscal Periods Ending	Ratio
March 31, 2020 through June 30, 2020	4.00 to 1.00
September 30, 2020 through December 31, 2020	3.50 to 1.00
March 31, 2021 through June 30, 2021	3.25 to 1.00
September 30, 2021 through December 31, 2021	3.00 to 1.00
March 31, 2022	3.50 to 1.00
June 30, 2022	6.00 to 1.00
September 30, 2022	4.50 to 1.00
December 31, 2022 and each fiscal quarter thereafter	2.50 to 1.00
March 31, 2023 and each fiscal quarter thereafter	2.25 to 1.00

8.2.17 Restrictions on Specified Excluded Subsidiaries.

(a) The Loan Parties shall not at any time permit any Specified Excluded Subsidiary to (i) create, incur, assume or suffer to exist Indebtedness for Borrowed Money, (ii) create, incur, assume or suffer to exist any Lien on any of its properties or assets, tangible or intangible, now owned or hereafter acquired, or agree or become liable to do so, except Permitted Liens (other than Liens described in clauses (viii) and (ix) of the definition of “Permitted Liens” in Section 1.1, which shall not be permitted to be incurred by any Specified Excluded Subsidiary), (iii) other than investments and loans made to a Specified Excluded Subsidiary Investee with the proceeds of an investment or loan pursuant to Section 8.2.4(viii) [Loans and Investments], make investments, loans, or dispositions or acquisitions of assets except in the ordinary course of business, (iv) merge or consolidate with any Person, (v) make any distributions (other than ratable distributions on equity), or (vi) in the case of Hallador Sands or any Subsidiary of Hallador Sands, form any Subsidiary unless Hallador Sands and such Subsidiary pledges the equity interests that such Person holds in such newly formed or acquired Subsidiary as required by Section 8.1.11(i) of this Agreement.

(b) The Loan Parties shall not permit any Specified Excluded Subsidiary Investee to (i) create, incur, assume or suffer to exist Indebtedness for Borrowed Money or (ii) create, incur, assume or suffer to exist any Lien on any of its properties or assets, tangible or intangible, now owned or hereafter acquired, or agree or become liable to do so, except Permitted Liens (other than Liens described in clauses (viii) and (ix) of the definition of “Permitted Liens” in Section 1.1, which shall not be permitted to be incurred by any Specified Excluded Subsidiary Investee); provided that the limitations in this Section 8.2.17(b) shall not apply at any time that all investments and loans in the Specified Excluded Subsidiary that is the owner of the equity interests in such Specified Excluded Subsidiary Investee shall have been fully returned or repaid, as applicable, in cash (or in the form in which such investment or loan was made) to one or more Loan Parties. The Loan Parties shall cause each Specified Excluded Subsidiary to retain such voting or other rights with respect to its equity interests in each of its Specified Excluded Subsidiary Investees in order to be able to comply with the foregoing.

8.2.18 Cash Surplus. The Borrower may not borrow any Loans to the extent that (a) the Borrower and the Loan Parties have any Cash Surplus at such time, or (b) any such Loan would trigger a mandatory prepayment pursuant to Section 5.7 [Mandatory Prepayments] of this Agreement.

8.3 Reporting Requirements. The Loan Parties will furnish or cause to be furnished to the Administrative Agent and each of the Lenders.

8.3.1 Quarterly Financial Statements. As soon as available and in any event not later than the earlier to occur of (x) the 45th day after the close of each of the first three fiscal quarters of each fiscal year of the Borrower, and (y) five days after the date by which the Borrower is required to file its quarterly report on form 10-Q with the Securities and Exchange Commission (the “SEC”) for the first three fiscal quarters of each fiscal year, financial statements of the Borrower, consisting of a consolidated and consolidating balance sheet as of the end of such fiscal quarter and related consolidated statements of income, retained earnings and 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 and without footnotes) by the Chief Executive Officer, President or Chief Financial Officer of the Borrower as having been prepared in accordance with GAAP, consistently applied, and including comments on any positive or negative variations from the Borrower’s annual budget.

8.3.2 Annual Financial Statements. As soon as available and in any event not later than the earlier to occur of (x) the 90th day after the close of each fiscal year and (y) fifteen days after the date by which the Borrower is required to file its annual report on form 10-K with the SEC, unqualified audited financial statements of the Borrower consisting of a consolidated and consolidating balance sheet as of the end of such fiscal year, and related consolidated statements of income, retained earnings and cash flows for the fiscal year then ended, certified (subject to normal year-end audit adjustments and without footnotes) by independent certified public accountants satisfactory to the Administrative Agent as having been prepared in accordance with GAAP all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding fiscal year. The certificate or report of accountants shall be free of qualifications (other than 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 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 Loan Parties shall deliver with such financial statements and certification by their accountants a letter of such accountants to the Administrative Agent and the Lenders substantially to the effect that, based upon their ordinary and customary examination of the affairs of the Loan Parties, performed in connection with the preparation of such consolidated financial statements, and in accordance with GAAP, they are not aware of the existence of any condition or event which constitutes an Event of Default or Potential Default or, if they are aware of such condition or event, stating the nature thereof.

8.3.3 Certificates of the Borrower. Concurrently with the quarterly and annual financial statements of Borrower, as applicable furnished to the Administrative Agent and to the Lenders pursuant to Sections 8.3.1 [Quarterly Financial Statements] and 8.3.2 [Annual Financial Statements], a certificate (each a “**Compliance Certificate**”) of Borrower signed by the President or Chief Financial Officer of Borrower, each in the form of Exhibit 8.3.3.

8.3.4 Notices.

8.3.4.1 Default. Promptly after any officer of any Loan Party has learned of the occurrence of an Event of Default or Potential Default, a certificate signed by an Authorized Officer setting forth the details of such Event of Default or Potential Default and the action which such Loan Party proposes to take with respect thereto.

8.3.4.2 Litigation. Promptly after the commencement thereof, notice of all actions, suits, proceedings or investigations before or by any Official Body or any other Person against any Loan Party or Subsidiary of any Loan Party which relate to the Collateral, involve a claim or series of claims in excess of \$2,500,000 or which if adversely determined would constitute a Material Adverse Change.

8.3.4.3 Organizational Documents. Within the time limits set forth in Section 8.2.13 [Changes in Organizational Documents], any amendment to the organizational documents of any Loan Party.

8.3.4.4 Erroneous Financial Information. Immediately in the event that the Borrower or its accountants conclude or advise that any previously issued financial statement, audit report or interim review should no longer be relied upon or that disclosure should be made or action should be taken to prevent future reliance, notice in writing setting forth the details thereof and the action which the Borrower proposes to take with respect thereto.

8.3.4.5 ERISA Event. Immediately upon the occurrence of any ERISA Event, notice in writing setting forth the details thereof and the action which the Borrower proposes to take with respect thereto.

8.3.4.6 PPP Loan. Within two (2) Business Days after the receipt thereof, copies of any material notices received in respect of the SBA PPP Loan.

8.3.4.7 Other Reports. Promptly upon their becoming available to the Borrower:

(i) Annual Budget. The annual budget and any forecasts or projections of the Borrower, to be supplied not later than the commencement of the current fiscal year to which any of the foregoing may be applicable,

(ii) Management Letters. Any reports including management letters submitted to the Borrower by independent accountants in connection with any annual, interim or special audit, and

(iii) Other Information. Such other reports and information as any of the Lenders may from time to time reasonably request.

8.3.5 Projected Cash Flow Statements. During the Additional Reporting Period, on or prior to Friday of each week (the “**Cash Flow Forecast Deadline**”), (i) a cash flow forecast of Borrower and its Subsidiaries for the 13-week period commencing on the Sunday following the Cash Flow Forecast Deadline, in form and substance reasonably satisfactory to the Administrative Agent, (ii) if the cash flow forecast delivered pursuant to clause (i) for any week within the 13-week period is changed from the cash flow forecast for such week previously delivered, a comparison showing such changes, (iii) a comparison of (x) the actual cash flows of the Borrower and its Subsidiaries for the week prior to the week in which the Cash Flow Forecast Deadline occurs (for example, if the Cash Flow Forecast Deadline is May 27, 2022, the actual cash flows for the week commencing May 15, 2022) with (y) the forecasted cash flows for such week as last previously provided to the Administrative Agent (including a calculation of the variance between actual and projected cash receipts and disbursements), (iv) a comparison of (x) the actual cash flows of the Borrower and its Subsidiaries for the period commencing on May 22, 2022 and ending with the week referred to in clause (iii) with (y) the forecasted cash flows for such period as previously provided to Administrative Agent (including a calculation of the variance between actual and projected cash receipts and disbursements), (v) accounts receivable agings inclusive of reconciliations to the general ledger, in form and detail reasonably acceptable to the Administrative Agent, (vi) accounts payable schedules inclusive of reconciliations to the general ledger, in form and detail reasonably acceptable to the Administrative Agent, (vii) if requested by the Administrative Agent, a report from the Borrower’s management setting forth explanations for any variances in actual results as compared to forecasted performance and (viii) such other information as is reasonably requested by the Administrative Agent.

8.4 Refinancing. The Borrower shall (a) on or before June 30, 2023, engage a third party consulting firm or other debt advisor (such debt advisor, the “**Debt Advisor**”) to advise with respect to, and assist the Borrower in structuring and arranging, the refinancing of the Term Loans, the Revolving Credit Loans and the Revolving Credit Commitments (the “**Refinancing**”), (b) on June 30, 2023 and every other Friday thereafter, provide the Administrative Agent and Lenders with updates (which updates shall include, if requested by the Administrative Agent, calls with the Administrative Agent and the Lenders), with respect to Borrower’s efforts with respect to the Refinancing, and the Borrower shall cause the Debt Advisor, if any, to participate in such updates and/or calls, and such updates shall otherwise include (i) a list of entities and persons who have signed confidentiality agreements with the Borrower in connection with the Refinancing, (ii) any management presentations made to prospective lenders or financing providers in connection with the Refinancing and (iii) any other material information with respect to Borrower’s efforts to effectuate the Refinancing) and (c) authorize and instruct the Debt Advisor, if any, to communicate directly with the Administrative Agent and Lenders on a routine basis regarding all material matters related to the Loan Parties and the Refinancing. If the Administrative Agent shall have determined, in its reasonable discretion, that the Borrower has not made sufficient progress with respect to its efforts in connection with the Refinancing by August 15, 2023, the Borrower shall cause the Debt Advisor, on August 15, 2023 or such later date as is satisfactory to the Administrative Agent, to formally launch the process for the Refinancing, and the Borrower shall prepare and cooperate in the preparation of all documents, financial statements, projections and other materials as are reasonably requested by the Debt Advisor or the Administrative Agent in order to assist in the Refinancing. The Borrower (i) shall pay all reasonable fees, charges and disbursements of the Debt Advisor (and shall ensure that the none of the Administrative Agent or the Lenders shall be responsible for any fees, expenses or disbursements of the Debt Advisor) and (ii) shall cooperate with the Debt Advisor and shall provide information regarding the Loan Parties, their business, operations and condition, financial or otherwise, in such detail and at such times and as often as the Debt Advisor may reasonably request.

9. DEFAULT

9.1 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):

9.1.1 Payments Under Loan Documents. The Borrower shall fail to pay: (i) any principal of any Loan (including scheduled installments, mandatory prepayments or the payment due at maturity), Reimbursement Obligation or Letter of Credit Obligation on the date on which such payment becomes due in accordance with the terms hereof or thereof, or (ii) any interest on any Loan, Reimbursement Obligation or Letter of Credit Obligation or any other amount owing hereunder or under the other Loan Documents within three (3) Business Days of the date on which such interest or other amount becomes due in accordance with the terms hereof or thereof;

9.1.2 Breach of Warranty. Any representation or warranty made at any time by any of the Loan Parties 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 misleading in any material respect as of the time it was made or furnished;

9.1.3 Anti-Terrorism Laws. Any representation or warranty contained in Section 6.1.22 [Anti-Terrorism Laws] is or becomes false or misleading at any time;

9.1.4 Breach of Negative Covenants or Visitation Rights or Anti-Terrorism Laws. Any of the Loan Parties shall default in the observance or performance of any covenant contained in Section 8.1.5 [Visitation Rights], Section 8.1.9 [Anti-Terrorism Laws] or Section 8.2 [Negative Covenants];

9.1.5 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 (or, in the case of Section 8.3.5 [Projected Cash Flow Statements], five (5) Business Days);

9.1.6 Defaults in Other Agreements or Indebtedness. A default or event of default shall occur at any time under the terms of (i) any PPP Loan Document or (ii) any other agreement involving borrowed money or the extension of credit or any other Indebtedness under which any Loan Party or Subsidiary of any Loan Party may be obligated as a borrower or guarantor in excess of \$10,000,000 in the aggregate, and such breach, default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto, whether waived or not) any Indebtedness when due (whether at stated maturity, by acceleration or otherwise) or if such breach or default permits or causes the acceleration of any Indebtedness (whether or not such right shall have been waived) or the termination of any commitment to lend;

9.1.7 Final Judgments or Orders. Any final judgments or orders for the payment of money in excess of \$10,000,000 in the aggregate shall be entered against any Loan Party by a court having jurisdiction in the premises, which judgment is not discharged, vacated, bonded or stayed pending appeal within a period of thirty (30) days from the date of entry;

9.1.8 Loan Document Unenforceable. Any of the Loan Documents shall cease to be legal, valid and binding agreements enforceable against the 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 become or be declared ineffective or inoperative or shall in any way be challenged or contested or cease to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby;

9.1.9 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 \$3,500,000 or the Collateral or any other of the Loan Parties' or any of their Subsidiaries' assets 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;

9.1.10 Events Relating to Pension Plans and Benefit Arrangements. (i) An ERISA Event occurs with respect to a Pension Plan which has resulted or could reasonably be expected to result in liability of Borrower or any member of the ERISA Group under Title IV of ERISA to the Pension Plan or the PBGC in an aggregate amount in excess of \$2,500,000, or (ii) Borrower or any member of the ERISA Group fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$2,500,000;

9.1.11 Change of Control. A Change of Control shall occur.

9.1.12 Relief Proceedings. (i) A Relief Proceeding shall have been instituted against any Loan Party or Subsidiary of a Loan Party and such Relief 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 Relief Proceeding, (ii) any Loan Party or Subsidiary of a Loan Party institutes, or takes any action in furtherance of, a Relief Proceeding, or (iii) (x) the Borrower ceases to be Solvent, (y) the Loan Parties, determined on a consolidated basis with their Subsidiaries, cease to be Solvent, or (z) any Loan Party or any Subsidiary of a Loan Party admits in writing its inability to pay its debts as they mature.

9.2 Consequences of Event of Default.

9.2.1 Events of Default Other Than Bankruptcy, Insolvency or Reorganization Proceedings. If an Event of Default specified under Sections 9.1.1 through 9.1.11 shall occur and be continuing, the Lenders and the Administrative Agent shall be under no further obligation to make Loans and the Issuing Lender shall be under no obligation to issue Letters of Credit and the Administrative Agent may, and upon the request of the Required Lenders, shall (i) by written notice to the Borrower, declare the unpaid principal amount of the Notes then outstanding and all interest accrued thereon, any unpaid fees and all other Indebtedness of the Borrower to the Lenders hereunder and thereunder 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, and (ii) require the Borrower to, and the Borrower shall thereupon, deposit in a non-interest-bearing account with the Administrative Agent, as cash collateral for its Obligations under the Loan Documents, an amount equal to the maximum amount currently or at any time thereafter available to be drawn on all outstanding Letters of Credit, and the Borrower hereby pledges to the Administrative Agent and the Lenders, and grants to the Administrative Agent and the Lenders a security interest in, all such cash as security for such Obligations; and

9.2.2 Bankruptcy, Insolvency or Reorganization Proceedings. If an Event of Default specified under Section 9.1.12 [Relief Proceedings] shall occur and be continuing, the Lenders shall be under no further obligations to make Loans hereunder and the Issuing Lender shall be under no obligation to issue Letters of Credit and the unpaid principal amount of the Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Indebtedness of the Borrower to the Lenders hereunder and thereunder shall be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived; and

9.2.3 Set-off. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Lender, and each of their respective Affiliates and any participant of such Lender or Affiliate which has agreed in writing to be bound by the provisions of Section 5.3 [Sharing of Payments] 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, the Issuing Lender or any such Affiliate or participant 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, the Issuing Lender, Affiliate or participant, irrespective of whether or not such Lender, Issuing Lender, Affiliate or participant 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 or the Issuing Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender, the Issuing Lender and their respective Affiliates and participants under this Section 9.2.3 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Lender or their respective Affiliates and participants may have. Each Lender and the Issuing Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application; and

9.2.4 Enforcement of Rights and Remedies. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with this Section 9.2 for the benefit of all the Lenders and the Issuing Lender; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Issuing Lender or the Swing Loan Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as the Issuing Lender or Swing Loan Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 9.2.3 (subject to the terms of Section 5.3 [Sharing of Payments by Lenders]), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Insolvency Proceeding; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to this Section 9.2.4, and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 5.3 [Sharing of Payments by Lenders]), any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders; and

9.2.5 Application of Proceeds. From and after the date on which the Administrative Agent has taken any action pursuant to this Section 9.2 and until Payment In Full, any and all proceeds received by the Administrative Agent from any sale or other disposition of the Collateral, or any part thereof, or the exercise of any other remedy by the Administrative Agent, shall be applied as follows:

(i) First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such, the Issuing Lender in its capacity as such and the Swing Loan Lender in its capacity as such, ratably among the Administrative Agent, the Issuing Lender and Swing Loan Lender in proportion to the respective amounts described in this clause (i) payable to them;

(ii) Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause (ii) payable to them;

(iii) Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and Reimbursement Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause (iii) payable to them;

(iv) Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and amounts to cash collateralize any undrawn amounts under outstanding Letters of Credit, and payment obligations then owing under Lender Provided Interest Rate Hedges and Other Lender Provided Financial Service Products, ratably among the Lenders, the Issuing Lender, and the Lenders or Affiliates of Lenders which provide Lender Provided Interest Rate Hedges and Other Lender Provided Financial Service Products, in proportion to the respective amounts described in this clause (iv) held by them; and

(v) Last, the balance, if any, to the Loan Parties or as required by Law.

Notwithstanding anything to the contrary in this Section 9.2.5, no Swap Obligations of any Non-Qualifying Party shall be paid with amounts received from such Non-Qualifying Party under its Guaranty Agreement (including sums received as a result of the exercise of remedies with respect to such Guaranty Agreement) or from the proceeds of such Non-Qualifying Party's Collateral if such Swap Obligations would constitute Excluded Hedge Liabilities; provided, however, that to the extent possible, appropriate adjustments shall be made by the Administrative Agent with respect to the allocation of payments and/or the proceeds of Collateral from other Loan Parties that are Eligible Contract Participants with respect to such Swap Obligations to preserve the ratable payment of the Obligations among the Lenders as contemplated by Section 9.2.5(iv) after taking into account payments made by, or proceeds received from, any Non-Qualifying Party in respect of the Obligations.

10. THE ADMINISTRATIVE AGENT

10.1 Appointment and Authority. Each of the Lenders and the Issuing Lender hereby irrevocably appoints PNC Bank 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 Section 10 are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

10.2 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, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.3 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

- (a) 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;
- (b) 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; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

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 11.1 [Modifications, Amendments or Waivers] and 9.2 [Consequences of Event of Default]) or (ii) in the absence of its own gross negligence or willful misconduct. 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 by the Borrower, a Lender or the Issuing Lender.

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 set forth 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 set forth in Section 7 [Conditions of Lending and Issuance of Letters of Credit] or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.4 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, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. 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.

10.5 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 Section 10 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 credit facilities provided for herein as well as activities as Administrative Agent.

10.6 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with approval from the Borrower (so long as no Event of Default has occurred and is continuing), to appoint a successor, such approval not to be unreasonably withheld or delayed. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) 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 the Administrative Agent on behalf of the Lenders or the Issuing Lender 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 (ii) 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 and the Issuing Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 10.6. 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 retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 10.6). 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 Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Section 10 and Section 11.3 [Expenses; Indemnity; Damage Waiver] shall continue in effect for the benefit of such retiring 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 Administrative Agent was acting as Administrative Agent.

If PNC Bank resigns as Administrative Agent under this Section 10.6, PNC Bank shall also resign as an Issuing Lender. Upon the appointment of a successor Administrative Agent hereunder, such successor shall (i) succeed to all of the rights, powers, privileges and duties of PNC Bank as the retiring Issuing Lender and Administrative Agent and PNC Bank shall be discharged from all of its respective duties and obligations as Issuing Lender and Administrative Agent under the Loan Documents, and (ii) issue letters of credit in substitution for the Letters of Credit issued by PNC Bank, if any, outstanding at the time of such succession or make other arrangement satisfactory to PNC Bank to effectively assume the obligations of PNC Bank with respect to such Letters of Credit.

10.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing 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 and the Issuing 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.

10.8 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the other Lenders 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, a Lender or the Issuing Lender hereunder.

10.9 Administrative Agent's Fee. The Borrower shall pay to the Administrative Agent a nonrefundable fee (the "**Administrative Agent's Fee**") under the terms of a letter (the "**Administrative Agent's Letter**") between the Borrower and Administrative Agent, as amended from time to time.

10.10 Authorization to Release Collateral and Guarantors. The Lenders and Issuing Lenders authorize the Administrative Agent to release (i) 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, and (ii) any Guarantor from its obligations under the Guaranty Agreement if the ownership interests of such Guarantor in the Borrower are sold or otherwise disposed of or transferred to persons other than Loan Parties or Subsidiaries of the Loan Parties in a transaction permitted under this Agreement.

10.11 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**"), 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 Laws.

10.12 Certain Payments.

(a) Each Lender hereby agrees that (i) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise), individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such 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 Lender 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, and (ii) such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives 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 Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender hereby further agrees that if it receives an Erroneous Payment from the Administrative Agent (or any of its Affiliates) (i) that is in an amount different than (other than a *de minimis* difference), or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Erroneous Payment (an “**Erroneous Payment Notice**”), or (ii) that was not preceded or accompanied by an Erroneous Payment Notice, it shall be on notice that, in each such case, an error has been made with respect to such Erroneous Payment. Each Lender further agrees that, in each such case, or if it otherwise becomes aware an Erroneous Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) that was received by such Lender 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.

(c) The Borrower and each other Loan Party hereby agree that (i) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (ii) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(d) Each party's obligations under this Section 10.12 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

10.13 Intercreditor Agreement. The Lenders (including in their capacity as potential counterparties to Lender Provided Interest Rate Hedges and Other Lender Provided Financial Service Products and on behalf of their Affiliates as potential counterparties to Lender Provided Interest Rate Hedges and Other Lender Provided Financial Service Products) hereby irrevocably authorize and instruct the Administrative Agent to, without any further consent of any Lender or any other Secured Party, enter into (or acknowledge and consent to) or amend, renew, extend, supplement, restate, replace, waive or otherwise modify the Intercreditor Agreement with the collateral agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral that is permitted (including with respect to priority) under this Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof. The Lenders and the other Secured Parties irrevocably agree that (x) the Administrative Agent may rely exclusively on a certificate of a Responsible Officer of the Borrower as to whether any such other Liens are permitted and (y) the Intercreditor Agreement entered into by the Administrative Agent shall be binding on the Secured Parties, and each Lender hereby agrees that it will take no actions contrary to the provisions of the Intercreditor Agreement.

11. MISCELLANEOUS

11.1 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:

11.1.1 Increase of Commitment. Increase the amount of the Revolving Credit Commitment, Initial Term Loan Commitment or Swing Loan Commitment of any Lender hereunder without the consent of such Lender;

11.1.2 Extension of Payment; Reduction of Principal Interest or Fees; Modification of Terms of Payment. Whether or not any Loans are outstanding, extend the Expiration Date, applicable Maturity Date, or the time for payment of principal or interest of any Loan (excluding the due date of any mandatory prepayment of a Loan), the Commitment Fee, Duration Fees or any other fee payable to any Lender, or reduce the principal amount of or the rate of interest borne by any Loan or reduce the Commitment Fee, Duration Fee or any other fee payable to any Lender, the Commitment Fee, Duration Fee or any other fee payable to any Lender, without the consent of each Lender directly affected thereby;

11.1.3 Release of Collateral or Guarantor. Except for sales or other dispositions of assets permitted by this Agreement, release all or a majority of the Collateral or any Guarantor from its Obligations under the Guaranty Agreement without the consent of all Lenders (other than Defaulting Lenders); or

11.1.4 Miscellaneous. Amend Sections 5.2 [Pro Rata Treatment of Lenders], 10.3 [Exculpatory Provisions, Etc.] or 5.3 [Sharing of Payments by Lenders] or this Section 11.1, 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 (other than Defaulting Lenders);

provided that no agreement, waiver or consent which would modify the interests, rights or obligations of the Administrative Agent, the Issuing Lender or PNC Bank in its capacity as the Swing Loan lender may be made without the written consent of the Administrative Agent, the Issuing Lender or PNC Bank, as applicable, and provided, further that, if in connection with any proposed waiver, amendment or modification referred to in Sections 11.1.1 through 11.1.4 above, the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (each 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 5.6.2 [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.

11.2 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 set forth 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.

11.3 Expenses; Indemnity; Damage Waiver.

11.3.1 Costs and Expenses. The Borrower shall pay (i) all reasonable 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 that have occurred on or prior to the Closing Date as 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 reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the Issuing Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the Issuing 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 or Letters of Credit issued hereunder, including all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit, and (iv) 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.

11.3.2 Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing 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 the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party 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 or nonperformance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) breach of representations, warranties or covenants of the Borrower under the Loan Documents, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, including any such items or losses relating to or arising under Environmental Laws or pertaining to environmental matters, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan 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 nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (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 nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 11.3.2 [Indemnification by the Borrower] shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

11.3.3 Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Sections 11.3.1 [Costs and Expenses] or 11.3.2 [Indemnification by the Borrower] to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender or such Related Party, as the case may be, such Lender's Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Lender 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) or Issuing Lender in connection with such capacity.

11.3.4 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 Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in Section 11.3.2 [Indemnification by Borrower] 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.

11.3.5 Payments. All amounts due under this Section 11.3.5 shall be payable not later than ten (10) days after demand therefor.

11.4 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 provided in Section 4.3 [Interest Periods]) and such extension of time shall be included in computing interest and fees, except that the Loans shall be due on the Business Day preceding the Expiration Date or applicable Maturity Date if the Expiration Date or applicable 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.

11.5 Notices; Effectiveness; Electronic Communication.

11.5.1 Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 11.5.2 [Electronic Communications]), 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 (i) if to a Lender, to it at its address set forth in its administrative questionnaire, or (ii) if to any other Person, to it at its address set forth on Schedule 1.1(B).

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 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 delivered through electronic communications to the extent provided in Section 11.5.2 [Electronic Communications], shall be effective as provided in such Section.

11.5.2 Electronic Communications. Notices and other communications to the Lenders and the Issuing Lender 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 or the Issuing Lender if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

11.5.3 Change of Address, Etc. Any party hereto may change its address, e mail address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

11.6 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.

11.7 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, the completion of the transactions hereunder and Payment In Full. 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 set forth in the Notes, Section 4.8 [Payments] and Section 11.3 [Expenses; Indemnity; Damage Waiver], shall survive Payment In Full. All other covenants and agreements of the Loan Parties shall continue in full force and effect from and after the date hereof and until Payment In Full.

11.8 Successors and Assigns.

11.8.1 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 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 Section 11.8.2 [Assignments by Lenders], (ii) by way of participation in accordance with the provisions of Section 11.8.4 [Participations], or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.8.5 [Certain Pledges; Successors and Assigns Generally] (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 Section 11.8.4 [Participations] 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.

11.8.2 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.

(A) 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 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 clause (i)(A) of this Section 11.8.2, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder and 2023 Term Loans) 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 \$5,000,000 unless each of the Administrative Agent 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 for the consent of the Administrative Agent (which shall not be unreasonably withheld or delayed) and:

(A) 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 five (5) Business Days after having received notice thereof; and

(B) the consent of the Issuing Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding).

(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, and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an administrative questionnaire provided by the Administrative Agent.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.8.3 [Register], 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 4.5 [Rate Unascertainable; Illegality; Increased Costs; Deposits Not Available], 5.8 [Increased Costs], and 11.3 [Expenses, Indemnity; Damage Waiver] with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.8.2 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 Section 11.8.4 [Participations].

11.8.3 Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a record of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time. Such register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is in such register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such 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.

11.8.4 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 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, the Lenders and the Issuing Lender shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce 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 11.1.1 [Increase of Commitment], 11.1.2 [Extension of Payment, Etc.], or 11.1.3 [Release of Collateral or Guarantor] that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.5 [Rate Unascertainable, Etc.], 5.8 [Increased Costs], 5.10 [Indemnity] and 5.9 [Taxes] (subject to the requirements and limitations therein, including the requirements under Section 5.9.7 [Status of Lenders] (it being understood that the documentation required under Section 5.9.7 [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 Section 11.8.2 [Assignments by Lenders]; provided that such Participant (A) agrees to be subject to the provisions of Section 5.6.2 [Replacement of a Lender] and Section 5.6.3 [Designation of a Different Lending Office] as if it were an assignee under Section 11.8.2 [Assignments by Lenders]; 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 5.6.2 [Replacement of a Lender] and Section 5.6.3 [Designation of Different Lending Office] with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.2.3 [Set-off] as though it were a Lender; provided that such Participant agrees to be subject to Section 5.3 [Sharing of Payments by Lenders] as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an 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.

11.8.5 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.

11.9 Confidentiality.

11.9.1 General. Each of the Administrative Agent, the Lenders and the Issuing Lender agrees to maintain the confidentiality of the Information, except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) 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, (vi) subject to an agreement containing provisions substantially the same as those of this Section 11.9.1, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) with the consent of the Borrower, (viii) to the extent such Information (Y) becomes publicly available other than as a result of a breach of this Section 11.9.1 or (Z) becomes available to the Administrative Agent, any Lender, the Issuing Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower or the other Loan Parties or (ix) to the Debt Restructuring Advisor. Any Person required to maintain the confidentiality of Information as provided in this Section 11.9.1 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.

11.9.2 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 to any such Subsidiary or Affiliate subject to the provisions of Section 11.9.1 [General].

11.10 Counterparts; Integration; Effectiveness.

11.10.1 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 Section 7 [Conditions Of Lending And Issuance Of Letters Of Credit], 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.

The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement, any Assignment and Assumption or any other Loan Document and the transactions contemplated hereby or thereby shall be deemed to include an electronic symbol or process attached to a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record (each, an “**Electronic Signature**”), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that nothing in any Loan Document shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent. Without limiting the generality of the foregoing, each Loan Party (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Loan Parties, electronic images of this Agreement or any other Loan Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

11.11 CHOICE OF LAW; SUBMISSION TO JURISDICTION; WAIVER OF VENUE; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

11.11.1 Governing Law. This Agreement shall be deemed to be a contract under the Laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles. Each standby Letter of Credit issued under this Agreement shall be subject either to the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the “**ICC**”) at the time of issuance (“**UCP**”) or the rules of the International Standby Practices (ICC Publication Number 590) (“**ISP98**”), as determined by the Issuing Lender, and each trade Letter of Credit shall be subject to UCP, and in each case to the extent not inconsistent therewith, the Laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles.

11.11.2 SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE COMMONWEALTH OF PENNSYLVANIA SITTING IN ALLEGHENY COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE WESTERN DISTRICT OF PENNSYLVANIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH PENNSYLVANIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE ISSUING 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.

11.11.3 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 THIS SECTION 11.11. 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 AND AGREES NOT ASSERT ANY SUCH DEFENSE.

11.11.4 SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.5.1 [NOTICES GENERALLY]. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.11.5 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, ADMINISTRATIVE 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 11.8.5.

11.12 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 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.

11.13 Certain ERISA Matters.

11.13.1 Lender ERISA Representations. Each Lender (x) represents and warrants, as of the later date of the date of this Agreement or the date such Person became a Lender party hereto, to, and (y) covenants, from the date which is the later of the date of this Agreement or the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower 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 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with such Lender’s Loans, the Letters of Credit or the Commitments hereunder,
- (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,
- (iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or
- (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent and such Lender.

11.13.2 Additional Lender ERISA Representations. In addition, unless sub-clause (i) in the immediately preceding Section 11.13.1 is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding Section 11.13.1, such Lender further (x) represents and warrants, as of the later of the date of this Agreement or the date such Person became a Lender party hereto, to, and (y) covenants, from the date which is the later of the date of this Agreement or the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent or any of its Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or any of its Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

11.14 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:

(b) 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

(c) 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.

11.15 Amendment and Restatement. This Agreement amends and restates in its entirety the 2014 Credit Agreement; and the Loan Parties confirm that the 2014 Credit Agreement, the other Loan Documents and the Collateral for the Obligations thereunder (as all such capitalized terms are defined in the 2014 Credit Agreement) have at all times, since the date of the execution and delivery of such documents, remained in full force and effect and continued to secure such obligations which are continued as the Obligations hereunder as amended hereby; and all such Collateral (as defined in the 2014 Credit Agreement) shall continue to secure the Obligations hereunder. The Loans hereunder are a continuation of the Loans under (and as such terms are defined in) the 2014 Credit Agreement. The Loan Parties, the Administrative Agent and the Lenders acknowledge and agree that the amendment and restatement of the 2014 Credit Agreement by this Agreement is not intended to constitute, nor does it constitute, a novation, interruption, suspension of continuity, satisfaction, discharge or termination of the obligations, loans, liabilities, or indebtedness under the 2014 Credit Agreement and the other Loan Documents (as such term is defined therein) thereunder or the collateral security therefor and this Agreement and the other Loan Documents are entitled to all rights and benefits originally pertaining to the 2014 Credit Agreement and the other Loan Documents (as such term is defined therein). For the avoidance of doubt, the Loan Parties, the Administrative Agent and the Lenders acknowledge and agree that upon execution of this Agreement by the parties hereto, Hallador Energy Company shall be the Borrower hereunder and shall no longer be, and is hereby released as, a Guarantor under this Agreement and any other Loan Document (but shall be bound as a Borrower), and Sunrise Coal, LLC shall be a Guarantor hereunder and shall no longer be, and is hereby released as, the Borrower under this Agreement and any other Loan Documents (but shall be bound as a Guarantor).

[Signature Pages Intentionally Omitted]

SCHEDULE 1.1(A)

PRICING GRID--

VARIABLE PRICING AND LETTER OF CREDIT FEES BASED ON LEVERAGE RATIO

(PRICING EXPRESSED IN BASIS POINTS)

<u>Level</u>	<u>Leverage Ratio</u>	<u>Letter of Credit Fee</u>		<u>Base Rate Spread</u>		<u>Term SOFR Rate Spread</u>	<u>LIBOR Rate Spread</u>		<u>Commitment Fee</u>	
		<u>Prior to the 10th AED*</u>	<u>On and after the 10th AED*</u>	<u>Prior to the 10th AED*</u>	<u>On and after the 10th AED*</u>	<u>On and after the 10th AED*</u>	<u>Prior to the 10th AED*</u>	<u>On and after the 10th AED*</u>	<u>Prior to the 10th AED*</u>	<u>On and after the 10th AED*</u>
IV	Greater than or equal to 3.0 to 1.0	400	500	300	400	500	400	500	50	50
III	Greater than or equal to 2.5 to 1.0 but less than 3.0 to 1.0	350	450	250	350	450	350	450	50	50
II	Greater than or equal to 2.0 to 1.0 but less than 2.5 to 1.0	300	425	200	325	425	300	425	50	50
I	Less than 2.0 to 1.0	275	400	175	300	400	275	400	37.5	50

* “10th AED” shall mean the Tenth Amendment Effective Date

For purposes of determining the Applicable Margin, Commitment Fee, and the Applicable Letter of Credit Fee Rate:

(a) As of the Third Amendment Closing Date, pricing shall be fixed at the level and rates that correspond with Level IV of the Pricing Grid, until the date on which a Compliance Certificate for the fiscal period ending March 31, 2020 is due to be delivered in accordance with Section 8.3.3. If a Compliance Certificate is not delivered when due in accordance with Section 8.3.3, then the rates in Level IV shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered.

(b) Applicable Margin for all Loans (including the Loans with an Interest Period ending after the Tenth Amendment Effective Date and the Tenth Amendment Existing Revolving Credit Loans), Commitment Fee and the Applicable Letter of Credit Fee Rate (i) applicable to any day prior to the Tenth Amendment Effective Date shall be determined based on the applicable “Prior to the 10th AED” column of the pricing grid and (ii) applicable to the Tenth Amendment Effective Date and any day thereafter shall be determined based on the applicable “On and after the 10th AED” column of the pricing grid.

(c) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the Issuing Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the Issuing Lender, as the case may be, under Sections 2.9 [Letter of Credit Subfacility] or 4.4 [Interest After Default] or 9 [Default]. The Borrower’s obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

EXHIBIT 1.1(N)(3)

TERM NOTE

[See attached]

EXHIBIT 2.5.1
LOAN REQUEST

[See attached]

Schedule 1.1(B)

Commitments of Lenders and Addresses for Notices

[See attached]

Schedule 1.1(R)

Real Property

[See attached]

Schedule 6.1.1

Qualifications to Do Business

[See attached]

Schedule 6.1.2

Subsidiaries

[See attached]

Schedule 6.1.4

No Conflict; Material Agreements; Consents

[See attached]

Schedule 8.2.1

Existing Indebtedness

[See attached]

Schedule A to the Third Amended and Restated Security Agreement

[See attached]

List of Subsidiaries

Edwardsport Construction Company, LLC

Gibson County Logistics, LLC

Hallador Sands, LLC

Hallador Power Company

Hourglass Sands, LLC

High Point Land Holdings LLC

Oaktown Fuels Mine No. 1, LLC

Oaktown Fuels Mine No. 2, LLC

Prosperity Mine, LLC

Railpoint Solutions, LLC

SFI Coal Sales, LLC

Summit Terminal, LLC

Sunrise Administrative Services, LLC

Sunrise Coal LLC

Sunrise Energy, LLC

Sunrise Indemnity, Inc.

Sunrise Land Holdings, LLC

Sycamore Coal, Inc.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated March 16, 2023, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Hallador Energy Company on Form 10-K for the year ended December 31, 2022. We consent to the incorporation by reference of said reports in the Registration Statements of Hallador Energy Company on Forms S-8 (File No. 333-261930 and File No. 333-171778).

/s/ GRANT THORNTON LLP

Tulsa, Oklahoma
March 16, 2023

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-261930, 333-163431 and 333-171778) of Hallador Energy Company (the "Company") of our report dated March 28, 2022, except for Note 18, as to which the date is March 16, 2023, relating to the financial statements as of and for the year ended December 31, 2021, which appears in this Form 10-K.

/S/PLANTE & MORAN, PLLC

Denver, Colorado
March 16, 2023

CERTIFICATION

I, Brent K. Bilsland, certify that:

1. I have reviewed this annual report on Form 10-K of Hallador Energy Company;
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 officers 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 officers 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 function):
 - 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.

March 16, 2023

/s/ BRENT K. BILSLAND

Brent K. Bilsland, Chairman, President and CEO

CERTIFICATION

I, Lawrence D. Martin, certify that:

1. I have reviewed this annual report on Form 10-K of Hallador Energy Company;
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 officers 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 officers 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 function):
 - 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.

March 16, 2023

/s/LAWRENCE D. MARTIN
Lawrence D. Martin, CFO

CERTIFICATION

I, R. Todd Davis, certify that:

1. I have reviewed this annual report on Form 10-K of Hallador Energy Company;
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 officers 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 officers 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 function):
 - 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.

March 16, 2023

/S/R. TODD DAVIS
R. Todd Davis, CAO

CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with this Annual Report (the "Report"), of Hallador Energy Company (the "Company"), on Form 10-K for the period ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof the undersigned, in the capacities and date indicated below, each hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report 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) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 16, 2023 By: /S/BRENT K. BILSLAND
Brent K. Bilsland, Chairman, President and CEO

March 16, 2023 By: /S/LAWRENCE D. MARTIN
Lawrence D. Martin, CFO

March 16, 2023 By: /S/R. TODD DAVIS
R. Todd Davis, CAO

Mine Safety Disclosure

Our principles at Sunrise Coal, LLC are safety, honesty, and compliance. We firmly believe that these values compose a dedicated workforce and with that, come high production. The core to this is our strong training programs that include accident prevention, workplace inspection and examination, emergency response and compliance. We work with the Federal and State regulatory agencies to help eliminate safety and health hazards from our workplace and increase safety and compliance awareness throughout the mining industry.

We are regulated by the 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 and orders when it believes a violation has occurred under the Mine Act. We present information below regarding certain violations which MSHA has issued with respect to our mines. While assessing this information please consider that the number and cost of violations will vary depending on the MSHA inspector and can be contested and appealed, and in that process, are often reduced in severity and amount, and are sometimes dismissed.

The disclosures listed below are provided pursuant to the Dodd-Frank Act. We believe that the following disclosures comply with the requirements of the Dodd-Frank Act; however, it is possible that future SEC rule making may require disclosures to be filed in a different format than the following.

The table that follows outline required disclosures and citations/orders issued to us by MSHA during 2022. The citations and orders outlined below may differ from MSHA’s data retrieval system due to timing, special assessed citations, and other factors.

Definitions:

Section 104(a) Significant and Substantial Citations “S&S”: An alleged violation of a mining safety or health standard or regulation where there exists a reasonable likelihood that the hazard outlined will result in an injury or illness of a serious nature.

Section 104(b) Orders: Failure to abate a 104(a) citation within the period of time prescribed by MSHA. The result of which is an order of immediate withdraw of non-essential persons from the affected area until MSHA determines the violation has been corrected.

Section 104(d) Citations and Orders: An alleged unwarrantable failure to comply with mandatory health and safety standards.

Section 107(a) Orders: An order of withdraw for situations where MSHA has determined that an imminent danger exists.

Section 110(b)(2) Violations: An alleged flagrant violation issued by MSHA under section 110(b)(2) of the Mine Act.

Pattern or Potential Pattern of Violations: A pattern of violations of mandatory health or safety standards that are of such a nature as could have significantly and substantially contributed to the cause and effect of coal mine health or safety hazards under section 104(e) of the Mine Act or a potential to have such a pattern.

Contest of Citations, Orders, or Proposed Penalties: A contest proceeding may be filed with the Commission by the operator or miners/miner’s representative to challenge the issuance or penalty of a citation or order issued by MSHA.

MSHA Federal Mine ID#s:

(12-02465 – Carlisle Preparation Plant)

(12-02460 – Ace in the Hole Mine)

(12-02394 – Oaktown Fuels No. 1)

(12-02418 – Oaktown Fuels No. 2)

(12-02462 – Oaktown Fuels Preparation Plant)

(12-02249 – Prosperity Mine)

(12-02339 – Freelandville East, Center Pit Mine)

Mine ID#	Section 104(a) Citations	Section 104(b) Orders	Section 104(d) Citations/Orders	Section 107(a) Orders	Section 110(b)(2) Violations	Proposed MSHA Assessments (In thousands)
12-02465	0	0	0	0	0	\$ -
12-02460	0	0	0	0	0	\$ 0.40
12-02394	46	0	0	0	0	\$ 64.30
12-02418	23	0	0	0	0	\$ 30.00
12-02462	0	0	0	0	0	\$ 0.40
12-02249	0	0	0	0	0	\$ 0.13
12-02339	0	0	0	0	0	\$ 0.13

Mine ID#	Section 104(e) Notice Yes/No	Section 104(e) POV Yes/No	Mining Related Fatalities	Legal Actions Pending	Legal Actions Initiated	Legal Actions Resolved
12-02465	No	No	0	0	0	0
12-02460	No	No	0	0	0	0
12-02394	No	No	1	0	0	0
12-02418	No	No	0	0	0	0
12-02462	No	No	0	0	0	0
12-02249	No	No	0	0	0	0
12-02339	No	No	0	0	0	0

Mine ID#	Contest of Citations/ Orders	Contest of Penalties	Complaints of Compensation	Complaints of Discharge/ Discrimination	Applications of Temp. Relief	Appeals of Decisions/ Orders
12-02465	0	0	0	0	0	0
12-02460	0	0	0	0	0	0
12-02394	2	0	0	0	0	0
12-02418	1	0	0	0	0	0
12-02462	0	0	0	0	0	0
12-02249	0	0	0	0	0	0
12-02339	0	0	0	0	0	0