

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

**FORM 10-K**

(Mark One)

☒

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

For the Fiscal Year Ended December 31, 2022

or

☐

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

Commission File Number 1-16463



**PEABODY ENERGY CORPORATION**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

13-4004153

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

701 Market Street, St. Louis, Missouri  
(Address of principal executive offices)

63101-1826  
(Zip Code)

(314) 342-3400

(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act:

Trading Symbol(s)

BTU

Name of Each Exchange on Which Registered

New York Stock Exchange

Title of Each Class

Common Stock, par value \$0.01 per share

Securities Registered Pursuant to Section 12(g) of the Act:

None

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

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

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

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

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

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. ☒

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

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). ☐

Aggregate market value of the voting and non-voting common equity held by non-affiliates (stockholders who are not directors or executive officers) of the Registrant, calculated using the closing price on June 30, 2022: Common Stock, par value \$0.01 per share, \$2.5 billion.

Number of shares outstanding of each of the Registrant's classes of Common Stock, as of February 17, 2023: Common Stock, par value \$0.01 per share, 144,236,926 shares outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Company's Proxy Statement to be filed with the Securities and Exchange Commission in connection with the Company's 2023 Annual Meeting of Shareholders (the Company's 2023 Proxy Statement) are incorporated by reference into Part III hereof. Other documents incorporated by reference in this report are listed in the Exhibit Index of this Form 10-K.

## CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS

This report includes statements of the Company's expectations, intentions, plans and beliefs that constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act), and are intended to come within the safe harbor protection provided by those sections. These statements relate to future events or the Company's future financial performance. The Company uses words such as "anticipate," "believe," "expect," "may," "forecast," "project," "should," "estimate," "plan," "outlook," "target," "likely," "will," "to be" or other similar words to identify forward-looking statements.

Without limiting the foregoing, all statements relating to the Company's future operating results, anticipated capital expenditures, future cash flows and borrowings, and sources of funding are forward-looking statements and speak only as of the date of this report. These forward-looking statements are based on numerous assumptions that the Company believes are reasonable, but are subject to a wide range of uncertainties and business risks, and actual results may differ materially from those discussed in these statements. These factors include but are not limited to those described in Part I, Item 1A. "Risk Factors." Such factors are difficult to accurately predict and may be beyond the Company's control.

When considering these forward-looking statements, you should keep in mind the cautionary statements in this document and in the Company's other Securities and Exchange Commission (SEC) filings. These forward-looking statements speak only as of the date on which such statements were made, and the Company undertakes no obligation to update these statements except as required by federal securities laws.

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*Note: The words “Peabody” or “the Company” as used in this report, refer to Peabody Energy Corporation or its applicable subsidiary or subsidiaries. Unless otherwise noted herein, disclosures in this Annual Report on Form 10-K relate only to the Company’s continuing operations.*

*When used in this filing, the term “ton” refers to short or net tons, equal to 2,000 pounds (907.18 kilograms), while “tonne” refers to metric tons, equal to 2,204.62 pounds (1,000 kilograms).*

## PART I

### Item 1. **Business.**

#### Overview

Peabody is a leading producer of metallurgical and thermal coal. At December 31, 2022, the Company owned interests in 17 active coal mining operations located in the United States (U.S.) and Australia, including a 50% equity interest in Middlemount Coal Pty Ltd. (Middlemount). In addition to its mining operations, the Company markets and brokers coal from other coal producers, trades coal and freight-related contracts, and, during 2022, partnered in a joint venture with the intent of developing various sites, including certain reclaimed mining land held by the Company in the U.S., for utility-scale photovoltaic solar generation and battery storage.

#### Segment and Geographic Information

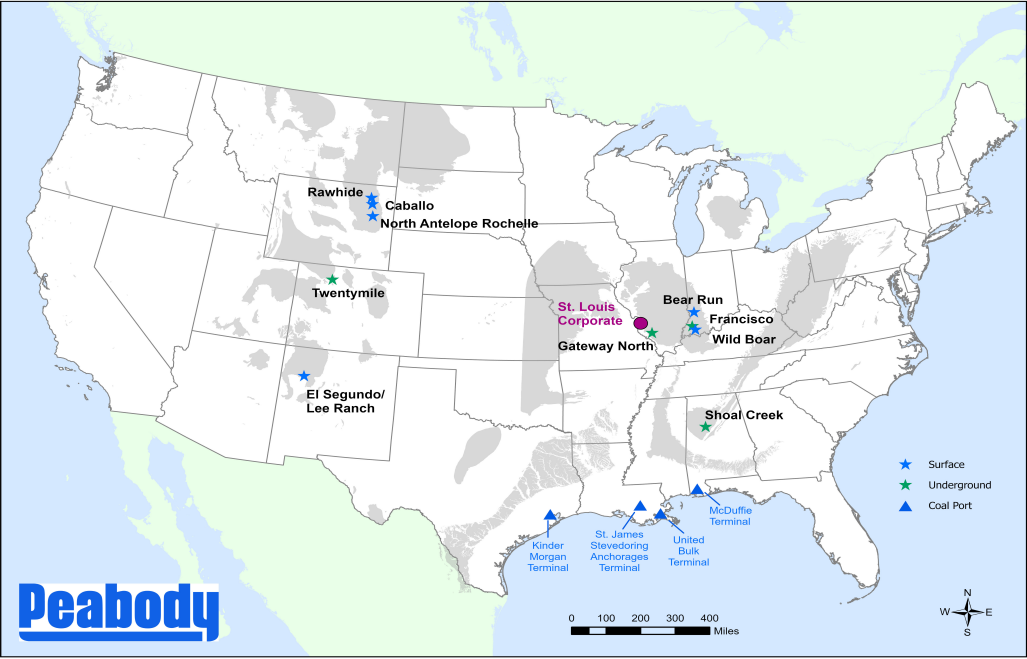
As of December 31, 2022, Peabody reports its results of operations primarily through the following reportable segments: Seaborne Thermal Mining, Seaborne Metallurgical Mining, Powder River Basin Mining, Other U.S. Thermal Mining and Corporate and Other. Refer to Part II, Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for additional information regarding the Company’s segments. Note 22. “Segment and Geographic Information” to the accompanying consolidated financial statements is incorporated herein by reference and also contains segment and geographic financial information.

#### **Mining Locations**

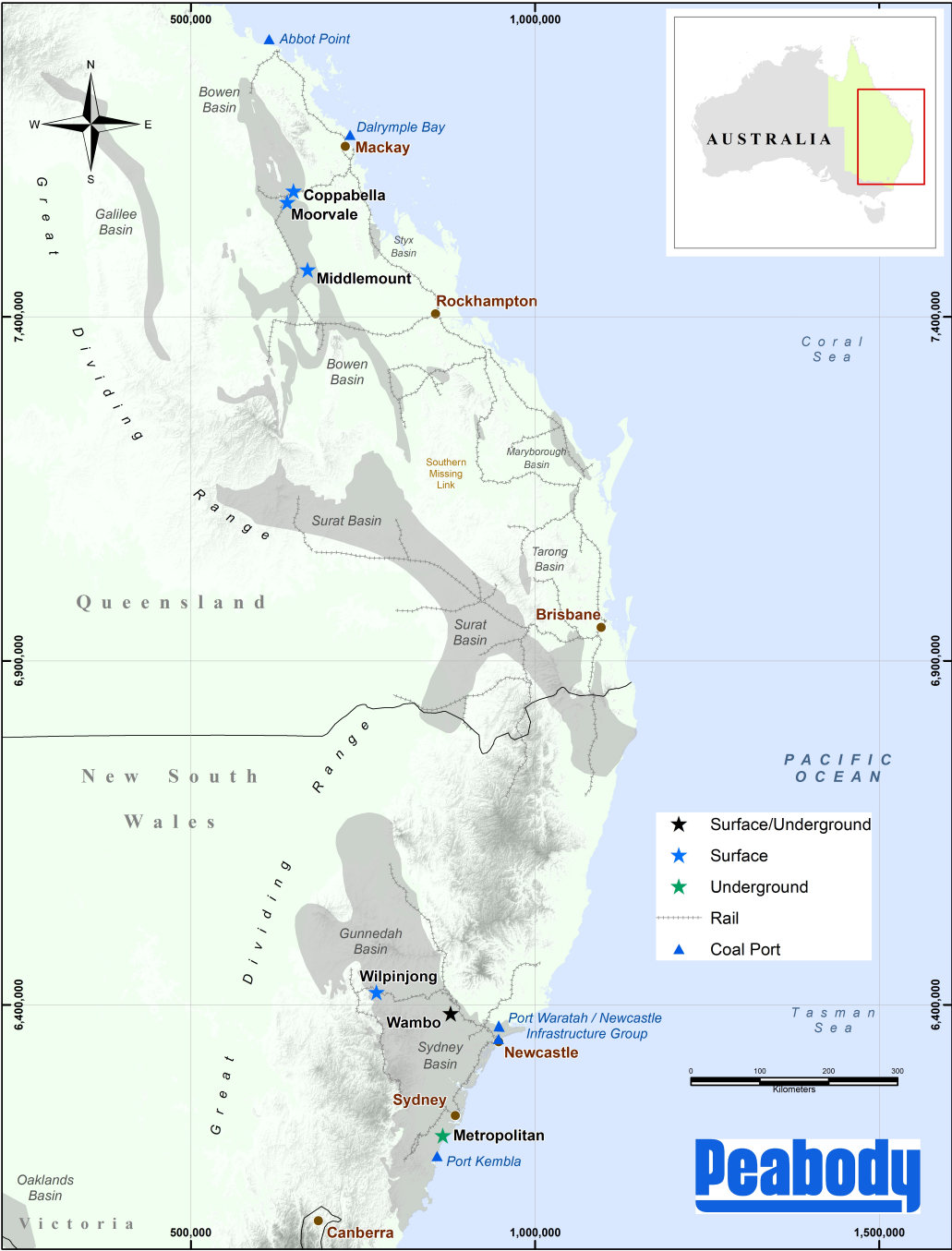
The maps that follow display Peabody’s active mine locations as of December 31, 2022. Also shown are the primary ports that the Company uses for its coal exports and the Company’s corporate headquarters in St. Louis, Missouri.



U.S. Locations



Australian Locations



The table below summarizes information regarding the operating characteristics of each of the Company's mines in the U.S. and Australia. The mines are listed within their respective reporting segment in descending order, as determined by tons produced in 2022.

							Production		
							Year Ended December 31,		
Segment/Mining Complex	Location	Mine Type	Mining Method	Coal Type	Primary Transport Method	Processing Plants	2022	2021	2020
Seaborne Thermal Mining							(Tons in millions)		
Wilpinjong	New South Wales	S	D, T/S	T	R, EV	Yes	12.1	13.2	14.2
Wambo Open-Cut <sup>(1)</sup>	New South Wales	S	T/S	T, C	R, EV	Yes	2.0	2.4	4.0
Wambo Underground <sup>(2)</sup>	New South Wales	U	LW	T, C	R, EV	Yes	1.1	1.4	1.5
Seaborne Metallurgical Mining									
Coppabella <sup>(3)</sup>	Queensland	S	DL, D, T/S	P	R, EV	Yes	2.4	2.1	2.2
Metropolitan <sup>(4)</sup>	New South Wales	U	LW	C, P, T	R, EV	Yes	1.8	1.0	1.0
Moorvale <sup>(3)</sup>	Queensland	S	D, T/S	C, P, T	R, EV	Yes	1.5	1.3	1.2
Shoal Creek <sup>(5)</sup>	Alabama	U	LW	C	B, EV	Yes	0.8	0.1	0.6
Millennium <sup>(6)</sup>	Queensland	S	HW	C, P	R, EV	No	—	—	0.1
Middlemount <sup>(7)</sup>	Queensland	S	D, T/S	C, P	R, EV	Yes	—	—	—
Powder River Basin Mining									
North Antelope Rochelle	Wyoming	S	DL, D, T/S	T	R	No	60.4	62.8	66.1
Caballo	Wyoming	S	D, T/S	T	R	No	12.1	13.9	11.6
Rawhide	Wyoming	S	D, T/S	T	R	No	10.3	11.6	9.5
Other U.S. Thermal Mining									
Bear Run	Indiana	S	DL, D, T/S	T	Tr, R, EV	Yes	6.7	6.0	5.2
El Segundo/Lee Ranch	New Mexico	S	DL, D, T/S	T	R	No	3.7	3.7	4.6
Gateway North	Illinois	U	CM	T	Tr, R, R/B, T/B, EV	Yes	2.4	1.8	1.8
Wild Boar	Indiana	S	HW, DL, D, T/S	T	Tr, R, R/B, T/B	Yes	2.3	2.4	2.0
Francisco Underground	Indiana	U	CM	T	R	Yes	1.8	1.5	1.6
Twentymile	Colorado	U	LW	T	R, Tr, EV	Yes	1.5	1.7	1.2
Somerville Central <sup>(6)</sup>	Indiana	S	DL, D, T/S	T	R, R/B, T/B, T/R	No	—	—	0.4

**Legend:**

S	Surface Mine	B	Barge
U	Underground Mine	Tr	Truck
HW	Highwall Miner	R/B	Rail to Barge
DL	Dragline	T/B	Truck to Barge
D	Dozer/Casting	T/R	Truck to Rail
T/S	Truck and Shovel	EV	Export Vessel
LW	Longwall	T	Thermal/Steam
CM	Continuous Miner	C	Coking
R	Rail	P	Pulverized Coal Injection

<sup>(1)</sup> In December 2020, the United Wambo Joint Venture, an unincorporated joint venture between Peabody and Glencore plc, began joint production. The tons shown reflect Peabody's proportionate share throughout the years. The Company's 50% joint venture interest is subject to an outside non-controlling ownership interest.

<sup>(2)</sup> Majority-owned mine in which there is an outside non-controlling ownership interest.

<sup>(3)</sup> Peabody owns a 73.3% undivided interest in an unincorporated joint venture that owns the Coppabella and Moorvale mines. The tons shown reflect its share.

<sup>(4)</sup> The mine was idled in the fourth quarter of 2020. The mine restarted production in the second quarter of 2021.

<sup>(5)</sup> The mine was idled in the fourth quarter of 2020. The mine restarted production in November 2021.

<sup>(6)</sup> The mine ceased production during 2020.

<sup>(7)</sup> Peabody owns a 50% equity interest in Middlemount, which owns the Middlemount Mine. Because Middlemount is accounted for as an unconsolidated equity affiliate, the table above excludes tons produced from that mine, which totaled 1.4 million, 2.0 million and 1.6 million tons, respectively (on a 50% basis).

Refer to the Reserves and Resources tables within Item 2. "Properties," which is incorporated by reference herein, for additional information regarding coal reserves and resources, and product characteristics associated with each mine.

## Coal Supply Agreements

**Customers.** Peabody's coal supply agreements are primarily with electricity generators, industrial facilities and steel manufacturers. Most of the Company's sales from its mining operations are made under long-term coal supply agreements (those with initial terms of one year or longer and which often include price reopener and/or extension provisions). A smaller portion of the Company's sales from its mining operations are made under contracts with terms of less than one year, including sales made on a spot basis. Sales under long-term coal supply agreements comprised approximately 85%, 84% and 89% of the Company's worldwide sales from its mining operations (by volume) for the years ended December 31, 2022, 2021 and 2020, respectively.

For the year ended December 31, 2022, Peabody derived 28% of its revenue from coal supply agreements from its five largest customers. Those five customers were supplied primarily from 16 coal supply agreements (excluding trading and brokerage transactions) expiring at various times from 2023 to 2025. Peabody's largest customer in 2022 contributed revenue of approximately \$358 million, or approximately 7% of Peabody's total revenue from coal supply agreements, and has contracts expiring at various times from 2023 to 2024.

**Backlog.** Peabody's sales backlog, which includes coal supply agreements subject to price reopener and/or extension provisions, was approximately 314 million and 283 million tons of coal as of January 1, 2023 and 2022, respectively. Contracts in backlog have remaining terms ranging from one to ten years and represent approximately three years of production based on the Company's 2022 production volume of 122.9 million tons. Approximately 62% of its backlog is expected to be filled beyond 2023.

**Seaborne Mining Operations.** Revenue from Peabody's Seaborne Thermal Mining and Seaborne Metallurgical Mining segments represented approximately 59%, 50% and 42% of the Company's total revenue from coal supply agreements for the years ended December 31, 2022, 2021 and 2020, respectively, during which periods the coal mining activities of those segments contributed respective amounts of 18%, 18% and 19% of the Company's sales volumes from mining operations. Production from these segments is primarily sold into the seaborne thermal and metallurgical markets, with a majority of those sales executed through annual and multi-year international coal supply agreements that contain provisions requiring both parties to renegotiate pricing periodically, with spot, index and quarterly sales arrangements also utilized. Industry commercial practice, and Peabody's typical practice, is to negotiate pricing for seaborne thermal coal contracts on an annual, spot or index basis and seaborne metallurgical coal contracts on a quarterly, spot or index basis. For its seaborne mining operations, the portion of sales volume under contracts with a duration of less than one year represented 41% in 2022.

**U.S. Thermal Mining Operations.** Revenue from Peabody's Powder River Basin Mining and Other U.S. Thermal Mining segments, in aggregate, represented approximately 41%, 50% and 58% of the Company's revenue from coal supply agreements for the years ended December 31, 2022, 2021 and 2020, respectively, during which periods the coal mining activities of those segments contributed respective aggregate amounts of approximately 82%, 82% and 81% of the Company's sales volumes from mining operations. The Company expects to continue selling a significant portion of coal production from its U.S. thermal operating segments under existing long-term supply agreements. Certain customers utilize long-term sales agreements in recognition of the importance of reliability, service and predictable coal prices to their operations. The terms of coal supply agreements result from competitive bidding and extensive negotiations with customers. Consequently, the terms of those agreements may vary significantly in many respects, including price adjustment features, price reopener terms, coal quality requirements, quantity parameters, permitted sources of supply, treatment of environmental constraints, extension options, force majeure and termination and assignment provisions. Peabody's approach is to selectively renew, or enter into new, long-term supply agreements when it can do so at prices and terms and conditions it believes are favorable. Over the last few years, Peabody's customers have shifted to long-term supply agreements with shorter durations, driven by the reduced utilization of plants and plant retirements, fluidity of natural gas pricing and the increased use of renewable energy sources.

## Transportation

**Methods of Distribution.** Coal consumed in the U.S. is usually sold at the mine with transportation costs borne by the purchaser. Peabody's U.S. mine sites are typically adjacent to a rail loop; however, in limited circumstances coal may be trucked to a barge site or directly to customers. Title predominately passes to the purchaser at the rail or barge, as applicable. Peabody's U.S. and Australian export coal is usually sold at the loading port, with purchasers paying ocean freight. In each case, the Company usually pays transportation costs from the mine to the port, including any demurrage costs (fees paid to third-party shipping companies for loading time that exceeded the stipulated time).

The Company believes it has good relationships with U.S. and Australian rail carriers and port and barge companies due, in part, to its modern coal-loading facilities and the experience of its transportation coordinators. During the year ended December 31, 2022, rail service constraints due, in part, to labor shortages and weather conditions experienced by Peabody's rail service providers, have negatively impacted U.S. thermal shipment volumes. Refer to the table in the foregoing "Mining Locations" section for a summary of transportation methods by mine.

**Export Facilities.** Peabody has generally secured its ability to transport coal in Australia through rail and port contracts and access to five east coast coal export terminals that are primarily funded through take-or-pay arrangements (refer to the "Liquidity and Capital Resources" section in Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" for additional information on its take-or-pay obligations). In Queensland, seaborne thermal and metallurgical coal from the Company's mines is exported through the Dalrymple Bay Coal Terminal, in addition to the Abbot Point Coal Terminal used by its joint venture Middlemount Mine. In New South Wales, the Company's primary ports for exporting thermal and metallurgical coal are at Port Kembla and Newcastle, which includes both the Port Waratah Coal Services terminal and the terminal operated by Newcastle Coal Infrastructure Group. Peabody has secured its ability to transport coal from its Shoal Creek Mine under barge and port contracts; the primary port is the McDuffie Terminal in Mobile, Alabama, which the Company utilizes without a take-or-pay arrangement.

Peabody's U.S. thermal mining operations exported less than 1% of their annual tons sold during both the years ended December 31, 2022 and 2021. No tons were exported during the year ended December 31, 2020. The primary ports used for U.S. thermal exports are the United Bulk Terminal near New Orleans, Louisiana, the St. James Stevedoring Anchorages terminal in Convent, Louisiana and the Kinder Morgan terminal near Houston, Texas.

## Suppliers

**Mining Supplies and Equipment.** The principal goods Peabody purchases in support of its mining activities are mining equipment and replacement parts, diesel fuel, ammonium-nitrate and emulsion-based explosives, off-the-road tires, steel-related products (including roof control materials), lubricants and electricity. Peabody has many well-established, strategic relationships with its key suppliers of goods and does not believe that it is overly dependent on any of its individual suppliers.

In situations where Peabody has elected to concentrate a large portion of its purchases with one supplier, it has been to take advantage of cost savings from larger volumes of purchases, benefit from long-term pricing for parts and ensure security of supply. Supplier concentration related to the Company's mining equipment also allows it to benefit from fleet standardization, which in turn improves asset utilization by facilitating the development of common maintenance practices across its global platform, enhancing its flexibility to move equipment between mines and reduce working capital through inventory optimization.

Surface and underground mining equipment demand and lead times for parts and components have increased in recent periods. Peabody consistently uses its global leverage with major suppliers and comprehensive planning processes to ensure security of supply to meet the requirements of its active mines.

**Services.** Peabody also purchases services at its mine sites, including services related to maintenance for mining equipment, construction, temporary labor, use of explosives and various other requirements. Peabody does not believe that it has undue operational or financial risk associated with its dependence on any individual service providers.

Throughout 2022, inflationary pressures and supply chain constraints have contributed to rising costs for mining equipment, supplies and services. This trend may continue to impact future periods.

## Competition

Demand for coal and the prices that the Company will be able to obtain for its coal are highly competitive and influenced by factors beyond the Company's control, including but not limited to global economic conditions; the demand for electricity and steel; the cost of alternative sources; the impact of weather on heating and cooling demand; the capacity and cost of transportation; geopolitical risks; and taxes and environmental regulations imposed by the U.S. and foreign governments.

**Thermal Coal.** Demand for Peabody's thermal coal products is impacted by economic conditions; demand for electricity, which is impacted by energy efficient products; and the cost of electricity generation from coal and alternative forms of generation. Regulatory policies and environmental, social and governance considerations can also have an impact on generation choices and coal consumption. The Company's products compete with producers of other forms of electricity generation, including natural gas, oil, nuclear, hydro, wind, solar and biomass, that provide an alternative to coal use. The use and price of thermal coal is heavily influenced by the availability and relative cost of alternative fuel sources and the generation of electricity utilizing alternative fuels, with customers focused on securing the lowest cost fuel supply in order to coordinate the most efficient utilization of generating resources in the economic dispatch of the power grid at the most competitive price.

In the U.S., natural gas is highly competitive (along with other alternative fuel sources) with thermal coal for electricity generation. The competitiveness of natural gas has been strengthened by accelerated growth in domestic natural gas production and new natural gas combined cycle generation capacity. The Henry Hub Natural Gas Prompt Price averaged \$6.54 per mmBtu in 2022, versus \$3.72 and \$2.13 per mmBtu in 2021 and 2020, respectively. In addition, the competitiveness of other alternative fuel sources for electricity generation has been strengthened by the growth of renewable energy generation. These pressures, coupled with increasing regulatory burdens, have contributed to a significant number of coal plant retirements. During 2022, approximately 12 gigawatts of U.S. coal power capacity was retired, and since 2010, U.S. coal power capacity has fallen by approximately thirty-six percent.

Internationally, thermal coal also competes with alternative forms of electricity generation. The competitiveness and availability of natural gas, liquefied natural gas, oil, nuclear, hydro, wind, solar and biomass varies by country and region. Seaborne thermal coal consumption is also impacted by the competitiveness of delivered seaborne thermal coal supply from key exporting countries such as Indonesia, Australia, Colombia, the U.S., Russia and South Africa, among others. In addition, seaborne thermal coal import demand can be significantly impacted by the availability of domestic coal production, particularly in the two leading coal import countries, China and India, among others. China's unofficial ban on Australian coal in recent years continued until January 2023 and impeded traditional trade flows. Global thermal coal markets have been turbulent during 2022, due in part to the Russian-Ukrainian conflict and the subsequent ban of Russian coal by European countries.

In addition to its alternative fuel source competitors, Peabody's principal U.S. direct coal supply competitors (listed alphabetically) are other large coal producers, including Alliance Resource Partners; American Consolidated Natural Resources, Inc.; Arch Resources, Inc.; CONSOL Energy; Eagle Specialty Materials LLC; Foresight Energy; Hallador Energy; Kiewit; and Navajo Transitional Energy Company LLC, among others. Major international direct coal supply competitors (listed alphabetically) include Adaro Energy; Anglo American plc; BHP; Bumi Resources; China Shenhua Energy; Coal India Limited; Drummond Company; Glencore; South32; SUEK; Whitehaven Coal Limited; and Yancoal Australia Ltd, among others.

**Metallurgical Coal.** Demand for Peabody's metallurgical coal products is impacted by economic conditions; government policies; demand for steel; and competing technologies used to make steel, some of which do not use coal as a manufacturing input, such as electric arc furnaces. The Company competes on the basis of coal quality and characteristics, delivered energy cost (including transportation costs), customer service and support and reliability of supply.

Seaborne metallurgical coal import demand can be significantly impacted by the availability of domestic coal production, particularly in leading metallurgical coal import countries such as China, among others, and the competitiveness of seaborne metallurgical coal supply from leading metallurgical coal exporting countries of Australia, the U.S., Russia, Canada, Mongolia and Mozambique, among others. Trade flow disruptions have occurred during 2022 related to China's unofficial ban on Australian coal and sanctions imposed on Russian coal imports.

Major international direct competitors (listed alphabetically) include Anglo American; Arch Resources, Inc.; BHP; Foxleigh; Glencore; Jellinbah; KRU; Stanmore; Teck Resources; Warrior Met Coal; Whitehaven Coal Limited; and Yancoal Australia Ltd, among others.

## Cybersecurity Risk Management

Peabody uses digital technology to conduct its business operations and engage with its customers, vendors and partners. As the Company implements newer technologies such as cloud, analytics, automation and “internet of things,” the threats to its business operations from cyber intrusions, denial of service attacks, manipulation and other cyber misconduct affecting both the Company and its partners’ technologies increase. To address the risk, the Company continues to evolve its risk management approach in an effort to continually assess and improve its cybersecurity risk detection, deterrence and recovery capabilities, under oversight from Peabody’s Board of Directors. Peabody’s cybersecurity strategy emphasizes reduction of cyber risk exposure and continuous improvement of its cyber defense and resilience capabilities. These include: (i) proactive management of cyber risk to ensure compliance with contractual, legal and regulatory requirements, (ii) performing due diligence on third parties to ensure they have sound cybersecurity practices in place, (iii) ensuring essential business services remain available during a business disruption, (iv) implementing data policies and standards to protect sensitive company information and (v) exercising cyber incident response plans and risk mitigation strategies to address potential incidents should they occur.

## Human Capital

Peabody had approximately 5,500 employees as of December 31, 2022, including approximately 4,300 hourly employees. Additional information on its employees and related labor relations matters is contained in Note 19. “Management — Labor Relations” to the accompanying consolidated financial statements, which information is incorporated herein by reference. Peabody endeavors to engage with its organized workforce and foster strong relationships with those organizations built on trust and communication.

As of December 31, 2022, approximately 3,600 of Peabody’s employees are located in the U.S., with the remainder primarily located in Australia. About 94% of its team members work for mine operations in the U.S. and Australia, while the remaining are based out of its global headquarters in St. Louis or its business offices in Brisbane and Beijing.

Peabody strives to create a strong, united workforce with a commitment to safety as a way of life. In 2022, the Company achieved a global safety incidence rate of 1.13 incidents per 200,000 hours worked, which was 59% better than the 2022 U.S. industry average incidence rate of 2.77 incidents per 200,000 hours worked per the Mine Safety and Health Administration (MSHA).

Peabody strives to offer an inclusive work environment and engages, recognizes and develops employees. Peabody seeks a workforce that is comprised of diverse backgrounds, thoughts and experiences as a means to drive innovation and excellence within its business, and has formalized inclusion programs and training in policy and practice. Such diversity may also serve to mitigate risks to the business in the current tight labor market. The Company strives to attract and retain the best people, develop their potential and align their skills to important initiatives and activities. Peabody believes in fostering an inclusive work environment built on mutual trust, respect and engagement. Peabody invests in its employees through health and wellness programs, competitive total rewards and development opportunities. Peabody actively seeks employees’ feedback, including through surveys and focus groups on its employee value proposition.

The typical Peabody employee has approximately seven years of experience with the company, and more than 47% of all Peabody employees remain employed with the company for more than five years. The Company offers a variety of learning events, including mentoring and development programs to aid its employees in their career growth. During the past five years, approximately 27% of open positions and 64% of director and above positions have been filled by internal candidates through promotions and lateral career development opportunities.

## Information About Our Executive Officers

Set forth below are the names, ages and positions of Peabody’s executive officers. Executive officers are appointed by, and hold office at the discretion of, Peabody’s Board of Directors, subject to the terms of any employment agreements.

Name	Age <sup>(1)</sup>	Position <sup>(1)</sup>
James C. Grech	61	President and Chief Executive Officer
Mark A. Spurbeck	49	Executive Vice President and Chief Financial Officer
Darren R. Yeates	62	Executive Vice President and Chief Operating Officer
Scott T. Jarboe	49	Chief Administrative Officer and Corporate Secretary
Marc E. Hathhorn	52	President - U.S. Operations
Jamie Frankcombe	62	President - Australian Operations
Patrick J. Forkin III	64	Chief Development Officer

<sup>(1)</sup> As of February 17, 2023.



**James C. Grech** was named Peabody's President and Chief Executive Officer in June 2021. He has over 30 years of experience in the natural resources industry. Mr. Grech served as Chief Executive Officer and a member of the Board of Directors of Wolverine Fuels, LLC, a thermal coal producer and marketer based in Sandy, Utah, from July 2018 until May 2021. Prior to joining Wolverine Fuels, LLC, Mr. Grech served as President of Nexus Gas Transmission from October 2016 to July 2018, and previously held the position of Chief Commercial Officer and Executive Vice President of Consol Energy. Mr. Grech brings a strong operational, commercial and financial background in both mining and other energy business operations and has extensive utilities and capital markets experience. He serves as a director of Blue Danube. Mr. Grech holds a Bachelor of Science in Electrical Engineering from Lawrence Technological University and an MBA from the University of Michigan.

**Mark A. Spurbeck** was named Peabody's Executive Vice President and Chief Financial Officer in June 2020, after serving in an interim capacity from January 2020 through June 2020. He oversees finance, treasury, tax, internal audit, financial reporting, financial planning, risk and mine finance, corporate accounting functions, investor relations and corporate communications, information technology and shared services. Mr. Spurbeck has more than 25 years of accounting and financial experience, most recently serving as the Company's Senior Vice President and Chief Accounting Officer from early 2018 to January 2020. Prior to joining Peabody, Mr. Spurbeck served as Vice President of Finance and Chief Accounting Officer at Coeur Mining, Inc., a diversified precious metals producer, from March 2013 to January 2018. He also previously held multiple financial positions at Newmont Mining Corporation, a leading gold and copper producer, First Data Corporation, a financial services company, and Deloitte LLP, an international accounting, tax and advisory firm. Mr. Spurbeck is a Certified Public Accountant and holds a Bachelor's Degree in Accounting from Hillsdale College.

**Darren R. Yeates** was named Peabody's Executive Vice President and Chief Operating Officer in October 2020. He has executive responsibility for operations, sales and marketing and technical services. Mr. Yeates has over 35 years of mining industry experience. From May 2018 to December 2019, Mr. Yeates served as Chief Operating Officer of MACH Energy Australia, a developer and supplier of thermal coal to both the Australian domestic and Asian export markets. From January 2014 until June 2016, Mr. Yeates served as the Chief Executive Officer of GVK Hancock Coal, a joint venture developing the vast potential of the Galilee Basin in Central Queensland. Prior to that, he spent over 22 years with Rio Tinto, a global mining group, including as Acting Managing Director and Chief Operating Officer for Coal Australia, General Manager Ports and Infrastructure for Pilbara Iron and General Manager Tarong Coal. Prior to joining Rio Tinto, Mr. Yeates worked for six years for BHP, a mining, metals and petroleum company, in coal operations and metalliferous exploration. Mr. Yeates holds a Bachelor of Engineering (Mining) from the University of Queensland, a Graduate Diploma in Management from the University of Central Queensland and a Graduate Diploma of Applied Finance and Investment from the Securities Institute of Australia. He holds an Executive MBA from the Monash Mt Eliza Business School and is a Fellow of the Australian Institute of Company Directors.

**Scott T. Jarboe** was named Peabody's Chief Administrative Officer and Corporate Secretary in November 2021 after serving as Chief Legal Officer and Corporate Secretary since March 2020. He leads the Company's global human resources, legal, government affairs, and ethics and compliance functions. Mr. Jarboe joined Peabody in 2010 and has served in a variety of legal roles. Previously, Mr. Jarboe practiced law with Husch Blackwell LLP and Bryan Cave LLP. Mr. Jarboe holds a Bachelor of Arts Degree from the University of Kansas, a Master's Degree from the University of Missouri – Kansas City and a Juris Doctor degree from Washington University School of Law.

**Marc E. Hathhorn** was named Peabody's President - U.S. Operations in November 2021. He has executive responsibility for the Company's U.S. operating platform, which includes leadership of health, safety and environment, people, operational performance and product delivery. Mr. Hathhorn has more than 30 years of experience in mining engineering and operations in North and South America and in Australia. Mr. Hathhorn joined Peabody in 2011 as Senior Vice President - Midwest Operations, and subsequently served as Group Executive - Americas Operations Support from 2013 to 2016, Group Executive - Americas Operations from 2016 to 2019 and President - Australian Operations until assuming his current role. Previously, Mr. Hathhorn held various leadership positions with Drummond LTD in South America, including Mine Operations Superintendent, Port Manager, and Vice President - Mining Operations. Prior to joining Drummond LTD, Mr. Hathhorn held various engineering and supervisory positions with Newmont Gold Corporation. Mr. Hathhorn holds a Bachelor of Science Degree in Mining Engineering from the University of Idaho, College of Mines.



**Jamie Frankcombe** was named Peabody's President - Australian Operations in November 2021. He has executive responsibility for the Company's Australian operating platform, which includes leadership of health, safety and environment, people, operational performance and product delivery. He is a senior mining executive with 30 years of experience in developing and managing large-scale open cut and underground coal, iron ore, copper and gold mines in Australia, Indonesia, Asia and the Americas. Prior to joining Peabody, Mr. Frankcombe served as Deputy Managing Director for Phu Bia Mining in Laos managing the Phu Kham (copper & gold) and Ban Houayxai (gold & silver) operating assets from June 2021 to November 2021. Prior to that, Mr. Frankcombe served as Integration Team Lead with Aurelia Metals Ltd from November 2020 to April 2021 with the responsibility of integrating the Dargues Gold Mine project and operations into the Aurelia Metals Ltd portfolio. Prior to that, he spent seven years as Chief Operating Officer for Whitehaven Coal Mining Ltd., overseeing operational and safety leadership of four open cut coal mines and one underground mine. In addition, he served as a director of Coal Services Pty Ltd. from September 2017 to July 2021. Mr. Frankcombe holds a Bachelor of Engineering (Mining) from University of Wollongong and a Master of Business Administration (Technology) from Deakin University.

**Patrick J. Forkin III** was named Chief Development Officer in July 2022 after serving as Senior Vice President - Corporate Development and Strategy since November 2017. He leads global strategy, mergers and acquisitions, portfolio management, U.S. thermal coal sales and renewable energy development. Mr. Forkin joined Peabody in 2010 and has served in a variety of roles. He has an extensive background in corporate finance, the energy industry, mergers and acquisitions and equity market research. Prior to joining Peabody, Mr. Forkin was in senior leadership roles at a U.S. solar development company and investment banking firms specializing in renewable and conventional energy. He spent the first nine years of his career at Deloitte LLP. Mr. Forkin holds a Bachelor of Science degree in Accountancy from the University of Illinois at Urbana-Champaign and is a Certified Public Accountant (inactive).

## **Regulatory Matters — U.S.**

Federal, state and local authorities regulate the U.S. coal mining industry with respect to matters such as employee health and safety, permitting and licensing requirements, air quality standards, water pollution, plant and wildlife protection, the reclamation and restoration of mining properties after mining has been completed, the discharge of materials into the environment, surface subsidence from underground mining and the effects of mining on groundwater quality and availability. In addition, the industry is affected by significant requirements mandating certain benefits for current and retired coal miners. Numerous federal, state and local governmental permits and approvals are required for mining operations. Peabody believes that it has obtained all permits currently required to conduct its present mining operations.

The Company endeavors to conduct its mining operations in compliance with all applicable federal, state and local laws and regulations. However, because of extensive and comprehensive regulatory requirements, violations during mining operations occur from time to time in the industry.

### ***Mine Safety and Health***

Peabody is subject to health and safety standards both at the federal and state level. The regulations are comprehensive and affect numerous aspects of mining operations, including training of mine personnel, mining procedures, blasting, the equipment used in mining operations and other matters.

MSHA is the entity responsible for monitoring compliance with the federal mine health and safety standards. MSHA employs various enforcement measures for noncompliance, including the issuance of monetary penalties and orders of withdrawal from a mine or part of a mine.

In Part I, Item 4. "Mine Safety Disclosures" and in Exhibit 95 to this Annual Report on Form 10-K, the Company provides additional details on MSHA compliance.

### ***Black Lung (Coal Workers' Pneumoconiosis)***

**Black Lung Benefits.** Under the U.S. Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977, as amended in 1981, each U.S. coal mine operator who was the last to employ a claimant for a cumulative year of employment, with the last day worked for the operator after July 1, 1973, must pay federal black lung benefits and medical expenses to claimants whose claims for benefits are allowed. Coal mine operators must also make payments to a trust fund for the payment of benefits and medical expenses to claimants who last worked in the coal industry prior to July 1, 1973. Historically, very few of the miners who sought federal black lung benefits were awarded these benefits; however, the approval rate has increased following implementation of black lung provisions contained in the Affordable Care Act. The Affordable Care Act included significant changes to the federal black lung program 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.

The trust fund has been funded by an excise tax on U.S. production. As a result of legislation enacted in December 2020, the excise tax rates were set at 4.4% of the gross sales price not to exceed \$1.10 per ton of underground coal and \$0.55 per ton of surface coal for the year ending December 31, 2021. This enacted legislation expired on December 31, 2021 and the excise tax rates reverted back to 2% of the gross sales price not to exceed \$0.50 per ton of underground coal and \$0.25 per ton of surface coal. Effective October 1, 2022, the excise tax rates reverted back to 4.4% of the gross sales price not to exceed \$1.10 per ton of underground coal and \$0.55 per ton of surface coal due to the enactment of the Inflation Reduction Act of 2022.

Peabody recognized expense related to the tax of \$32.4 million, \$51.5 million and \$53.3 million for the years ended December 31, 2022, 2021 and 2020, respectively. During the year ended December 31, 2022, Peabody recognized additional expense of approximately \$8 million as a result of the higher excise tax rates.

**Black Lung Benefits Act Self-Insurance Requirements.** The Black Lung Benefits Act requires each coal mine operator to secure the payment of its potential benefits liability by either qualifying as a self-insurer or by purchasing and maintaining a commercial insurance contract. The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) is responsible for authorizing coal mine operators to self-insure and for setting the security amounts. As part of its ongoing efforts to reform the self-insurance program to ensure that operators are adequately securing their liabilities, the OWCP proposed a rule in January 2023 to update its regulations for authorizing operators to self-insure and for determining appropriate security amounts. The public comment period for the proposed rule ends March 20, 2023.

A change in requirements for security posted to self-insure black lung liabilities could result in the Company being required to post additional security for its obligations. At the request of OWCP, the Company recently refiled its application for self-insurance.

### **Environmental Laws and Regulations**

Peabody is subject to various federal, state, local and tribal environmental laws and regulations. These laws and regulations place substantial requirements on its coal mining operations, and require regular inspection and monitoring of its mines and other facilities to ensure compliance. The Company is also affected by various other federal, state, local and tribal environmental laws and regulations that impact its customers.

**Surface Mining Control and Reclamation Act.** In the U.S., the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which is administered by the Office of Surface Mining Reclamation and Enforcement (OSMRE), established mining, environmental protection and reclamation standards for surface mining and underground mining. Mine operators must obtain SMCRA permits and permit renewals for mining operations from the OSMRE or from the respective state regulatory authority. Where state regulatory agencies have adopted federal mining programs under SMCRA, the state becomes the primary regulatory authority, with oversight from OSMRE. States in which Peabody has active mining operations have achieved primacy control of enforcement through federal authorization. In Arizona, where Peabody performs reclamation work on tribal lands, the Company is regulated by the OSMRE because the tribes do not have SMCRA authorization.

SMCRA provides for three categories of bonds: surety bonds, collateral bonds and self-bonds. A surety bond is an indemnity agreement in a sum certain payable to the regulatory authority, executed by the permittee as principal and which is supported by the performance guarantee of a surety corporation. A collateral bond can take several forms, including cash, letters of credit, first lien security interest in property or other qualifying investment securities. A self-bond is an indemnity agreement in a sum certain executed by the permittee or by the permittee and any corporate guarantor made payable to the regulatory authority.

The Company's total reclamation bonding requirements in the U.S. were \$1,035.0 million as of December 31, 2022. The bond requirements for a mine represent the calculated cost to reclaim the current operations of a mine if it ceased to operate in the current period. The cost calculation for each bond must be completed according to the regulatory authority of each state or OSMRE. The Company's asset retirement obligations calculated in accordance with generally accepted accounting principles for its active and inactive U.S. operations were \$533.3 million as of December 31, 2022. The bond requirement amount for the Company's U.S. operations significantly exceeds the financial liability for final mine reclamation because the asset retirement obligation liability is discounted from the end of the mine's economic life to the balance sheet date in recognition that the final reclamation cash outlay is projected to be a number of years away. The bond amount, in contrast with the asset retirement obligation, presumes reclamation begins immediately, as well as different assumptions related to the cost of equipment and services utilized in the reclamation process.

After a permit application is prepared and submitted to the regulatory agency, it goes through a completeness and technical review. Public notice of the proposed permit is given for a comment period before a permit can be issued. Regulatory authorities have considerable discretion in the timing of the permit issuance and the public has the right to comment on and otherwise engage in the permitting process, including public hearings and through intervention in the courts. Before a SMCRA permit is issued, a mine operator must submit a bond or other form of financial security to guarantee the performance of reclamation bonding requirements.

In situations where the Company's coal resources are federally owned, the U.S. Bureau of Land Management oversees a substantive exploration and leasing process. If surface land is managed by the U.S. Forest Service, that agency serves as the cooperating agency during the federal coal leasing process. Federal coal leases also require an approved federal mining permit under the signature of the Assistant Secretary of the Department of the Interior.

The SMCRA Abandoned Mine Land Fund requires a fee on all coal produced in the U.S. The proceeds are used to rehabilitate lands mined and left unreclaimed prior to August 3, 1977 and to pay health care benefit costs of orphan beneficiaries of the Combined Fund created by the Coal Industry Retiree Health Benefit Act of 1992. The fee amount can change periodically based on changes in federal legislation. Pursuant to the Tax Relief and Health Care Act of 2006, from October 1, 2012 through September 30, 2021, the fee was \$0.28 and \$0.12 per ton of surface-mined and underground-mined coal, respectively. As a result of the Abandoned Mine Land Reclamation Amendments of 2021, which Congress enacted on November 15, 2021 as part of the Infrastructure Investment and Jobs Act, from October 1, 2021 through September 30, 2034, the fee is \$0.224 and \$0.096 per ton of surface-mined and underground-mine coal, respectively. The Company recognized expense related to the fees of \$21.7 million, \$27.0 million and \$28.4 million for the years ended December 31, 2022, 2021 and 2020, respectively.

*Clean Air Act (CAA).* The CAA, enacted in 1970, and comparable state and tribal laws that regulate air emissions affect the Company's U.S. coal mining operations both directly and indirectly.

*National Ambient Air Quality Standards (NAAQS).* The CAA requires the United States Environmental Protection Agency (EPA) to review national ambient air quality standards every five years to determine whether revision to current standards are appropriate. As part of this recurring review process, the EPA in 2020 proposed to retain the ozone NAAQS promulgated in 2015, including both the primary (public health) and secondary (public welfare) standards. The EPA subsequently promulgated final standards to this effect. In 2021, fifteen states and other petitioners filed a petition for review of the rule in the United States Court of Appeals for the D.C. Circuit (D.C. Circuit). The litigation is currently in abeyance following a motion filed by the EPA to allow for review of the standards.

The EPA also proposed in 2020 to retain the particulate matter (PM) NAAQS last revised in 2012. On December 18, 2020, the EPA issued a final rule to retain both the primary annual and 24-hour PM standards for fine particulate matter (PM<sub>2.5</sub>) and the primary 24-hour standard for coarse particulate matter (PM<sub>10</sub>) and secondary PM<sub>10</sub> standards. This rule has also been challenged in the D.C. Circuit by several states and environmental organizations. The case is currently in abeyance following a motion filed by the EPA to allow for review of the standards. On January 6, 2023, the EPA proposed to lower the level of the annual PM<sub>2.5</sub> NAAQS from 12.0  $\mu\text{g}/\text{m}^3$  to within the range of 9.0 to 10.0  $\mu\text{g}/\text{m}^3$ .

More stringent PM or ozone standards would require new state implementation plans to be developed and filed with the EPA and may trigger additional control technology for mining equipment or result in additional challenges to permitting and expansion efforts. This could also be the case with respect to other NAAQS for nitrogen dioxide (NO<sub>2</sub>) and sulfur dioxide (SO<sub>2</sub>), although these standards are not subject to a statutorily-required review until 2023 for NO<sub>2</sub> and 2024 for SO<sub>2</sub>.

*Final New Source Performance Standards (NSPS) for Fossil Fuel-Fired Electricity Utility Generating Units (EGUs).* The EPA promulgated a final rule to limit carbon dioxide (CO<sub>2</sub>) from new, modified and reconstructed fossil fuel-fired EGUs under Section 111(b) of the CAA on August 3, 2015, and published it in the Federal Register on October 23, 2015.

This rule requires that newly-constructed fossil fuel-fired steam generating units achieve an emission standard for carbon dioxide of 1,400 lb carbon dioxide per megawatt-hour gross output (CO<sub>2</sub>/MWh-gross). The standard (known as the Best System of Emission Reduction (BSER)) is based on the performance of a supercritical pulverized coal boiler implementing partial carbon capture, utilization and storage (CCUS). Modified and reconstructed fossil fuel-fired steam generating units must implement the most efficient generation achievable through a combination of best operating practices and equipment upgrades, to meet an emission standard consistent with best historical performance. Reconstructed units must implement the most efficient generating technology based on the size of the unit (supercritical steam conditions for larger units, to meet a standard of 1,800 lb CO<sub>2</sub>/MWh-gross, and subcritical conditions for smaller units to meet a standard of 2,000 lb CO<sub>2</sub>/MWh-gross).

Numerous legal challenges to the final rule were filed in the D.C. Circuit. Sixteen separate petitions for review were filed, and the challengers include 25 states, utilities, mining companies (including Peabody), labor unions, trade organizations and other groups. The cases were consolidated under the case filed by North Dakota (D.C. Cir. No. 15-1381). Four additional cases were filed seeking review of the EPA's denial of reconsideration petitions in a final action published in the May 6, 2016 Federal Register entitled "Reconsideration of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units; Notice of final action denying petitions for reconsideration." Pursuant to an order of the court, these cases remain in abeyance, subject to requirements for the EPA to file 90-day status reports.

On December 20, 2018, the EPA proposed to revise the 2015 NSPS to modify the minimum requirements for newly constructed coal-fired units from partial carbon capture and storage to efficiency-based standards. (83 Fed. Reg. 65,424 (Dec. 20, 2018)). In contrast to the 2015 rule, the proposed rule defined BSER as the most efficient demonstrated steam cycle in combination with the best operating practices. The EPA indicated that the primary reason for revising BSER was the high cost and limited geographic availability of carbon capture and storage technology. Status reports filed with the D.C. Circuit in *North Dakota v. EPA* indicate that litigation on the 2015 rule should remain in abeyance pending the EPA's action on the 2018 proposed rule.

**EPA Regulation of Greenhouse Gas Emissions from Existing Fossil Fuel-Fired EGUs.** On October 23, 2015, the EPA published a final rule in the Federal Register regulating greenhouse gas emissions from existing fossil fuel-fired EGUs under Section 111(d) of the CAA (80 Fed. Reg. 64,662 (Oct. 23, 2015)). The rule (known as the Clean Power Plan or CPP) established emission guidelines for states to follow in developing plans to reduce greenhouse gas (GHG) emissions from existing fossil fuel-fired EGUs. The CPP required that the states individually or collectively create systems that would reduce carbon emissions from any EGU located within their borders by 28% in 2025 and 32% in 2030 (compared with a 2005 baseline).

The EPA subsequently proposed to repeal the CPP and in August 2018 issued a proposed rule to replace the CPP, with the Affordable Clean Energy (ACE) Rule. In June 2019, the EPA issued a combined package that finalized the CPP repeal rule as well as the replacement rule, ACE. The ACE rule sets emissions guidelines for GHG emissions from existing EGUs based on a determination that efficiency heat rate improvements constitute the BSER. Numerous petitions for review challenging the ACE Rule were filed in the D.C. Circuit and subsequently consolidated. In January 2021, a 3-judge panel of the D.C. Circuit vacated and remanded the ACE Rule to the EPA, including its repeal of the CPP and amendments to the implementing regulations that extended the compliance timeline.

On October 29, 2021, the Supreme Court of the United States (Supreme Court) granted certiorari in four consolidated matters seeking review of the D.C. Circuit's opinion vacating the ACE rule and invalidating the repeal of the CPP. On June 30, 2022, the Supreme Court issued its opinion in *West Virginia v. EPA*, No. 20-1530. The Supreme Court ruled that the EPA does not have Congressional authority under Section 111(d) of the CAA to limit emissions at existing power plants through generation shifting to other fuels and/or renewable energy, but still can regulate emissions at plants by emissions reductions technologies as the EPA has done in the past. The D.C. Circuit's opinion was reversed and remanded, leaving neither the CPP or the ACE Rule in effect. Thus, it will be necessary for the EPA to initiate new rulemaking in order to control GHG emissions from EGUs using section 111(d) of the CAA. The EPA tentatively plans to propose emission guidelines for EGUs in 2023. The Company will continue to monitor EPA rulemaking in this regard.

**EPA's Greenhouse Gas Permitting Regulations for Major Emission Sources.** In May 2010, the EPA published final rules requiring permitting and control technology requirements for greenhouse gases under the Prevention of Significant Deterioration (PSD) and Title V permitting programs that apply to stationary sources of air pollution. The EPA determined that these requirements were "triggered" by the EPA's prior regulation of greenhouse gases from motor vehicles. These rules were subsequently upheld by the D.C. Circuit on June 26, 2012. On June 23, 2014, however, the Supreme Court ruled that the EPA could not require PSD and Title V permitting for greenhouse gases emitted from stationary sources if those sources were not otherwise considered to be "major sources" of conventional pollutants for purposes of PSD and Title V (known as Step 2 sources). In accordance with that decision, the D.C. Circuit vacated the federal regulations that implemented Step 2 of the Greenhouse Gas Tailoring Rule in 2015. Subsequently, the EPA removed the vacated elements from its rules to ensure that neither the PSD nor Title V rules require a source to obtain a permit solely because the source emits or has the potential to emit greenhouse gases above the applicable thresholds. The EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can the EPA approve provisions submitted by a state for inclusion in its state implementation plan providing this authority.

**Cross State Air Pollution Rule (CSAPR) and CSAPR Update Rule.** In 2011, the EPA finalized the CSAPR, which requires the District of Columbia and 27 states from Texas eastward (not including the New England states or Delaware) to reduce power plant emissions that cross state lines and significantly contribute to ozone and/or fine particle pollution in other states. In 2016, the EPA published the final CSAPR Update Rule which imposed additional reductions in nitrogen oxides (NO<sub>x</sub>) beginning in 2017 in 22 states subject to CSAPR. This rule was subsequently remanded back to the EPA. *Wisconsin v. EPA*, 938 F.3d 303.

In April 2021, the EPA published a final rule in the Federal Register to address the D.C. Circuit remand. This rule imposed further reductions of NO<sub>x</sub> emissions in 12 states that were subject to the original 2016 rule, which was based on the 2008 ozone NAAQS.

In the same rule, the EPA determined that 9 states did not significantly contribute to downwind nonattainment and/or maintenance issues and therefore did not require additional emission reductions. The EPA subsequently issued Federal Implementation Plans (FIPs) to lower state ozone season NO<sub>x</sub> budgets in 2021 to 2024 in the affected states. A petition for review challenging the 2021 rule was filed in the D.C. Circuit. Briefing is completed and oral arguments were held September 28, 2022, but this does not stay the effectiveness of the rule.

On April 6, 2022, the EPA proposed FIPs to address regional ozone transport for the 2015 ozone NAAQS. The proposed rule would result in new ozone season emission budgets for NO<sub>x</sub> in 25 states, including four Western states, and additionally contains provisions that would require daily “backstop” emission limits for coal-fired power plants over 100 megawatts. The proposed rule would also set first-time limits on certain industrial sources. The EPA estimates that by 2026 the compliance cost will be \$1.1 billion. These emission limitations would apply in addition to requirements contained in State Implementation Plans to control ozone precursors in affected states, although states have the option to replace these limits with equally strict or more stringent limitations.

**Mercury and Air Toxic Standards (MATS).** The EPA published the final MATS rule in the Federal Register in 2012. The MATS rule revised the NSPS for NO<sub>x</sub>, SO<sub>2</sub> and PM for new and modified coal-fueled electricity generating plants, and imposed maximum achievable control technology (MACT) emission limits on hazardous air pollutants (HAPs) from new and existing coal-fueled and oil-fueled electric generating plants. MACT standards limit emissions of mercury, acid gas HAPs, non-mercury HAP metals and organic HAPs.

In 2020, the EPA issued a final rule reversing a prior finding and determined that it is not “appropriate and necessary” under the CAA to regulate HAP emissions from coal- and oil-fired power plants. This rule also finalized residual risk and technology review standards for the coal- and oil-fired electricity utility generating units source category. Both actions were challenged in the D.C. Circuit but this litigation was placed in abeyance. On February 9, 2022 the EPA proposed a rule to revoke the 2020 finding and to reaffirm the agency’s 2016 finding that it remains “appropriate and necessary” to regulate HAP emissions from coal- and oil-fired power plants under Section 112 of the CAA. In the same proposal, the EPA solicited comments on the performance and cost of new or improved technologies to control HAPs from these power plants as part of the agency’s review of related residual risk and technology review standards.

**Regional Haze.** The Clean Air Act contains a national visibility goal for the “prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.” The EPA promulgated comprehensive regulations in 1999 requiring all states to submit plans to address regional haze that could affect 156 national parks and wilderness areas, including requirements for certain sources to install the best available retrofit technology and for states to demonstrate “reasonable progress” towards meeting the national visibility goal. States are required to revise plans every 10 years.

**New Source Review (NSR).** The Clean Air Act imposes permitting requirements when a new source undergoes construction or when an existing source is reconstructed or undergoes a major modification. These requirements are contained in the CAA’s PSD and Nonattainment New Source Review (NNSR) programs, generally referred to as NSR. On August 4, 2020, the EPA released a guidance memorandum concerning implementation of plantwide applicability limitations (PALs) (Guidance on Plantwide Applicability Limitation Provisions Under the New Source Review Regulations). PALs allow sources to make physical and operational changes under a plantwide emission limit without “triggering” NSR.

The EPA has also taken action on a number of different rules and guidance affecting the interpretation and application of NSR. In a final rule (83 Fed. Reg. 57,324 (Nov. 15, 2018)), the EPA completed reconsideration of a 2009 petition to clarify when certain actions must be “aggregated” for purposes of determining whether these actions are part of a single project to which NSR applies. The EPA has additionally published guidance on the definition of “ambient air” (Revised Policy on Exclusions from “Ambient Air,” Dec. 2, 2019) and guidance concerning when multiple air pollution-emitting activities may be considered to be “adjacent” so that they should be considered to be a single source (Interpreting “Adjacent” for New Source Review and Title V Source Determinations in All Industries Other Than Oil and Gas, Nov. 26, 2019). Additional memorandum and applicability determinations have also been made that address other NSR issues and the EPA has also taken steps to review and potentially revise previously issued rules and guidance, including those related to project emissions accounting and fugitive emissions. PSD rules, guidance and memorandum may affect the construction, reconstruction and modification of sources and the level of pollution control requirements that will be necessary on a case-by-case basis.

**Federal Coal Leasing Moratorium.** The Executive Order on Promoting Energy Independence and Economic Growth (EI Order), signed on March 28, 2017, lifted the Department of Interior's federal coal leasing moratorium and rescinded guidance on the inclusion of social cost of carbon in federal rulemaking. Following the EI Order, the Interior Secretary issued Order 3349 ending the federal coal leasing moratorium. Environmental groups took the issue to court (District of Montana) and in April 2019, the court held the lifting of the moratorium triggered National Environmental Policy Act (NEPA) review. On May 22, 2020, the court held that the Department of the Interior's issuance of an Environmental Assessment and Finding of No Significant Impact (FONSI) remedied the prior NEPA violations. Thereafter, environmental groups amended their complaint to challenge the Environmental Assessment and FONSI. On August 12, 2022, the court invalidated the Environmental Assessment and FONSI and reinstated the moratorium until completion of a sufficient NEPA analysis. The August 2022 decision is currently on appeal to the U.S. Court of Appeals for the Ninth Circuit.

**Clean Water Act (CWA).** The CWA of 1972 directly impacts U.S. coal mining operations by requiring effluent limitations and treatment standards for wastewater discharge from mines through the National Pollutant Discharge Elimination System (NPDES). Regular monitoring, reporting and performance standards are requirements of NPDES permits that govern the discharge of water from mine-related point sources into receiving waters.

The U.S. Army Corps of Engineers (Corps) regulates certain activities affecting navigable waters and waters of the U.S., including wetlands. Section 404 of the CWA requires mining companies to obtain permits from the Corps to place material in or mine through jurisdictional waters of the U.S.

States are empowered to develop and apply water quality standards. These standards are subject to change and must be approved by the EPA. Discharges must either meet state water quality standards or be authorized through available regulatory processes such as alternate standards or variances. Standards vary from state to state. Additionally, through the CWA Section 401 certification program, state and tribal regulators have approval authority over federal permits or licenses that might result in a discharge to their waters. State and tribal regulators consider whether the activity will comply with their water quality standards and other applicable requirements in deciding whether or not to certify the activity. The EPA issued a final rule in 2020 that could limit state and tribal regulators' authority by allowing the EPA to certify projects over state or tribal regulator objections in some circumstances. That rule was temporarily vacated by a district court, but a Supreme Court order on April 7, 2022, effectively reinstated the rule. The EPA issued another proposal in June 2022 that would supersede the 2020 rule and expand state and tribal regulators' authority to review activities that require federal permits or licenses and to impose conditions they believe are necessary to ensure compliance with water quality requirements. Comments for this rule were due August 8, 2022 and final rule is expected in early 2023.

**CWA Definition of "Waters of the United States".** In January 2020 the EPA and the Corps finalized the Navigable Waters Protection Rule to revise the definition of "Waters of the United States" and thereby establish the scope of federal regulatory authority under the CWA. On August 30, 2021, a federal court in Arizona vacated the Navigable Waters Protection Rule, and on September 3, 2021, the EPA and the Corps announced that they had "halted implementation" of the rule nationwide and that they are interpreting "Waters of the United States" consistent with the pre-2015 regulatory framework. On December 30, 2022, the agencies released the pre-publication version of a final rule that formally repeals the Navigable Waters Protection Rule and codifies a revised definition of "Waters of the United States" that is generally consistent with the pre-2015 regulatory framework that they are currently implementing. The final rule was published in the Federal Register on January 18, 2023 and takes effect on March 20, 2023. In addition, the Supreme Court is currently considering *Sackett v. EPA*, No. 21-454, a case involving the scope of federal regulatory authority over wetlands. The Court heard oral arguments on October 3, 2022, and the opinion is forthcoming. Depending on the outcome of that case, the agencies may need to revisit the most recent rulemaking.

**Effluent Limitations Guidelines for the Steam Electric Power Generating Industry.** On September 30, 2015, the EPA published a final rule setting new or additional requirements for various wastewater discharges from steam electric power plants. The rule set zero discharge requirements for some waste streams, as well as new, more stringent limits for arsenic, mercury, selenium and nitrogen applicable to certain other waste streams. On October 13, 2020, the EPA issued a final rule revising the technology-based effluent limitations guidelines and standards for the steam electric power generating point source category applicable to flue gas desulfurization wastewater and bottom ash transport water. However, on August 3, 2021, the EPA announced it is undertaking a supplemental rulemaking to "strengthen certain discharge limits" applicable to steam electric power plants. The EPA expects to issue that proposal in early 2023. As finalized, the revised effluent limitations guidelines could significantly increase costs for many coal-fired steam electric power plants.



*National Environmental Policy Act.* NEPA, signed into law in 1970, requires federal agencies to review the environmental impacts of their decisions and issue either an environmental assessment or an environmental impact statement. Peabody must provide information to agencies when it proposes actions that will be under the authority of the federal government. The NEPA process involves public participation and can involve lengthy timeframes. The White House Council on Environmental Quality (CEQ) issued a final rule comprehensively updating and modernizing its longstanding NEPA regulations on July 16, 2020. That final rule sought to reduce unnecessary paperwork, burdens and delays, promote better coordination among agency decision makers, and clarify scope of NEPA reviews, among other things. States and environmental groups have filed several lawsuits challenging the final rule. On April 20, 2022, however, the CEQ published the final Phase 1 rule that partially amended the 2020 rule by restoring key provisions of the pre-2020 NEPA regulations. The CEQ plans to propose a Phase 2 rule in the near future that makes broader changes to the 2020 rule. Separately, the CEQ published NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change on January 9, 2023. The interim guidance was effective immediately, though the agency is accepting comments on the guidance.

*Resource Conservation and Recovery Act (RCRA).* RCRA, which was enacted in 1976, affects U.S. coal mining operations by establishing “cradle to grave” requirements for the treatment, storage and disposal of hazardous wastes. Typically, the only hazardous wastes generated at a mine site are those from products used in vehicles and for machinery maintenance. Coal mine wastes, such as overburden and coal cleaning wastes, are not considered hazardous wastes under RCRA.

Subtitle C of RCRA exempted fossil fuel combustion wastes from hazardous waste regulation until the EPA completed a report to Congress and made a determination on whether the wastes should be regulated as hazardous. On December 19, 2014, the EPA announced the final rule on coal combustion residuals (CCR or coal ash). As finalized, the rule continues the exemption of CCR from regulation as a hazardous waste, but does impose new requirements at existing CCR surface impoundments and landfills that will need to be implemented over a number of different time-frames in the coming months and years, as well as at new surface impoundments and landfills. Generally, EPA-imposed requirements will increase the cost of CCR management, but not as much as if the rule had regulated CCR as hazardous.

*Proposed Rule for Disposal of CCR from Electric Utilities; Federal CCR Permit Program and Revisions to Closure Requirements.* On February 20, 2020, as required by the Water Infrastructure Improvements for the Nation Act, the EPA proposed a federal permitting program for the disposal of CCR in surface impoundments and landfills. Under the proposal, the EPA would directly implement the permit program in Indian Country, and at CCR units located in states that have not submitted their own CCR permit program for approval. The proposal includes requirements for federal CCR permit applications, content and modification, as well as procedural requirements. The comment period for the EPA's proposal ended on April 20, 2020. Although EPA had planned to finalize this rule in 2021, the EPA now expects to issue a final rule around July 2023. Separately, on August 28, 2020 and November 12, 2020, the EPA finalized two sets of amendments to its 2015 CCR rule to partially address the D.C. Circuit's 2018 decision holding that certain provisions of that rule were not sufficiently protective. The EPA is still deciding how to further revise the 2015 rule to address the remainder of the court decision. The EPA expects to finalize additional revisions in August 2023.

*Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).* Although generally not a prominent environmental law in the coal mining sector, CERCLA, which was enacted in 1980, nonetheless may affect U.S. coal mining operations by creating liability for investigation and remediation in response to releases of hazardous substances into the environment and for damages to natural resources. Under CERCLA, joint and several liabilities may be imposed on waste generators, site owners or operators and others, regardless of fault.

*Toxic Release Inventory.* Arising out of the passage of the Emergency Planning and Community Right-to-Know Act in 1986 and the Pollution Prevention Act passed in 1990, the EPA's Toxic Release Inventory program requires companies to report the use, manufacture or processing of listed toxic materials that exceed established thresholds, including chemicals used in equipment maintenance, reclamation, water treatment and ash received for mine placement from power generation customers.

*Endangered Species Act (ESA).* The ESA of 1973 and counterpart state legislation is intended to protect species whose populations allow for categorization as either endangered or threatened. Changes in listings or requirements under these regulations could have a material adverse effect on Peabody's costs or its ability to mine some of its properties in accordance with its current mining plans. During the Trump Administration, the Departments of the Interior and Commerce issued finalized five rules aiming to streamline and update the ESA. But in June 2021, agencies announced their plan to revise, rescind, or reinstate the rules that were finalized (or withdrawn) during the Trump Administration that conflict with the Biden Administration's objectives. The agencies plan to begin issuing proposed rules in mid-2023.

*Use of Explosives.* Peabody's surface mining operations are subject to numerous regulations relating to blasting activities. Pursuant to these regulations, it incurs costs to design and implement blast schedules and to conduct pre-blast surveys and blast monitoring. The storage of explosives is subject to strict federal regulatory requirements. The U.S. Bureau of Alcohol, Tobacco and Firearms (ATF) regulates the use of explosive blasting materials. In addition to ATF regulation, the Department of Homeland Security is expected to finalize an ammonium nitrate security program rule. On July 30, 2019, the OSMRE officially withdrew its decision to initiate rulemaking related to emissions generated from blasting at coal mining operations. The decision cited its lack of statutory authority and the sufficiency of the existing regulatory framework.

*Federal Report on Climate Change.* On November 23, 2018, the U.S. Global Change Research Program, a working group comprised of 13 U.S. governmental departments and agencies, issued the Fourth National Climate Assessment. The report lists the observed effects of "increasing greenhouse gas concentrations on Earth's climate" and enumerates the impacts of those observed effects. The report also discusses the alternatives for reducing the impacts of climate-related risks, including through mitigation and adaptation. While there are no explicit regulatory actions that flow from the issuance of the report, both the legislative and executive branches of government may rely on its conclusions to shape and justify policies and actions going forward. A Fifth National Climate Assessment is currently in development with an anticipated publication date in 2023.

*SEC Climate-Related Disclosures.* On March 21, 2022, the SEC proposed rules that would require public companies to disclose extensive climate-related information in certain SEC filings. Specifically, the proposed rules would add new Subpart 1500 to Regulation S-K and new Article 14 to Regulation S-X to require disclosure of climate-related risks that are reasonably likely to have a material impact on a public company's business, results of operations, or financial condition; GHG emissions associated with a public company that includes, in many cases, an attestation report by a GHG emissions attestation provider; and climate-related financial metrics to be included in a company's audited financial statements. The Company is currently assessing the potential impact of the proposed rules. The public comment period on the proposed rules has concluded and final rules are expected in 2023.

*Inflation Reduction Act of 2022.* The Inflation Reduction Act of 2022 was signed into law on August 16, 2022. Among its many provisions are programs that provide grants and other forms of direct and indirect financial assistance for the deployment of zero emission technologies as well as other actions that could affect energy markets and the future use of coal. The Company is currently assessing the potential environmental impacts of the legislation.

## **Regulatory Matters — Australia**

The Australian mining industry is regulated by Australian federal, state and local governments with respect to environmental issues such as land reclamation, water quality, air quality, dust control, noise, planning issues (such as approvals to expand existing mines or to develop new mines) and health and safety issues. The Australian federal government retains control over the level of foreign investment and export approvals. Industrial relations are regulated under both federal and state laws. Australian state governments also require coal companies to post deposits or give other security against land which is being used for mining, with those deposits being returned or security released after satisfactory reclamation is completed.

*Fair Work Act.* In December 2022, the federal government passed The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022, which amends the Fair Work Act. The legislation introduces several changes to workplace laws in Australia including changes to enterprise agreement making and termination, to when industrial action can be taken and to access to multi-employer bargaining. In addition, employers will no longer be able to employ individuals on a fixed-term contract for more than two years, and access to flexible working arrangements for employees has been expanded. A number of measures aimed at addressing the gender pay gap have also been introduced.

*New South Wales Coal Directions.* The State of New South Wales (NSW) enacted the Energy and Utilities Administration Amendment Act 2022 granting the State Premier and Minister for Energy the ability to issue directions in the event of a coal market price emergency (among other powers). On December 22, 2022, the State Premier declared a coal market price emergency on the basis that the declaration was necessary to reduce the risk that increases in coal prices could contribute to an increase in electricity prices. On December 23, 2022, Peabody and a number of other coal producers in NSW were issued with directions that require those coal producers to reserve and sell a portion of the coal produced to NSW power generators at a capped price until June 30, 2024. On January 31, 2023, amended directions were issued. The directions, as they currently stand, apply to the Wilpinjong Mine and also impose a number of additional reporting obligations with respect to coal produced from the Wilpinjong Mine. However, the NSW government is in ongoing discussions with coal producers and power generators regarding issuing additional directions. It is anticipated that these directions will not impact Wilpinjong Mine, but may require the reservation of coal at the Wambo Mines; however, the nature and extent of those obligations and associated reporting requirements are still evolving and require further clarification from the NSW government.



**Metropolitan Mine Stormwater Discharge.** Over the past two years, there has been significantly high rainfall in New South Wales, including unprecedented rain totals at the Metropolitan Mine site. While stormwater collected at the mine site is managed through two sedimentation dams, at times the heavy rainfall has presented challenges with managing the significant volumes of stormwater, as the surface water management infrastructure has not had sufficient capacity. As a result, on multiple occasions throughout 2021 and 2022 stormwater has been discharged from the mine site. Metropolitan Collieries Pty Ltd (MCPL), a wholly-owned subsidiary of Peabody, removed accumulated material from the sedimentation dams to restore full site stormwater capacity by December 31, 2022 and has identified and is implementing additional controls for the management of sediment moving forward. Despite the measures undertaken by MCPL to manage and improve the situation, the Environment Protection Authority is currently undertaking an investigation in relation to the discharges of sediment laden water from the mine site and a review process of the Metropolitan Mine's environmental protection license. The Environment Protection Authority is investigating potential offenses against the environmental protection legislation arising from the discharges.

**Mining Tenements and Environmental.** In Queensland and New South Wales, the development of a mine requires both the grant of a right to extract the resource and an approval which authorizes the environmental impact. These approvals are obtained under separate legislation from separate government authorities. However, the application processes run concurrently and are also concurrent with any native title or cultural heritage process that is required. The environmental impacts of mining projects are regulated by state and federal governments. Federal regulation will only apply if the particular project will significantly impact a matter of national environmental significance (for example, a water resource, an endangered species or particular protected places). Environmental approvals processes involve complex issues that, on occasion, require lengthy studies and documentation.

In February 2019, the New South Wales Land and Environment Court (LEC) upheld the government's denial of a planning approval for a non-Peabody coal mining project (*Gloucester Resources Limited v. Minister for Planning*). Although the approval was refused for other reasons, the judge in that case discussed 'Scope 3' greenhouse gas emissions resulting from the consumption of coal to be mined under the proposed project. Such emissions are often raised as a ground of objection to Australian mining projects, including Peabody's mining projects. For example, in a subsequent LEC decision (*Australian Coal Alliance Incorporated v. Wyong Coal Pty Ltd*), the approval of a coal mining project was confirmed after such emissions had been considered by the relevant authority. In August 2019, Peabody and Glencore received approval from the NSW Independent Planning Commission (IPC) for the United Wambo project, subject to conditions (Export Conditions) requiring the joint venture to prepare an Export Management Plan setting out protocols for using all reasonable and feasible measures to ensure that any coal extracted from the mine that is to be exported from Australia is only exported to countries that are parties to the Paris Agreement (as defined below) or countries that the NSW Planning Secretary considers to have similar policies for reducing greenhouse gas emissions. The IPC subsequently approved another non-Peabody coal mining project (Rix's Creek) without any Export Conditions. In October 2019, the NSW government introduced into Parliament proposed amendments to legislation and policy that would, if passed, have the effect of invalidating Export Conditions imposed on future NSW planning approvals, as well as no longer requiring consent authorities to consider 'downstream emissions' when assessing developments for the purposes of mining, petroleum production or extractive industry. The NSW government has announced changes to the IPC and planning system process which aims to improve timeframes and efficiencies for project approvals and providing more clarity on the IPC's role in determining applications including seeking guidance on government policy. In June 2020, the NSW Government released its Strategic Statement on Coal Exploration and Mining in NSW which provides a high level framework for the government's policy approach to the future of the coal sector, as well as details of a streamlined strategic release process. The strategy identifies some potential areas for possible new coal exploration, areas that are ruled out for coal mining and areas where new coal exploration can only occur adjacent to an existing coal title via the Operational Allocation process. In December 2020, the NSW Government finalized and published the Guideline for the Competitive Allocation of Coal, which details the process for considering areas for coal exploration and allocating them by public tender.

In Queensland, laws and regulations related to mining include, but are not limited to, the Mineral Resources Act 1989, Environmental Protection Act 1994 (EP Act), Environmental Protection Regulation 2008, Planning Act 2016, Coal Mining Safety and Health Act 1999, Minerals and Energy Resources (Common Provisions) Act 2014, Explosives Act 1999, Aboriginal Cultural Heritage Act 2003, Water Act 2000, State Development and Public Works Organisation Act 1971, Queensland Heritage Act 1992, Transport Infrastructure Act 1994, Nature Conservation Act 1992, Vegetation Management Act 1999, Biosecurity Act 2014, Land Act 1994, Regional Planning Interests Act 2014, Fisheries Act 1994 and Forestry Act 1959. Under the EP Act, policies have been developed to achieve the objectives of the law and provide guidance on specific areas of the environment, including air, noise, water and waste management. State planning policies address matters of Queensland state interest, and must be adhered to during mining project approvals. The Mineral Resources Act 1989 was amended effective September 27, 2016 to include significant changes to the management of overlapping coal and coal seam gas tenements, and the coordination of activities and access to private and public land. In November 2016, amendments to the EP Act and the Water Act 2000 became effective that facilitate regulatory scrutiny of the environmental impacts of underground water extraction during the operational phase of resource projects for all tenements yet to commence mineral extraction. The 'chain of responsibility' provisions of the EP Act, which became effective in April 2016, allow the regulator to issue an environmental protection order (EPO) to a related person of a company in two circumstances: (a) if an EPO has been issued to the company, an EPO can also be issued to a related person of the company (at the same time or later); or (b) if the company is a high risk company (as defined in the EP Act), an EPO can be issued to a related person of the company (whether or not an EPO has also been issued to the company). A guideline has been issued that provides more certainty to the industry on the circumstances in which an EPO may be issued.

In New South Wales, laws and regulations related to mining include, but are not limited to, the Mining Act 1992, Work Health and Safety (Mines) Act 2013, Coal Mine Subsidence Compensation Act 2017, Environmental Planning and Assessment Act 1979 (EPA Act), Environmental Planning and Assessment Regulations 2000, Protection of the Environment Operations Act 1997, Contaminated Land Management Act 1997, Explosives Act 2003, Water Management Act 2000, Water Act 1912, Radiation Control Act 1990, Biodiversity Conservation Act 2016 (BC Act), Heritage Act 1977, Aboriginal Land Rights Act 1983, Crown Land Management Act 2016, Dangerous Goods (Road and Rail Transport) Act 2008, Fisheries Management Act 1994, Forestry Act 2012, Native Title (New South Wales) Act 1994, Biosecurity Act 2015, Roads Act 1993 and National Parks & Wildlife Act 1974.

Under the EPA Act, environmental planning instruments must be considered when approving a mining project development application. Decision makers review the significance of a resource and the state and regional economic benefits of a proposed coal mine when considering a development application on the basis that it is an element of the "public interest" consideration contained in the relevant legislation. Effective from March 1, 2018, the EPA Act was amended to introduce a number of changes to planning laws in New South Wales. The EPA Act was further amended in June 2018 to revoke a process for modifying development approvals under the former Section 75W of the EPA Act. As a result, new development approvals will need to be obtained unless the proposed project will be substantially the same development as it was when the development approval was last modified under Section 75W, in which case the existing development approval can be modified. If a new development approval is required then this could take additional time to achieve.

On August 25, 2017, the BC Act commenced in New South Wales and imposes a revised framework for the assessment of potential impacts on biodiversity that may be caused by a development, such as a proposed mining project. The BC Act requires these potential impacts on biodiversity to be offset in perpetuity, by one or more of the following means: securing land based offsets and retiring biodiversity credits, making a payment into a biodiversity conservation fund or in some cases through mine site ecological rehabilitation. The data collected from the biodiversity impact assessment process is inputted into a new offsets payment calculator in order to determine the amount payable by the proponent to offset the impacts. The proposed development can only proceed once the biodiversity offset obligations have been satisfied.

*Sharma v Minister for the Environment.* On March 15, 2022, the Full Court of the Federal Court of Australia overturned the decision in *Sharma v Minister for the Environment* [2021] FCA 560 (Sharma), a case which found in 2021 that the Federal Minister for the Environment had a duty to avoid causing personal injury or death to children in Australia as a result of carbon emissions when deciding an application to approve a coal mine expansion. In light of this decision, the Minister for the Environment no longer must consider the effects of carbon emissions when assessing referrals under the Environment Protection and Biodiversity Conservation Act 1999. However, an application by Sharma for special leave to appeal to the High Court of Australia remains probable, and the duty could be reinstated.

***Mining Rehabilitation (Reclamation).*** Mine reclamation is regulated by state-specific legislation. As a condition of approval for mining operations, companies are required to progressively reclaim mined land and provide appropriate bonding, or, in certain circumstances (see below in relation to the Mineral and Energy Resources (Financial Provisioning) Act 2018), make alternative financial contributions to the relevant state government as a safeguard to cover the costs of reclamation in circumstances where mine operators are unable to do so. Self-bonding is not permitted. Peabody's mines provide financial assurance to the relevant authorities which is calculated in accordance with current regulatory requirements. This financial assurance is in the form of cash, surety bonds or bank guarantees which are supported by a combination of cash collateral, deeds of indemnity and guarantee and letters of credit issued under the Company's credit facility, collateralized letter of credit program and accounts receivable securitization program. The Company operates in both the Queensland and New South Wales state jurisdictions.

Peabody's reclamation bonding requirements in Australia were \$215.1 million as of December 31, 2022. The bond requirements represent the states' calculated cost to reclaim the current operations of a mine if it ceases to operate in the current period less any discounts agreed with the state. The cost calculation for each bond must be completed according to the regulatory authority of each state. The Company's asset retirement obligations calculated in accordance with U.S. generally accepted accounting principles for its active and inactive Australian operations were \$216.7 million as of December 31, 2022. The total bonding requirements for the Company's Australian operations differ from the calculated costs associated with the asset retirement obligations because the costs associated with asset retirement obligations are discounted from the end of the mine's economic life to the balance sheet date in recognition of the economic reality that reclamation is conducted progressively and final reclamation is projected to be a number of years away, whereas the bonding amount represents the states' calculated cost of reclamation if a mine ceases to operate immediately as well as different costs assumptions.

***New South Wales Reclamation.*** The Mining Act 1992 (Mining Act) is administered by the Department of Planning and Environment and the New South Wales Resources Regulator and authorizes the holder of a mining tenement to extract a mineral subject to obtaining consent under the EPA Act and other auxiliary approvals and licenses.

Through the Mining Act, environmental protection and reclamation are regulated by conditions in all mining leases including requirements for the submission of a mining operations plan (MOP) prior to the commencement of operations. All mining operations must be carried out in accordance with the MOP which describes site activities and the progress toward environmental and reclamation outcomes and are updated on a regular basis or if mine plans change. The mines publicly report their reclamation performance on an annual basis.

In support of the MOP process, a reclamation cost estimate is calculated periodically to determine the amount of bond support required to cover the cost of reclamation based on the extent of disturbance during the MOP period.

***Queensland Reclamation.*** The EP Act is administered by the Department of Environment and Science, which authorizes environmentally relevant activities such as mining activities relating to a mining lease through an Environmental Authority (EA). Environmental protection and reclamation activities are regulated by conditions in the EA. All mining operations must be carried out in a manner so as to ensure compliance with the conditions in the EA. The mines submit an annual return reporting on their EA compliance.

In November 2018, the Queensland government passed the Mineral and Energy Resources (Financial Provisioning) Act 2018 providing for a new financial assurance (FA) framework and new progressive rehabilitation requirements. The new FA framework creates a pooled fund covering most mines and most of the total industry liability, plus other options for providing FA if not part of the pooled fund (for example, allowing insurance bonds or cash). The percentage rate of the total rehabilitation cost payable into the pooled fund will take into account the financial strength of the holder of the EA for the mine and the project strength of the mine. The total rehabilitation cost is determined using an updated rehabilitation cost calculator, which no longer provides for discounting. The commencement date for the new FA framework was April 1, 2019 and there is a transitional period during which Peabody will move each of its mines in Queensland into the new FA framework.

The new progressive rehabilitation requirements commenced on November 1, 2019 and require each mine, within a three-year transitional period, to establish a schedule of rehabilitation milestones covering the life of the mine, and any significant changes to the timing of rehabilitation will require regulatory approval. If there is to remain an area within the mine that does not have a post-mining land use (referred to as a non-use management area or NUMA) then each such NUMA will need to pass a public interest evaluation test as part of the approval process. An example of a NUMA is the void that remains after open-cut mining activities have been completed. Under the legislation, each current mine is exempt from the requirement to justify its NUMAs to the extent that its current approvals provide for such areas. The Company is of the view that there will not be a need to seek any further regulatory approvals for any of the NUMAs at any of its Queensland mines.

**Residual Risks.** On August 20, 2020, the Environmental Protection and Other Legislation Amendment Act (Queensland) 2020 (EPOLA Act) became law, amending the residual risk framework that aims to ensure that any remaining risks on former resource sites are appropriately identified, costed and managed. On completion of all mining activities, the holder of the EA for the mine can apply to surrender the EA once all conditions, requirements and rehabilitation obligations have been met. When approving the surrender, the government can request a residual risk payment from the holder of the EA for the mine to cover potential rehabilitation or maintenance costs incurred after the surrender has been accepted. It contemplates two approaches for determining residual risk payments. Depending on the level of risk of a particular site, a cost calculator tool might be used or a panel of appropriately qualified experts might undertake a qualitative and quantitative risk assessment.

**Native Title and Cultural Heritage.** Since 1992, the Australian courts have recognized that native title to lands and water, as recognized under the laws and customs of the Aboriginal inhabitants of Australia, may have survived the process of European settlement. These developments are supported by the federal Native Title Act which recognizes and protects native title, and under which a national register of native title claims has been established. Native title rights do not extend to minerals; however, native title rights can be affected by mining activities unless those rights have previously been extinguished, thereby requiring negotiation with the traditional owners (and potentially the payment of compensation) prior to the grant of certain mining tenements. There is also federal and state legislation to prevent damage to Aboriginal cultural heritage and archaeological sites.

Following the May 2020 destruction of caves at the Juukan Gorge in the Pilbara region of Western Australia by an iron ore mining operation, the Federal Government established a Senate Inquiry. The Senate Inquiry's terms of reference included reviewing the effectiveness and adequacy of state and federal laws in relation to Aboriginal and Torres Strait Islander cultural heritage in each of the Australian jurisdictions; and how these cultural heritage laws might be improved to guarantee the protection of culturally and historically significant sites. Following an interim report released on December 9, 2020, the Joint Standing Committee on Northern Australia released its final report on October 18, 2021. The final report sets out three key findings and eight recommendations, including that a new framework for cultural heritage protection be implemented at a national level by way of new legislated national minimum standards for State and Territory laws. The recommendations also include that a review of the *Native Title Act 1993* (Cth) be undertaken to address inequalities in the negotiating position of Aboriginal and Torres Strait Islander peoples in the future act regime, including the 'right to negotiate' process which is associated with the grant of certain mining tenements. On November 24, 2022, the Environment Minister announced the Australian government's support for all but one of the recommendations from the Senate Inquiry (whether final responsibility for heritage protection should sit with the Indigenous Affairs Minister or the Environment Minister is still being assessed) and indicated laws to protect Aboriginal cultural heritage would be strengthened following a further review of mining standards. Any legislation passed as a result of the recommendations in the final report could potentially impact the Company's current and future mining tenements and operations.

**Occupational Health and Safety.** State legislation requires Peabody to provide and maintain a safe workplace by providing safe systems of work, safety equipment and appropriate information, instruction, training and supervision. In recognition of the specialized nature of mining and mining activities, specific occupational health and safety obligations have been mandated under state legislation specific to the coal mining industry. There are some differences in the application and detail of the laws, and mining operators, directors, officers and certain other employees are all subject to the obligations under this legislation.

In September 2020, Safe Work Australia (SWA) published its revised Workplace Exposure Standards (WES) for coal dust and silica based on toxicological information and other monitoring data. SWA have recommended exposure limits of 1.5 milligrams per cubic meter (mg/m<sup>3</sup>) for coal dust (to apply from October 2022) and 0.05 mg/m<sup>3</sup> for silica (to apply as soon as possible). In Queensland, a new workplace exposure standard for respirable crystalline silica (eight hour time-weighted average airborne concentration of 0.05mg/m<sup>3</sup>) took effect from July 1, 2020. In New South Wales, the new respirable crystalline silica workplace exposure standard of 0.05 mg/m<sup>3</sup> commenced on July 1, 2020. The respirable coal dust workplace exposure standard of 2.5 mg/m<sup>3</sup> was reduced to 1.5 mg/m<sup>3</sup> on February 1, 2021 and mines need to report exceedances of the new exposure standard to the NSW Resources Regulator from this date. NSW is the first mining jurisdiction in Australia to implement an exposure standard for diesel particulate matter with the exposure standard of 0.1 mg/m<sup>3</sup> which became enforceable on February 1, 2021.

In addition, as part of a broader review of workplace exposure standards, SWA is currently considering a proposal to reduce the time weighted average (TWA) WES for CO<sub>2</sub> in Australian coal mines from 12,500 ppm to 5,000 ppm. Currently there is a separate TWA for CO<sub>2</sub> in coal mines, however SWA proposes to remove this to align with a general industry standard. If implemented, the change has the potential to affect underground mines operating in CO<sub>2</sub> rich coal seams, including the primary coal seam of the Company's Metropolitan Mine. Importantly, a minimum three-year transition period applies for any change to standards. SWA expects to make recommendations to the Work Health and Safety Ministers on the proposed workplace exposure standards in the first quarter of 2023.

On July 1, 2020, the *Resources Safety and Health Queensland Act 2020* became effective. It establishes Resources Safety and Health Queensland (RSHQ) as a statutory body designed to ensure independence of the mining safety and health regulator. RSHQ includes inspectorates for coal mines, mineral mines and quarries, explosives and petroleum and gas. The new law seeks to enhance the role of advisory committees to identify, quantify and prioritize safety and health issues in the mining and quarrying industries. It also provides for an independent Work Health and Safety Prosecutor to prosecute serious offenses under resources safety legislation.

On May 20, 2020, the Queensland Parliament passed a bill into law that introduces the criminal offense of 'industrial manslaughter' for executive officers, individuals who are "senior officers" and companies in the mining industry. Individuals now face a maximum prison sentence of 20 years and companies could be fined up to approximately \$13 million Australian dollars. This new law became effective July 1, 2020. The bill also introduced the requirement for statutory role holders to be employees of the coal mine operator entity with an 18-month transition period ending November 25, 2022.

*Industrial Relations.* A national industrial relations system, the Fair Work Act and National Employment Standards, administered by the federal government applies to all employers and employees. The matters regulated under the national system include general employment conditions, unfair dismissal, enterprise bargaining, bullying claims, industrial action and resolution of workplace disputes. Most of the hourly workers employed in the Company's mines are also covered by the Black Coal Mining Industry Award and company specific enterprise agreements approved under the national system.

*National Greenhouse and Energy Reporting Act 2007 (NGER Act).* The NGER Act imposes requirements for corporations meeting a certain threshold to register and report greenhouse gas emissions and abatement actions, as well as energy production and consumption as part of a single, national reporting system. The Clean Energy Regulator administers the NGER Act. The federal Department of Environment and Energy is responsible for NGER Act-related policy developments and review.

On July 1, 2016, amendments to the NGER Act implemented the Emissions Reduction Fund Safeguard Mechanism. From that date, large designated facilities such as coal mines were issued with a baseline for their covered emissions and must take steps to keep their emissions at or below the baseline or face penalties.

The National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 outlines key elements of a responsible emitter's duty to avoid an excess emissions situation and provides detail on how it can meet that requirement. The rule was amended between 2019 and 2021 to transition responsible emitters to new baseline setting arrangements. From the start of the 2020-21 compliance year, baselines must use prescribed production variables (an example being run of mine coal) and default emissions intensity values (being values set by the government to represent the industry average emissions intensity of production over five years) unless specific exemptions apply (such as a facility having site-specific values set).

On January 10, 2023, the Australian federal government released its Safeguard Mechanism Reforms Position Paper setting out the proposed changes to the emissions reduction regime. The reforms will commence on July 1, 2023 utilizing site specific baseline emissions as benchmarks for year-on-year improvement (proposed to be 4.9% each year to 2030) before transitioning to industry average emissions benchmarks by 2030. Proponents will earn tradeable credits (Safeguard Mechanism Credits) when emissions are below their baselines or can purchase credits to offset emissions. Access to existing Australian Carbon Credit Units will continue unchanged albeit with a price ceiling of \$75 Australian dollars per tonne of CO<sub>2</sub> in 2023-24, increasing with the Consumer Price Index plus 2% each year. After further consultation, the Australian government aims to finalize the legislative amendments to implement the Safeguard Mechanism reforms by April 2023. The potential impact of these reforms to Peabody's Australian operations is under review.

*Queensland Royalty.* As part of the Queensland government's 2019-20 budget, the government committed to freeze royalty rates on coal and minerals for three years, provided companies voluntarily contributed to a Resource Community Infrastructure Fund (the Fund) over this three-year period. The government contributed \$30 million Australian dollars towards the Fund, with companies voluntarily contributing \$70 million Australian dollars. Peabody's contribution to the Fund was approximately \$457,000 Australian dollars for the 2021-22 financial year, \$522,000 Australian dollars for the 2020-21 financial year and \$713,000 Australian dollars for the 2019-20 financial year.

On and from July 1, 2022, the Queensland government introduced three new royalty tiers for coal produced and sold from the state. The new tier rates are 20% for the portion of prices above \$175 Australian dollars per tonne; 30% for the portion of prices above \$225 Australian dollars per tonne; and a 40% tier for the portion of prices above \$300 Australian dollars per tonne. Previously, the maximum royalty rate was 15% of the value of the coal sold above \$150 Australian dollars per tonne. The change follows a three-year freeze on royalty rates for coal in the state. Through December 31, 2022, the Company paid additional royalties of \$69.9 million Australian dollars as a result of the new rates. The increased rate structure may impact the Company's future decisions about its Queensland operations.

*New South Wales Royalty.* In New South Wales, the royalty applicable to coal is charged as a percentage of the value of production (total revenue less allowable deductions). This is equal to 6.2% for deep underground mines (coal extracted at depths greater than 400 meters below ground surface), 7.2% for underground mines and 8.2% for open-cut mines.

*Sydney Water Catchment Areas.* In November 2017, the New South Wales government established an independent expert panel (Panel) to advise the Department of Planning and Environment (DPE) on the impact of underground mining activities in Sydney's water catchment areas, including at the Company's Metropolitan Mine. The Panel issued its final report in October 2019, which made findings and recommendations concerning mining activities and effects across the catchment as a whole.

In response to the Panel's recommendations, in 2020 the DPE established an interagency taskforce to implement a detailed action plan which includes: ensuring there is a net gain for the metropolitan water supply by requiring more offsetting from mining companies; establishing a new independent expert panel (Independent Advisory Panel) to advise on future mining applications in the catchment; strengthening surface and groundwater monitoring; improving access to and transparency of environmental data; adopting a more stringent approach to the assessment and conditioning of future mining proposals to minimize subsidence impacts; reviewing and updating current and potential future water losses from mining in line with the best available science; introducing a licensing regime to properly account for any water losses; and undertaking further research into mine closure planning to reduce potential long-term impacts.

When requested by the DPE, the Independent Advisory Panel is available to provide informed technical advice to the DPE or the Independent Planning Commission in relation to development applications and post-approval matters relating to the assessment and management of subsidence impacts associated with underground mining across NSW, with a particular focus on risks to the quantity of water in the catchment. The Independent Advisory Panel is comprised of an independent chair and experts in the fields of mining engineering and subsidence, surface water, groundwater and swamp hydrology and ecology. Advice that may be provided by the Independent Advisory Panel may include, but is not confined to, risks to the total water quantity and holding capacity of surface and groundwater systems, including swamps and reservoirs, and the types and reliability of methodologies used to predict, monitor, assess and report on mining effects, impacts and consequences.

### **Risks Related to Global Climate Change**

Peabody recognizes that climate change is occurring and that human activity, including the use of fossil fuels, contributes to GHG emissions. The Company's largest contribution to GHG emissions occurs indirectly, through the coal used by its customers in the generation of electricity and the production of steel (Scope 3). To a lesser extent, the Company directly and indirectly contributes to GHG emissions from various aspects of its mining operations, including from the use of electrical power and combustible fuels, as well as from the fugitive methane emissions associated with coal mines and stockpiles (Scopes 1 and 2).

Peabody's board of directors and management believe that coal is essential to affordable, reliable energy and will continue to play a significant role in the global energy mix for the foreseeable future. Peabody views technology as vital to advancing global climate change solutions, and the Company supports advanced coal technologies to drive continuous improvement toward the ultimate goal of net-zero emissions from coal.

The board of directors has ultimate oversight for climate-related risk and opportunity assessments, and has delegated certain aspects of these assessments to subject matter committees of the board. In addition, the board and its committees are provided regular updates on major risks and changes, including climate-related matters. The senior management team champions the strategic objectives set forth by the board of directors and Peabody's global workforce turns those objectives into meaningful actions.

Management believes that the Company's external communications, including environmental regulatory filings and public notices, U.S. Securities and Exchange Commission filings, its annual Environmental, Social and Governance (ESG) Report, its website and various other stakeholder-focused publications provide a comprehensive picture of the Company's material risks and progress. All such communications are subject to oversight and review protocols established by Peabody's board of directors and executive leadership team.

The Company faces risks from both the global transition to a net-zero emissions economy and the potential physical impacts of climate change. Such risks may involve financial, policy, legal, technological, reputational and other impacts as the Company meets various mitigation and adaptation requirements.



The transition to a net-zero emissions economy is driven by many factors, including, but not limited to, legislative and regulatory rulemaking processes, campaigns undertaken by non-governmental organizations to minimize or eliminate the use of coal as a source of electricity generation, and the ESG-related policies of financial institutions and other private companies. The Company has experienced, or may in the future experience, negative effects on its results of operations due to the following specific risks as a result of such factors:

- Reduced utilization or closure of existing coal-fired electricity generating plants;
- Electricity generators switching from coal to alternative fuels, when feasible;
- Increased costs associated with regulatory compliance;
- Unfavorable impact of regulatory compliance on supply and demand fundamentals, such as limitations on financing or construction of new coal-fueled power stations;
- Uncertainty and inconsistency in rulemaking processes related to periodic governmental administrative and policy changes;
- Unfavorable costs of capital and access to financial markets and products due to the policies of financial institutions;
- Disruption to operations or markets due to anti-coal activism and litigation; and
- Reputational damage associated with involvement in GHG emissions.

With respect to the potential or actual physical impacts of climate change, the Company has identified the following specific risks:

- Disruption to water supplies vital to mining operations;
- Disruption to transportation and other supply chain activities;
- Damage to the Company's, customers' or suppliers' plant and equipment, or third-party infrastructure, resulting from weather events or changes in environmental trends and conditions; and
- Electrical grid failures and power outages.

While the Company faces numerous risks associated with the transition to a net-zero emissions economy and the physical impacts of climate change, certain opportunities may also emerge, such as:

- Heightened emphasis among multiple stakeholders to develop high-efficiency, low-emissions (HELE) technologies and CCUS technologies;
- Increased steel demand related to construction and other infrastructure projects related to climate change concerns; and
- The relative expense and reliability of renewable energy sources compared to coal may encourage support for balanced-source energy policies and regulations.

Global climate issues continue to attract public and scientific attention. Numerous reports, such as the Fourth and the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, have also engendered concern about the impacts of human activity, especially fossil fuel combustion, on global climate issues. In turn, increasing government attention is being paid to global climate issues and to GHG emissions, including emissions of carbon dioxide from coal combustion by power plants. There have been significant developments in federal and state legislation and regulation and international accords regarding climate change. Such developments are described below in the section "Regulations Related to Global Climate Change" within this Item 1.

The enactment of future laws or the passage of regulations regarding emissions from the use of coal by the U.S., some of its states or other countries, or other actions to limit such emissions, could result in electricity generators switching from coal to other fuel sources. Further, policies limiting available financing for the development of new coal-fueled power stations could adversely impact the global demand for coal in the future. The potential financial impact on Peabody of such future laws, regulations or other policies will depend upon the degree to which any such laws or regulations force electricity generators to diminish their reliance on coal as a fuel source. That, in turn, will depend on a number of factors, including the specific requirements imposed by any such laws, regulations or other policies, the time periods over which those laws, regulations or other policies would be phased in, the state of development and deployment of CCUS technologies as well as acceptance of CCUS technologies to meet regulations and the alternative uses for coal. Higher-efficiency coal-fired power plants may also be an option for meeting laws or regulations related to emissions from coal use. Several countries, including major coal users such as China, India and Japan, included using higher-efficiency coal-fueled power plants in their plans under the Paris Agreement. The Company believes HELE and CCUS technologies should be part of the solution to achieve substantial reductions in GHG emissions and should be broadly supported and encouraged, including through eligibility for public funding from national and international sources. In addition, CCUS merits targeted deployment incentives, like those provided to other low-emission sources of energy.

From time to time, the Company's board of directors and management attempt to analyze the potential impact on the Company of as-yet-unadopted, potential laws, regulations and policies. Such analyses require significant assumptions as to the specific provisions of such potential laws, regulations and policies which sometimes show that if implemented in the manner assumed by the analyses, the potential laws, regulations and policies could result in material adverse impacts on the Company's operations, financial condition or cash flows. Such analyses cannot be relied upon to reasonably predict the quantitative impact that future laws, regulations or other policies may have on the Company's results of operations, financial condition or cash flows.

### Regulations Related to Global Climate Change

In the U.S., Congress has considered legislation addressing global climate issues and GHG emissions, but to date, no new comprehensive, regulatory legislation has been signed into law. The U.S. Congress, however, has approved legislation, the Inflation Reduction Act of 2022, that will provide substantial tax incentives, grants and loan guarantees for energy infrastructure, solar panels, wind turbines, nuclear and geothermal energy, hydrogen projects and carbon capture and storage. While it is possible that the U.S. will adopt additional climate legislation in the future, the timing and specific requirements of any such legislation are uncertain.

The EPA has also undertaken several steps to regulate GHG emissions under existing law, primarily the CAA. In response to the 2007 U.S. Supreme Court ruling in *Massachusetts v. EPA*, the EPA commenced several rulemaking projects as described under "Regulatory Matters - U.S." The EPA has indicated that it will continue these efforts and proceed with new regulations affecting GHG emissions from fossil fuel-fired electric generation, methane emissions from oil and gas production and carbon emissions from light and heavy-duty vehicles.

At the same time, a number of states in the U.S. have adopted programs to regulate GHG emissions. For example, 10 northeastern states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont) entered into the Regional Greenhouse Gas Initiative (RGGI) in 2005, and Pennsylvania joined in 2022. RGGI is a mandatory cap-and-trade program to cap regional carbon dioxide emissions from power plants. Six mid-western states (Illinois, Iowa, Kansas, Michigan, Minnesota and Wisconsin) and one Canadian province have entered into the Midwestern Regional Greenhouse Gas Reduction Accord (MGGRA) to establish voluntary regional greenhouse gas reduction targets and develop a voluntary multi-sector cap-and-trade system to help meet the targets. It has been reported that, while the MGGRA has not been formally suspended, the participating states are no longer pursuing it. Seven western states (Arizona, California, Montana, New Mexico, Oregon, Utah and Washington) and four Canadian provinces entered into the Western Climate Initiative (WCI) in 2008 to establish a voluntary regional greenhouse gas reduction goal and develop market-based strategies to achieve emissions reductions. However, in November 2011, the WCI announced that six states had withdrawn from the WCI, leaving California and four Canadian provinces as the remaining members. Of those five jurisdictions, only California and Quebec have adopted greenhouse gas cap-and-trade regulations to date and both programs have begun operating. Many of the states and provinces that left WCI, RGGI and MGGRA, along with many that continue to participate, have joined the new North America 2050 initiative, which seeks to reduce GHG emissions and create economic opportunities in ways not limited to cap-and-trade programs.

Several other U.S. states have enacted legislation establishing GHG emissions reduction goals or requirements. In addition, several states have enacted legislation or have in effect regulations requiring electricity suppliers to use renewable energy sources to generate a certain percentage of power or that provide financial incentives to electricity suppliers for using renewable energy sources. Some states have initiated public utility proceedings that may establish values for carbon emissions.

Increasingly, both foreign and domestic banks, insurance companies and large investors are curtailing or ending their financial relationships with fossil fuel-related companies. This has had adverse impacts on the liquidity and operations of coal producers.

Peabody participated in the Department of Energy's Voluntary Reporting of Greenhouse Gases Program until its suspension in May 2011, and the Company regularly discloses information regarding its production-related emissions in its annual ESG Report. The vast majority of the Company's emissions are generated by the operation of heavy machinery to extract and transport material at its mines and fugitive emissions from the extraction of coal.



The Kyoto Protocol, adopted in December 1997 by the signatories to the 1992 United Nations Framework Convention on Climate Change (UNFCCC), established a binding set of GHG emission targets for developed nations. The U.S. signed the Kyoto Protocol but it has never been ratified by the U.S. Senate. Australia ratified the Kyoto Protocol in December 2007 and became a full member in March 2008. There were discussions to develop a treaty to replace the Kyoto Protocol after the expiration of its commitment period in 2012, including at the UNFCCC conferences in Cancun (2010), Durban (2011), Doha (2012) and Paris (2015). At the Durban conference, an ad hoc working group was established to develop a protocol, another legal instrument or an agreed outcome with legal force under the UNFCCC, applicable to all parties. At the Doha meeting, an amendment to the Kyoto Protocol was adopted, which included new commitments for certain parties in a second commitment period, from 2013 to 2020. In December 2012, Australia signed on to the second commitment period. During the UNFCCC conference in Paris, France in late 2015, an agreement was adopted calling for voluntary emissions reductions contributions after the second commitment period ends in 2020 (the Paris Agreement). The agreement was entered into force on November 4, 2016 after ratification and execution by more than 55 countries, including Australia, that account for at least 55% of global GHG emissions. On January 20, 2021, the U.S. reentered the Paris Agreement by accepting the agreement and all of its articles and clauses, after having announced its withdrawal from the agreement in November 2019.

In June 2022, the new Australian federal government announced plans to legislate for a 43% reduction in Australia's GHG emissions by 2030 and to introduce changes by mid-2023 that will require heavy emitting companies producing more than 100,000 tonnes of carbon emissions annually to accelerate their emissions reduction activities. On September 13, 2022, the Australian government passed the Climate Change Act 2022 to set the GHG emissions reduction targets into law.

On January 10, 2023, the Australian federal government released its Safeguard Mechanism Reforms Position Paper setting out the proposed changes to the emissions reduction regime (legislated through the *National Greenhouse and Energy Reporting Act 2007 (Cth)*). Refer to the section "Regulatory Matters — Australia" within this Item 1 for discussion of the proposed reform.

#### **Available Information**

Peabody files or furnishes annual, quarterly and current reports (including any exhibits or amendments to those reports), proxy statements and other information with the SEC. These materials are available free of charge through the Company's website ([www.peabodyenergy.com](http://www.peabodyenergy.com)) as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. Information included on the Company's website does not constitute part of this document. These materials may also be accessed through the SEC's website ([www.sec.gov](http://www.sec.gov)).

In addition, copies of the Company's filings will be made available, free of charge, upon request by telephone at (314) 342-7900 or by mail at: Peabody Energy Corporation, Peabody Plaza, 701 Market Street, St. Louis, Missouri 63101-1826, attention: Investor Relations.

#### **Item 1A. Risk Factors.**

The Company operates in a rapidly changing environment that involves a number of risks. The following discussion highlights some of these risks and others are discussed elsewhere in this report. These and other risks could materially and adversely affect the Company's business, financial condition, prospects, operating results or cash flows. The following risk factors are not an exhaustive list of the risks associated with the Company's business. New factors may emerge or changes to these risks could occur that could materially affect its business.

#### **Risks Associated with Peabody's Operations**

##### ***The Company's profitability depends upon the prices it receives for its coal.***

The Company operates in a competitive and highly regulated industry that has at times experienced strong headwinds. Current pricing levels of both seaborne and domestic coal products may not be sustainable in the future. Declines in coal prices could materially and adversely affect the Company's operating results and profitability and the value of its coal reserves and resources.

Coal prices are dependent upon factors beyond the Company's control, including:

- the demand for electricity and capacity utilization of electricity generating units (whether coal or non-coal);
- changes in the fuel consumption and dispatch patterns of electric power generators, whether based on economic or non-economic factors;
- the proximity, capacity and cost of transportation and terminal facilities;
- competition with and the availability, quality and price of coal and alternative fuels, including natural gas, fuel oil, nuclear, hydroelectric, wind, biomass and solar power;
- governmental regulations and taxes, including tariffs or other trade restrictions as well as those establishing air emission standards for coal-fueled power plants or mandating or subsidizing increased use of electricity from renewable energy sources;
- the strength of the global economy;
- the global supply and production costs of thermal and metallurgical coal;
- the demand for steel, which may lead to price fluctuations in the monthly and quarterly repricing of the Company's metallurgical coal contracts;
- weather patterns, severe weather and natural disasters;
- regulatory, administrative and judicial decisions, including those affecting future mining permits and leases;
- competing technologies used to make steel, some of which do not use coal as a manufacturing input, such as electric arc furnaces; and
- technological developments, including those related to alternative energy sources, those intended to convert coal-to-liquids or gas and those aimed at capturing, using and storing carbon dioxide.

Thermal coal accounted for the majority of the Company's coal sales by volume during 2022 and 2021, with the vast majority of these sales to electric power generators. The demand for coal consumed for electric power generation is affected by many of the factors described above, but primarily by (i) the overall demand for electricity; (ii) the availability, quality and price of competing fuels, such as natural gas, nuclear, fuel oil and alternative energy sources; (iii) utilization of all electricity generating units (whether using coal or not), including the relative cost of producing electricity from multiple fuels, including coal; (iv) stringent environmental and other governmental regulations; (v) other sociopolitical views on coal; and (vi) the coal inventories of utilities. Gas-fueled generation has displaced and could continue to displace coal-fueled generation (particularly from older, less efficient coal-fueled generation units) as current and potentially increasing regulatory costs and other factors impact the operating decisions of electric power generators. In addition, some electric power generators have made decisions to close coal-fueled generation units given ongoing pressure to shift away from coal generation. Many of the new power plants in the U.S. may be fueled by natural gas because gas-fired plants have been less expensive to construct, permits to construct these plants are easier to obtain based on emissions profiles and electric power generators may face public and governmental pressure to generate a larger portion of their electricity from natural gas-fueled units and alternative energy sources. Increasingly stringent regulations along with stagnant electricity demand in recent years have also reduced the number of new power plants being built. In recent years, these trends have reduced demand for the Company's coal and the related prices. Lower demand for coal consumed by electric power generators could reduce the volume of thermal coal that the Company sells and the prices that it receives for the thermal coal, thereby reducing its revenue and adversely impacting its earnings and the value of its coal reserves and resources.

The Company produces metallurgical coal that is used in the global steel industry. Metallurgical coal accounted for approximately 32% and 22% of its revenue in 2022 and 2021, respectively. Changes in governmental policies and regulations and changes in the steel industry, including the demand for steel, could reduce the demand for the Company's metallurgical coal. Lower demand for metallurgical coal in international markets could reduce the amount of metallurgical coal that the Company sells and the prices that it receives for the metallurgical coal, thereby reducing its revenue and adversely impacting its earnings and the value of its coal reserves and resources.

The balance between coal demand and supply, factoring in demand and supply of closely related and competing fuel sources, both domestically and internationally, could materially reduce coal prices and therefore materially reduce the Company's revenue and profitability. The Company competes with other fuel sources used for electricity generation, such as natural gas, nuclear and renewables. The Company's seaborne products compete with other producers as well as other fuel sources. Declines in the price of natural gas could cause demand for coal to decrease and adversely affect the price of coal. Sustained periods of low natural gas prices or low prices for other fuels may also cause utilities to phase out or close existing coal-fueled power plants or reduce construction of new coal-fueled power plants. In the U.S., no new coal-fueled power plants are being constructed or reopened after closure. These closures could have a material adverse effect on demand and prices for the Company's coal, thereby reducing its revenue and materially and adversely affecting its business and results of operations.

***If a substantial number of the Company's long-term coal supply agreements, including those with its largest customers, terminate, or if the pricing, volumes or other elements of those agreements materially adjust, its revenue and operating profits could suffer if the Company is unable to find alternate buyers willing to purchase its coal on comparable terms to those in its contracts.***

Most of the Company's sales are made under coal supply agreements, which are important to the stability and profitability of its operations. The execution of a satisfactory coal supply agreement is frequently the basis on which the Company undertakes the development of coal reserves and resources required to be supplied under the contract, particularly in the U.S. For the year ended December 31, 2022, the Company derived 28% of its revenue from coal supply agreements from its five largest customers. Those five customers were supplied primarily from 16 coal supply agreements (excluding trading and brokerage transactions) expiring at various times from 2023 to 2025.

Many of the Company's coal supply agreements contain provisions that permit the parties to adjust the contract price upward or downward at specified times. The Company may adjust these contract prices based on inflation or deflation, price indices and/or changes in the factors affecting the cost of producing coal, such as taxes, fees, royalties and changes in the laws regulating the mining, production, sale or use of coal. In a limited number of contracts, failure of the parties to agree on a price under those provisions may allow either party to terminate the contract. The Company may experience reductions in coal prices in new long-term coal supply agreements replacing some of its expiring contracts. Coal supply agreements also typically contain force majeure provisions allowing temporary suspension of performance by the Company or the customer during the duration of specified events beyond the control of the affected party. Some coal supply agreements allow customers to vary the volumes of coal that they are required to purchase during a particular period, and where coal supply agreements do not explicitly allow such variation, customers sometimes request that the Company amend the agreements to allow for such variation. Most of its coal supply agreements contain provisions requiring the Company to deliver coal meeting quality thresholds for certain characteristics such as Btu, sulfur content, ash content, volatile matter, coking properties, grindability and ash fusion temperature. Failure to meet these specifications could result in economic penalties, including price adjustments, the rejection of deliveries or termination of the contracts. Moreover, some of these agreements allow the Company's customers to terminate their contracts in the event of changes in regulations affecting the coal industry that restrict the use or type of coal permissible at the customer's plant or increase the price of coal beyond specified limits.

On an ongoing basis, the Company discusses the extension of existing agreements or entering into new long-term agreements with various customers, but these negotiations may not be successful and these customers may not continue to purchase coal from the Company under long-term supply agreements.

The operating profits the Company realizes from coal sold under supply agreements depend on a variety of factors. In addition, price adjustment and other contract provisions may increase its exposure to short-term coal price volatility. If a substantial portion of the Company's coal supply agreements were modified or terminated, it could be materially adversely affected to the extent that it is unable to find alternate buyers for its coal at the same level of profitability. Prices for coal vary by mining region and country. As a result, the Company cannot predict the future strength of the coal industry overall or by mining region and cannot provide assurance that it will be able to replace existing long-term coal supply agreements at the same prices or with similar profit margins when they expire. In addition, the Company's revenue could be adversely affected by a decline in customer purchases (including contractually obligated purchases) due to lack of demand and oversupply, cost of competing fuels and environmental and other governmental regulations.

***Risks inherent to mining could increase the cost of operating the Company's business, and events and conditions that could occur during the course of its mining operations could have a material adverse impact on the Company.***

The Company's mining operations are subject to conditions that can impact the safety of its workforce, delay coal deliveries or increase the cost of mining at particular mines for varying lengths of time. These conditions include:

- elevated gas levels;
- fires and explosions, including from methane gas or coal dust;
- accidental mine water discharges;
- weather, flooding and natural disasters;
- hazardous events such as roof falls and high wall or tailings dam failures;
- seismic activities, ground failures, rock bursts or structural cave-ins or slides;
- key equipment failures;
- supply chain constraints or unavailability of equipment or parts;
- variations in coal seam thickness, coal quality, the amount of rock and soil overlying coal deposits and geologic conditions impacting mine sequencing;
- delays in moving its longwall equipment;
- unexpected maintenance problems; and
- unforeseen delays in implementation of mining technologies that are new to its operations.

The Company maintains insurance policies that provide limited coverage for some of the risks referenced above, which may lessen the impact associated with these risks. However, there can be no assurance as to the amount or timing of recovery under its insurance policies in connection with losses associated with these risks.

***The Company's take-or-pay arrangements could unfavorably affect its profitability.***

The Company has substantial take-or-pay arrangements with its port access and rail transportation providers, predominately in Australia, totaling \$1.4 billion, with terms ranging up to 20 years, that commit the Company to pay a minimum amount for the delivery of coal even if those commitments go unused. The take-or-pay provisions in these contracts sometimes allow the Company to apply amounts paid for subsequent deliveries, but these provisions have limitations and the Company may not be able to apply all such amounts so paid in all cases. Also, the Company may not be able to utilize the amount of capacity for which it has previously paid. Additionally, the Company may continue to deliver coal during times when it might otherwise be optimal to suspend operations because these take-or-pay provisions effectively convert a variable cost of selling coal to a fixed operating cost.

***The Company may not recover its investments in its mining, exploration and other assets, which may require the Company to recognize impairment charges related to those assets.***

The value of the Company's assets have from time to time been adversely affected by numerous uncertain factors, some of which are beyond its control, including unfavorable changes in the economic environments in which it operates; declining coal-fired electricity generation; lower-than-expected coal pricing; technical and geological operating difficulties; an inability to economically extract its coal reserves and resources; 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 the Company's results of operations.

Because of the volatile and cyclical nature of coal markets, it is reasonably possible that the Company's current estimates of projected future cash flows from its mining assets may change in the near term, which may result in the need for adjustments to the carrying value of its assets.

***The Company's ability to operate effectively could be impaired if it loses key personnel or fails to attract qualified personnel.***

Peabody manages its business with a number of key personnel, the loss of whom could have a material adverse effect on the Company, absent the completion of an orderly transition. In addition, the Company believes that its future success will depend greatly on its continued ability to attract and retain highly skilled and qualified personnel in tight labor markets, particularly personnel with mining experience. Peabody cannot provide assurance that key personnel will continue to be employed by the Company or that it will be able to attract and retain qualified personnel in the future. Failure to retain or attract key personnel could have a material adverse effect on the Company.

***The Company could be negatively affected if it fails to maintain satisfactory labor relations.***

As of December 31, 2022, the Company had approximately 5,500 employees (excluding employees that were employed at operations classified as discontinued), which included approximately 4,300 hourly employees. The Company is party to labor agreements with various labor unions that represent certain of its employees. Such labor agreements are negotiated periodically, and, therefore, the Company is subject to the risk that these agreements may not be able to be renewed on reasonably satisfactory terms. Approximately 34% of its hourly employees were represented by organized labor unions and generated approximately 16% of its coal production for the year ended December 31, 2022. Relations with its employees and, where applicable, organized labor are important to the Company's success. If some or all of its current non-union operations were to become unionized, the Company could incur an increased risk of work stoppages, reduced productivity and higher labor costs. Also, if the Company fails to maintain good relations or successfully negotiate contracts with its employees who are represented by unions, the Company could potentially experience labor disputes, strikes, work stoppages, slowdowns or other disruptions in production that could negatively impact its profitability.

***The Company could be adversely affected if it fails to appropriately provide financial assurances for its obligations.***

U.S. federal and state laws and Australian laws require the Company to provide financial assurances related to requirements to reclaim lands used for mining; to pay federal and state workers' compensation, such as black lung liabilities; to provide financial assurances for coal lease obligations; and to satisfy other miscellaneous obligations. The primary methods the Company uses to meet those obligations are to provide a third-party surety bond or a letter of credit. As of December 31, 2022, the Company had \$1,376.8 million of outstanding surety bonds and \$569.6 million of letters of credit with third parties in order to provide required financial assurances for post-mining reclamation, workers' compensation and other insurance obligations, coal lease-related and other obligations and performance guarantees, in addition to collateral for sureties.

The Company's financial assurance obligations may increase or become more costly due to a number of factors, and surety bonds and letters of credit may not be available to the Company, particularly in light of some banks and insurance companies' announced unwillingness to support thermal coal producers and other fossil fuel companies. Alternative forms of financial assurance such as self-bonding have been severely restricted or terminated in most of the regions where its mines reside. The Company's failure to retain, or inability to obtain, surety bonds, bank guarantees or letters of credit, or to provide a suitable alternative, could have a material adverse effect on it. That failure could result from a variety of factors including:

- lack of availability, higher expense or unfavorable market terms of new surety bonds, bank guarantees or letters of credit;
- inability to provide or fund collateral for current and future third-party issuers of surety bonds, bank guarantees or letters of credit; and
- lack of available fronting banks in certain countries where the Company must provide financial assurances but its primary surety providers are not licensed or admitted.

As further described in "Liquidity and Capital Resources" of Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," in November 2020, the Company entered into a surety transaction support agreement with the providers of its surety bond portfolio. The Company's failure to provide adequate collateral, or abide by other terms in the agreement, could invalidate the agreement and materially and adversely affect its business and results of operations.

The Company's failure to maintain adequate bonding would invalidate its mining permits and prevent mining operations from continuing, which could result in its inability to continue as a going concern.

***The Company's mining operations are extensively regulated, which imposes significant costs on it, and future regulations and developments could increase those costs or limit its ability to produce coal.***

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

- workplace health and safety;
- limitations on land use;
- mine permitting and licensing requirements;
- reclamation and restoration of mining properties after mining is completed;
- the storage, treatment and disposal of wastes;
- remediation of contaminated soil, sediment and groundwater;
- air quality standards;
- water pollution;
- protection of human health, plant-life and wildlife, including endangered or threatened species and habitats;
- protection of wetlands;
- the discharge of materials into the environment; and
- the effects of mining on surface water and groundwater quality and availability.

Regulatory agencies have the authority under certain circumstances following significant health and safety incidents to order a mine to be temporarily or permanently closed. In the event that such agencies ordered the closing of one of the Company's mines, its production and sale of coal would be disrupted and it may be required to incur cash outlays to re-open the mine. Any of these actions could have a material adverse effect on the Company's financial condition, results of operations and cash flows.

New legislation, regulations or orders related to the environment or employee health and safety may be adopted and may materially adversely affect the Company's mining operations, its cost structure or its customers' ability to use coal. New legislation or administrative regulations (or new interpretations by the relevant government of existing laws, regulations and approvals), including proposals related to the protection of the environment or the reduction of greenhouse gas emissions that would further regulate and tax the coal industry, may also require the Company or its customers to change operations significantly or incur increased costs. Some of the Company's coal supply agreements contain provisions that allow a purchaser to terminate its contract if legislation is passed that either restricts the use or type of coal permissible at the purchaser's plant or results in specified increases in the cost of coal or its use. These factors and legislation, if enacted, could have a material adverse effect on the Company's financial condition and results of operations.

For additional information about the various regulations affecting the Company, see the sections entitled "Regulatory Matters —U.S." and "Regulatory Matters — Australia."

***The Company's operations may impact the environment or cause exposure to hazardous substances, and its properties may have environmental contamination, which could result in material liabilities to the Company.***

The Company's operations currently use hazardous materials and generate limited quantities of hazardous wastes from time to time. A number of laws, including CERCLA and RCRA in the U.S. and similar laws in other countries where the Company operates, impose liability relating to contamination by hazardous substances. Such liability may involve the costs of investigating or remediating contamination and damages to natural resources, as well as claims seeking to recover for property damage or personal injury caused by hazardous substances. Such liability may arise from conditions at formerly, as well as currently, owned or operated properties, and at properties to which hazardous substances have been sent for treatment, disposal or other handling. Liability under RCRA, CERCLA and similar state statutes is without regard to fault, and typically is joint and several, meaning that a person may be held responsible for more than its share, or even all, of the liability involved.

***The Company may be unable to obtain, renew or maintain permits necessary for its operations, or the Company may be unable to obtain, renew or maintain such permits without conditions on the manner in which it runs its operations, which would reduce its production, cash flows and profitability.***

Numerous governmental permits and approvals are required for mining operations. The permitting rules, and the interpretations of these rules, are complex, change frequently and are often subject to discretionary interpretations by regulators, all of which may make compliance more difficult or impractical. As part of this permitting process, when the Company applies for permits and approvals, it is required to prepare and present to governmental authorities data pertaining to the potential impact or effect that any proposed exploration for or production of coal may have upon the environment. The public, including non-governmental organizations, opposition groups and individuals, have statutory rights to comment upon and submit objections to requested permits and approvals (including modifications and renewals of certain permits and approvals) and otherwise engage in the permitting process, including bringing citizens' lawsuits to challenge the issuance of permits, the validity of environmental impact statements or the performance of mining activities. In recent years, the permitting required for coal mining has been the subject of increasingly stringent regulatory and administrative requirements and extensive litigation by environmental groups.

Additionally, the Company's operations may be affected by sites within or near mining areas that have cultural heritage significance to indigenous peoples, and its mining permits may be rescinded or modified, or its mining plans may be voluntarily adjusted, to mitigate against adverse impacts to such sites.

The costs, liabilities and requirements associated with these permitting requirements and any related opposition may be extensive and time-consuming and may delay commencement or continuation of exploration or production which would adversely affect the Company's coal production, cash flows and profitability. Further, required permits may not be issued or renewed in a timely fashion or at all, or permits issued or renewed may be conditioned in a manner that may restrict the Company's ability to efficiently and economically conduct its mining activities, any of which would materially reduce its production, cash flows and profitability.

***Concerns about the impacts of coal combustion on global climate are increasingly leading to conditions that have affected and could continue to affect demand for the Company's products or its securities and its ability to produce, including increased governmental regulation of coal combustion and unfavorable investment decisions by electricity generators.***

Global climate issues continue to attract public and scientific attention. Numerous reports, including the Fourth and the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, have also engendered concern about the impacts of human activity, especially fossil fuel combustion, on global climate issues. In turn, increasing government attention is being paid to global climate issues and to emissions of greenhouse gases, including emissions of carbon dioxide from coal combustion by power plants.

The enactment of future laws or the passage of regulations regarding emissions from the use of coal by the U.S., some of its states or other countries, or other actions to limit such emissions, could result in electricity generators switching from coal to other fuel sources. Further, policies limiting available financing for the development of new coal-fueled power stations could adversely impact the global demand for coal in the future. The potential financial impact on Peabody of such future laws, regulations or other policies will depend upon the degree to which any such laws or regulations force electricity generators to diminish their reliance on coal as a fuel source. That, in turn, will depend on a number of factors, including the specific requirements imposed by any such laws, regulations or other policies, the time periods over which those laws, regulations or other policies would be phased in, the state of development and deployment of CCUS technologies as well as acceptance of CCUS technologies to meet regulations and the alternative uses for coal. Higher-efficiency coal-fired power plants may also be an option for meeting laws or regulations related to emissions from coal use. Several countries, including major coal users such as China, India and Japan, included using higher-efficiency coal-fueled power plants in their plans under the Paris Agreement.

From time to time, the Company's board of directors and management attempt to analyze the potential impact on the Company of as-yet-unadopted, potential laws, regulations and policies. Such analyses require significant assumptions as to the specific provisions of such potential laws, regulations and policies which sometimes show that if implemented in the manner assumed by the analyses, the potential laws, regulations and policies could result in material adverse impacts on the Company's operations, financial condition or cash flows. Such analyses cannot be relied upon to reasonably predict the quantitative impact that future laws, regulations or other policies may have on the Company's results of operations, financial condition or cash flows.

***Numerous activist groups are devoting substantial resources to anti-coal activities to minimize or eliminate the use of coal as a source of electricity generation, domestically and internationally, thereby further reducing the demand and pricing for coal, and potentially materially and adversely impacting the Company's future financial results, liquidity and growth prospects.***

Several non-governmental organizations have undertaken campaigns to minimize or eliminate the use of coal as a source of electricity generation in the U.S. and across the globe. In an effort to stop or delay coal mining activities, activist groups have brought lawsuits challenging the issuance of individual coal leases and challenging the federal coal leasing program more broadly. Other lawsuits challenge historical and pending regulatory approvals, permits and processes that are necessary to conduct coal mining operations or to operate coal-fueled power plants, including so-called "sue and settle" lawsuits where regulatory authorities in the past have reached private agreements with environmental activists that often involve additional regulatory restrictions or processes being implemented without formal rulemaking.

The effect of these and other similar developments has made it more costly and difficult to maintain the Company's business. These cost increases and/or substantial or extended declines in the prices the Company receives for its coal due to these or other factors could reduce its revenue and profitability, cash flows, liquidity, and value of its coal reserves and resources, and could result in material losses.

***The Company's trading and hedging activities do not cover certain risks and may expose it to earnings volatility and other risks.***

In addition to coal price volatility, the Company is currently subject to price volatility on diesel fuel utilized in its mining operations and the Australian dollar. The Company has entered into certain hedging arrangements to address these risks, and may continue in the future to enter into hedging arrangements, including economic hedging arrangements, to manage these risks or other exposures. Since the Company's existing hedging arrangements do not receive cash flow hedge accounting treatment, all changes in fair value are reflected in current earnings.

Some of these hedging arrangements may require the Company to post margin based on the value of the related instruments and other credit factors. If the fair value of its hedge portfolio moves significantly, or if laws, regulations or exchange rules are passed requiring all hedge arrangements to be exchange-traded or exchange-cleared, the Company could be required to post additional margin, which could negatively impact its liquidity.

***If the assumptions underlying the Company's asset retirement obligations for reclamation and mine closures are materially inaccurate, its costs could be significantly greater than anticipated.***

The Company's asset retirement obligations primarily consist of spending estimates for surface land reclamation and support facilities at both surface and underground mines in accordance with federal and state reclamation laws in the U.S. and Australia as defined by each mining permit. These obligations are determined for each mine using various estimates and assumptions including, among other items, estimates of disturbed acreage as determined from engineering data, estimates of future costs to reclaim the disturbed acreage and the timing of these cash flows, which is driven by the estimated economic life of the mine and the applicable reclamation laws. These cash flows are discounted using a credit-adjusted, risk-free rate. The Company's management and engineers periodically review these estimates. If its assumptions do not materialize as expected, actual cash expenditures and costs that the Company incurs could be materially different than currently estimated. Moreover, regulatory changes could increase the Company's obligation to perform reclamation, mine closing and post-closure activities. The resulting estimated asset retirement obligation could change significantly if actual amounts change significantly from its assumptions, which could have a material adverse effect on its results of operations and financial condition.

***The Company's future success depends upon its ability to continue acquiring and developing coal reserves and resources that are economically recoverable.***

The Company's recoverable reserves and resources decline as it produces coal. The Company has not yet applied for the permits required or developed the mines necessary to use all of its reserves and resources. Moreover, the amount of coal reserves and resources described in Part I, Item 2. "Properties" involves the use of certain estimates and those estimates could be inaccurate. Actual production, revenue and expenditures with respect to its coal reserves and resources may vary materially from estimates.



The Company's future success depends upon it conducting successful exploration and development activities or acquiring properties containing economically recoverable reserves and resources. The Company's current strategy includes increasing its reserves and resources through acquisitions of government and other leases and producing properties and continuing to use its existing properties and infrastructure. In certain locations, leases for oil, natural gas and coalbed methane reserves are located on, or adjacent to, some of the Company's reserves and resources, potentially creating conflicting interests between it and lessees of those interests. Other lessees' rights relating to these mineral interests could prevent, delay or increase the cost of developing the Company's coal reserves and resources. These lessees may also seek damages from the Company based on claims that its coal mining operations impair their interests. Additionally, the U.S. federal government limits the amount of federal land that may be leased by any company to 75,000 acres in any one state and 150,000 acres nationwide. As of December 31, 2022, the Company leased a total of 44,287 acres from the federal government subject to those limitations.

The Company's planned mine development projects and acquisition activities may not result in significant additional reserves and resources, and it may not have success developing additional mines. Most of its mining operations are conducted on properties owned or leased by the Company. Its right to mine some of its reserves and resources may be materially adversely affected if defects in title or boundaries exist. In order to conduct its mining operations on properties where these defects exist, the Company may incur unanticipated costs. In addition, in order to develop its reserves and resources, the Company must also own the rights to the related surface property and receive various governmental permits. The Company cannot predict whether it will continue to receive the permits or appropriate land access necessary for it to operate profitably in the future. The Company may not be able to negotiate or secure new leases from the government or from private parties, obtain mining contracts for properties containing additional reserves and resources or maintain its leasehold interest in properties on which mining operations have not commenced or have not met minimum quantity or product royalty requirements. From time to time, the Company has experienced litigation with lessors of its coal properties and with royalty holders. In addition, from time to time, its permit applications and federal and state coal leases have been challenged, causing production delays.

To the extent that the Company's existing sources of liquidity are not sufficient to fund its planned mine development projects or reserve and resource acquisition activities, it may require access to capital markets, which may not be available to it or, if available, may not be available on satisfactory terms. If the Company is unable to fund these activities, it may not be able to maintain or increase its existing production rates and could be forced to change its business strategy, which could have a material adverse effect on its financial condition, results of operations and cash flows.

***The Company faces numerous uncertainties in estimating its coal reserves and resources and inaccuracies in its estimates could result in lower than expected revenue, higher than expected costs and decreased profitability.***

Coal is economically recoverable when the price at which the Company's coal can be sold exceeds the costs and expenses of mining and selling the coal. The costs and expenses of mining and selling the coal are determined on a mine-by-mine basis, and as a result, the price at which its coal is economically recoverable varies based on the mine. Forecasts of the Company's future performance are based on, among other things, estimates of its recoverable coal reserves and resources. The Company bases its reserve and resource information on engineering, economic and geological data assembled and analyzed by its staff and third parties, which includes various engineers and geologists. The Company's estimates are also subject to SEC regulations regarding classification of reserves and resources, including subpart 1300 of Regulation S-K. The reserve and resource estimates as to both quantity and quality are updated from time to time to reflect production of coal from the reserves and resources and new drilling or other data received. There are numerous uncertainties inherent in estimating quantities and qualities of coal and costs to mine recoverable reserves and resources, including many factors beyond the Company's control.

Estimates of economically recoverable coal reserves and resources necessarily depend upon a number of variable factors and assumptions, any one of which may, if incorrect, result in an estimate that varies considerably from actual results. These factors and assumptions include:

- geologic and mining conditions, which may not be fully identified by available exploration data and may differ from the Company's experience in areas it currently mines;
- demand for coal;
- current and future market prices for coal, contractual arrangements, operating costs and capital expenditures;
- severance and excise taxes, royalties and development and reclamation costs;
- future mining technology improvements;
- the effects of regulation by governmental agencies;
- the ability to obtain, maintain and renew all required permits;
- employee health and safety; and
- historical production from the area compared with production from other producing areas.

The conversion of reported mineral resources to mineral reserves should not be assumed, and the reclassification of reported mineral resources from lower to higher levels of geological confidence should not be assumed. As such, actual coal tonnage recovered from identified reserve and resource areas or properties and revenue and expenditures with respect to the Company's reserves and resources may vary materially from estimates. Thus, these estimates may not accurately reflect its actual reserves and resources. Any material inaccuracy in the Company's estimates related to its reserves and resources could result in lower than expected revenue, higher than expected costs or decreased profitability which could materially and adversely affect its business, results of operations, financial position and cash flows.

***Joint ventures, partnerships or non-managed operations may not be successful and may not comply with the Company's operating standards.***

The Company participates in several joint venture and partnership arrangements and may enter into others, all of which necessarily involve risk. Whether or not the Company holds majority interests or maintains operational control in its joint ventures, its partners may, among other things, (1) have economic or business interests or goals that are inconsistent with, or opposed to, the Company's; (2) seek to block actions that the Company believes are in its or the joint venture's best interests; or (3) be unable or unwilling to fulfill their obligations under the joint venture or other agreements, such as contributing capital, each of which may adversely impact the Company's results of operations and its liquidity or impair its ability to recover its investments.

Where the Company's joint ventures are jointly controlled or not managed by it, the Company may provide expertise and advice but have limited control over compliance with its operational standards. The Company also utilizes contractors across its mining platform, and may be similarly limited in its ability to control their operational practices. Failure by non-controlled joint venture partners or contractors to adhere to operational standards that are equivalent to the Company's could unfavorably affect safety results, operating costs and productivity and adversely impact its results of operations and reputation.

***The Company's expenditures for postretirement benefit obligations could be materially higher than it has predicted if its underlying assumptions prove to be incorrect.***

The Company pays postretirement health and life insurance benefits to eligible retirees. Its total accumulated postretirement benefit obligation related to such benefits was a liability of \$172.5 million as of December 31, 2022, of which \$16.0 million was classified as a current liability.

These liabilities are actuarially determined. The Company uses various actuarial assumptions, including the discount rate, future cost trends, mortality tables, demographic assumptions and expected rates of return on plan assets to estimate the costs and obligations for these items. Its discount rate is determined by utilizing a hypothetical bond portfolio model which approximates the future cash flows necessary to service its liabilities. A decrease in the discount rate used to determine its postretirement benefit and defined benefit pension obligations could result in an increase in the valuation of these obligations, thereby increasing the cost in subsequent fiscal years. The Company has made assumptions related to future trends for medical care costs in the estimates of retiree health care obligations. Its medical trend assumption is developed by annually examining the historical trend of its cost per claim data. If the Company's assumptions do not materialize as expected, actual cash expenditures and costs that it incurs could differ materially from its current estimates. Moreover, regulatory changes or changes in healthcare benefits provided by the government could increase its obligation to satisfy these or additional obligations. The Company develops its actuarial determinations of liabilities using actuarial mortality tables it believes best fit its population's actual results. In deciding which mortality tables to use, the Company periodically reviews its population's actual mortality experience and evaluates results against its current assumptions as well as consider recent mortality tables published by the Society of Actuaries Retirement Plans Experience Committee in order to select mortality tables for use in its year end valuations. If the Company's mortality tables do not anticipate its population's mortality experience as accurately as expected, actual cash expenditures and costs that the Company incurs could differ materially from its current estimates. Additionally, the Company's reported defined benefit pension funding status may be affected, and it may be required to increase employer contributions, due to increases in its defined benefit pension obligation or poor financial performance in asset markets in future years.

***Inflation could result in higher costs and decreased profitability***

Recent inflation, increasing the cost of materials, labor, equipment, freight, fuel and other cost categories, has adversely impacted the Company and could be a sustained trend. The Company's efforts to recover inflation-based cost increases from its customers may be hampered as a result of the structure of its contracts and the contract bidding process as well as the competitive industries, economic conditions and countries in which the Company operates. Accordingly, substantial inflation may result in a material adverse impact on the Company's costs, profitability and financial results.

During the year ended December 31, 2022, the Company estimates that the impact of inflation increased operating costs and expenses by approximately \$230 million over the prior year.

***The Company's business, results of operations, financial condition and prospects could be materially and adversely affected by pandemic or other widespread illnesses and the related effects on public health.***

The Company's operations are susceptible to widespread outbreaks of illness or other public health issues, such as the global coronavirus (COVID-19) pandemic. Pandemic illnesses could have a material adverse effect on the Company's business, results of operations, financial condition and prospects, including its ability to comply with restrictions and covenants under its debt and surety bonding obligations.

Governmental mandates and the Company's efforts to act in the best interests of its employees, customers, suppliers, vendors and joint venture and other business partners, could affect its business and operations, causing the Company to modify a number of its normal business practices. Governmental mandates could require forced shutdowns of its mines and other facilities for extended or indefinite periods and widespread outbreaks in locations significant to its operations could adversely affect its workforce, resulting in serious health issues and absenteeism. In addition, pandemic illnesses could cause supply chain and distribution channels to be interrupted, slowed or rendered inoperable. If the Company's operations were curtailed, it may need to seek alternate sources of supply for commodities, services and labor, which may be more expensive. Alternate sources may not be available or may result in delays in shipments to its customers. Further, if the Company's customers' businesses were similarly affected, they might delay, reduce or cancel purchases from the Company. Adverse changes in the general domestic and global economic conditions and disrupted domestic and international credit markets, could negatively affect its customers' ability to pay the Company as well as its ability to access capital that could negatively affect its liquidity.

Despite its efforts to manage these potential impacts, their ultimate impact would also depend on factors beyond the Company's knowledge or control, including the duration and severity of the pandemic as well as third-party actions taken to contain its spread and mitigate its public health effects. The Company could also face disruption to supply chain and distribution channels, potentially increasing costs of production, storage and distribution, and potential adverse effects to its workforce, each of which could have a material adverse effect on its business, financial condition, results of operations and prospects.

***Peabody is exposed to risks associated with political or international conflicts such as the ongoing conflict between Russia and Ukraine.***

Political or international conflicts can result in worldwide geopolitical and macroeconomic uncertainty, as has been the case with the ongoing conflict between Russia and Ukraine. The Company is unable to predict the ultimate impacts related to such conflicts. If a conflict continues for a significant time or expands to other countries, it could have adverse effects on macroeconomic conditions, including but not limited to, turbulent coal pricing and trade flow disruptions resulting from sanctions imposed on coal imports; supply chain disruptions; increased costs; and decreased business spending. Furthermore, political or international conflicts could give rise to disruptions to Peabody or its business partners' global technology infrastructure, including through cyber attack or cyber intrusion; adverse changes in international trade policies and relations; regulatory enforcement; Peabody's ability to implement and execute its business strategy; terrorist activities; Peabody's exposure to foreign currency fluctuations; and constraints, volatility, or disruption in the capital markets, any of which could have a material adverse effect on the Company's business, results of operations, cash flows and financial condition.

***Peabody could be exposed to significant liability, reputational harm, loss of revenue, increased costs or other risks if it sustains cyber attacks or other security breaches that disrupt its operations or result in the dissemination of proprietary or confidential information about the Company, its customers or other third-parties.***

Peabody has implemented security protocols and systems with the intent of maintaining the physical security of its operations and protecting the Company's and its counterparties' confidential information and information related to identifiable individuals against unauthorized access. Despite such efforts, the Company may be subject to security breaches which could result in unauthorized access to its facilities or the information it is trying to protect. Unauthorized physical access to one of the Company's facilities or electronic access to its information systems could result in, among other things, unfavorable publicity, litigation by affected parties, damage to sources of competitive advantage, disruptions to its operations, loss of customers, financial obligations for damages related to the theft or misuse of such information and costs to remediate such security vulnerabilities, any of which could have a substantial impact on the Company's results of operations, financial condition or cash flows.

***The Company is subject to various general operating risks which may be fully or partially outside of its control.***

The Company's results of operations, financial position or cash flows could be adversely impacted by various general operating risks which may be fully or partially outside of its control. Such risks stem from internal and external sources and include:

- global economic recessions and/or credit market disruptions;
- deterioration of the creditworthiness of its customers or counterparties to financial instruments, and their ability to perform under contracts;
- inability of suppliers and other counterparties, including those related to transportation, contract mining, service provision, and coal trading and brokerage, to fulfil the terms of their contracts with the Company;
- decreases in the availability or increases in costs of key supplies, capital equipment or commodities such as diesel fuel, steel, explosives and tires;
- disruption to, or increased costs within, the transportation chain for coal, including rail, barge, trucking, overland conveyor, ports and ocean-going vessels;
- new or increased forms of taxation imposed by federal, state, provincial or local governmental authorities, including production taxes, sales-related taxes, royalties, environmental taxes, mining profits taxes and income taxes; and
- uncertainties associated with the Company's global operating platform, including country and political risks, international regulatory requirements, and foreign currency rates.

**Risks Related to Peabody's Capital Structure**

***The terms of the agreements and instruments governing the Company's debt and surety bonding obligations impose restrictions that may limit its operating and financial flexibility.***

The agreements governing the Company's debt and surety bonding obligations contain certain restrictions and covenants which restrict its ability to incur liens and/or debt or provide guarantees in respect of obligations of any other person and other restrictions, all of which could adversely affect the Company's ability to operate its business, as well as significantly affect its liquidity, and therefore could adversely affect its results of operations.

These restrictions and covenants limit, among other things, the Company's ability to:

- incur additional indebtedness;
- pay dividends on or make distributions in respect of stock or make certain other restricted payments, such as share repurchases;
- make capital or other investments;
- enter into agreements that restrict distributions from certain subsidiaries;
- sell or otherwise dispose of assets;
- use for general purposes the cash received from certain allowable asset sales or disposals;
- enter into transactions with affiliates;
- create or incur liens;
- merge, consolidate or sell all or substantially all of its assets; and
- receive dividends or other payments from subsidiaries in certain cases.

The Company's ability to comply with these restrictions or covenants may be affected by events beyond its control and the Company may need to refinance existing debt in the future. A breach of any of these restrictions or covenants together with the expiration of any cure period, if applicable, could result in a default. If any such default occurs, subject to applicable grace periods, the holders of the Company's indebtedness may elect to declare such indebtedness, together with accrued interest and other amounts payable thereunder, to be immediately due and payable. If such obligations were to be accelerated, the Company's financial resources may be insufficient to repay the debt and any other obligations becoming due in full as a result of certain cross default provisions.

If the Company experiences a default under the terms of its debt or surety bonding obligations for any reason, its business, financial condition and results of operations could be materially and adversely affected. In addition, complying with such terms may make it more difficult for the Company to successfully execute its business strategy and compete against companies who are not subject to such restrictions.

***The number and quantity of viable financing and insurance alternatives available to the Company may be significantly impacted by unfavorable lending and investment policies by financial institutions and insurance companies associated with concerns about environmental impacts of coal combustion, and negative views around its efforts with respect to environmental and social matters and related governance considerations could harm the perception of the Company by a significant number of investors or result in the exclusion of its securities from consideration by those investors.***

Certain banks, other financing sources and insurance companies have taken actions to limit available financing and insurance coverage for the development of new coal-fueled power plants and coal producers and utilities that derive a majority of their revenue from coal, and particularly from thermal coal. This may adversely impact the future global demand for coal. Increasingly, the actions of such financial institutions and insurance companies are informed by non-standardized “sustainability” scores, ratings and benchmarking studies provided by various organizations that assess environmental, social and governance matters. Further, there have been efforts in recent years by members of the general financial and investment communities, including investment advisors, sovereign wealth funds, public pension funds, universities and other institutional investors, to divest themselves and to promote the divestment of securities issued by companies involved in the fossil fuel extraction market, or that have low ratings or scores in studies and assessments of the type noted above, including coal producers. These entities also have been pressuring lenders to limit financing available to such companies.

These efforts may have adverse consequences, including, but not limited to:

- restricting the Company's ability to access capital and financial markets in the future;
- reducing the demand and price for its equity securities;
- increasing the cost of borrowing;
- causing a decline in the Company's credit ratings;
- reducing the availability, and/or increasing the cost of, third-party insurance;
- increasing the Company's retention of risk through self-insurance;
- making it more difficult to obtain surety bonds, letters of credit, bank guarantees or other financing; and
- limiting the Company's flexibility in business development activities such as mergers, acquisitions and divestitures.

### **Risks Related to Ownership of Peabody's Securities**

***The price of Peabody's securities may be volatile.***

The price of Peabody's common stock (Common Stock) may fluctuate due to a variety of market and industry factors that may materially reduce the market price of its Common Stock regardless of its operating performance, including, among others:

- actual or anticipated fluctuations in Peabody's quarterly and annual results and those of other public companies in its industry;
- industry cycles and trends;
- mergers and strategic alliances in the coal industry;
- changes in government regulation;
- potential or actual military conflicts or acts of terrorism;
- the failure of securities analysts to publish research about Peabody or to accurately predict the results it actually achieves;
- changes in accounting principles;
- announcements concerning Peabody or its competitors;
- the purchase and sale of shares of its Common Stock by significant shareholders;
- lack of or excess of trading liquidity; and
- the general volatility of securities markets.

As a result of all of these factors, investors in Peabody's Common Stock may not be able to resell their stock at or above the price they paid or at all. Further, Peabody could be the subject of securities class action litigation due to any such stock price volatility, which could divert management's attention and have a material adverse effect on its results of operation.

***Peabody's Common Stock is subject to dilution and may be subject to further dilution in the future.***

Peabody's Common Stock is subject to dilution from its convertible senior debt and its long-term incentive plan. In addition, Peabody may continue issuing equity securities in connection with future investments, acquisitions or capital raising transactions. Such issuances or grants could constitute a significant portion of the then-outstanding Common Stock, which may result in significant dilution in ownership of Common Stock.

***There may be circumstances in which the interests of a significant stockholder could be in conflict with other stakeholders' interests.***

Circumstances may arise in which the interests of a significant stockholder may be in conflict with the interests of the Company's other stakeholders. A significant stockholder may exert substantial influence over the Company to cause the Company to take action that aligns with their interests, for example, to pursue or prevent acquisitions, divestitures or other transactions, including the issuance or repurchase of additional shares or debt, that, in its judgment, could enhance its investment in Peabody or another company in which it invests. Such transactions may advance the interests of the significant stockholder and not necessarily those of other stakeholders, which might adversely affect Peabody or other holders of its Common Stock or debt instruments.

***The future payment of dividends on Peabody's stock or future repurchases of its stock is dependent on a number of factors and cannot be assured.***

As more fully described within "Liquidity and Capital Resources" of Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," restrictive covenants in the Company's credit and surety agreements limit its ability to pay cash dividends and repurchase shares. Such restrictions may negatively impact the trading price of the Common Stock. The payment of future cash dividends and future repurchases will depend upon these restrictions, as well as Peabody's earnings, economic conditions, liquidity and capital requirements, and other factors, including its leverage and other financial ratios. Accordingly, the Company cannot make any assurance that future dividends will be paid or future repurchases will be made.

**General Risk Factors**

***The Company may not be able to fully utilize its deferred tax assets.***

The Company is subject to income and other taxes in the U.S. and numerous foreign jurisdictions, most significantly Australia. As of December 31, 2022, the Company had gross deferred income tax assets, including net operating loss (NOL) carryforwards, and liabilities of \$1,587.0 million and \$81.7 million, respectively, as described further in Note 8. "Income Taxes" to the accompanying consolidated financial statements. At that date, the Company also had recorded a valuation allowance of \$1,451.0 million.

The Company's ability to use its U.S. NOL carryforwards may be limited if it experiences an "ownership change" as defined in Section 382 of the Internal Revenue Code of 1986, as amended. An ownership change generally occurs if certain stockholders increase their aggregate percentage ownership of a corporation's stock by more than 50 percentage points over their lowest percentage ownership at any time during the testing period, which is generally the three-year period preceding any potential ownership change.

Although the Company may be able to utilize some or all of those deferred tax assets in the future if it has income of the appropriate character in those jurisdictions (subject to loss carryforward and tax credit expiry, in certain cases), there is no assurance that it will be able to do so. Further, the Company is presently unable to record tax benefits on future losses in the U.S. until such time as sufficient income is generated by its operations in those jurisdictions to support the realization of the related net deferred tax asset positions. The Company's results of operations, financial condition and cash flows may adversely be affected in future periods by these limitations.

**Acquisitions and divestitures are a potentially important part of the Company's long-term strategy, subject to its investment criteria, and involve a number of risks, any of which could cause the Company not to realize the anticipated benefits.**

The Company may engage in acquisition or divestiture activity based on its set of investment criteria to produce outcomes that increase shareholder value or provide potential strategic benefits. If the Company fails to accurately estimate the future results and value of an acquired or divested business or assets and the related risk associated with such a transaction, or are unable to successfully integrate the businesses or assets it acquires, its business, financial condition or results of operations could be negatively affected. Moreover, any transactions the Company pursues could materially impact its liquidity and an acquisition could increase capital resource needs and may require it to incur indebtedness, seek equity capital or both. The Company may not be able to satisfy these liquidity and capital resource needs on acceptable terms or at all. In addition, future acquisitions could result in its assuming significant long-term liabilities, including potentially unknown liabilities, relative to the value of the acquisitions.

**Peabody's certificate of incorporation and by-laws include provisions that may discourage a takeover attempt.**

Provisions contained in Peabody's certificate of incorporation and by-laws and Delaware law could make it more difficult for a third-party to acquire it, even if doing so might be beneficial to its stockholders. Provisions of Peabody's by-laws and certificate of incorporation impose various procedural and other requirements that could make it more difficult for stockholders to effect certain corporate actions. These provisions could limit the price that certain investors might be willing to pay in the future for shares of its Common Stock and may have the effect of delaying or preventing a change in control.

**Diversity in interpretation and application of accounting literature in the mining industry may impact the Company's reported financial results.**

The mining industry has limited industry-specific accounting literature and, as a result, the Company understands diversity in practice exists in the interpretation and application of accounting literature to mining-specific issues. As diversity in mining industry accounting is addressed, the Company may need to restate its reported results if the resulting interpretations differ from its current accounting practices. Refer to Note 1. "Summary of Significant Accounting Policies" to the accompanying consolidated financial statements for a summary of the Company's significant accounting policies.

#### **Item 1B. Unresolved Staff Comments.**

None.

#### **Item 2. Properties.**

##### **Coal Reserves and Resources**

Information concerning the Company's mining properties in this Annual Report on Form 10-K has been prepared in accordance with the requirements of subpart 1300 of Regulation S-K, which first became applicable to the Company for the year ended December 31, 2021. These requirements differ significantly from the previously applicable disclosure requirements of SEC Industry Guide 7. Among other differences, subpart 1300 of Regulation S-K requires disclosure of mineral resources, in addition to mineral reserves, both in the aggregate and for each of the Company's individually material mining properties. The Company's coal reserves and resources are estimated by individuals deemed Qualified Persons (QP) according to the standards set forth in subpart 1300 of Regulation S-K.

Mineral resources and reserves are defined in subpart 1300 of Regulation S-K as follows:

- **Mineral resource.** A concentration or occurrence of material of economic interest in or on the earth's crust in such form, grade or quality, and quantity that there are reasonable prospects for economic extraction. A mineral resource is a reasonable estimate of mineralization, taking into account relevant factors such as cut-off grade, likely mining dimensions, location or continuity, that, with the assumed and justifiable technical and economic conditions, is likely to, in whole or in part, become economically extractable. It is not merely an inventory of all mineralization drilled or sampled.
- **Mineral reserve.** An estimate of tonnage and grade or quality of indicated and measured mineral resources that, in the opinion of a QP, can be the basis of an economically viable project. More specifically, it is the economically mineable part of a measured or indicated mineral resource, which includes diluting materials and allowances for losses that may occur when the material is mined or extracted.

Under subpart 1300 of Regulation S-K, mineral resources may not be classified as mineral reserves unless the determination has been made by a QP that such mineral resources can be the basis of an economically viable project. The conversion of reported mineral resources to mineral reserves should not be assumed.



Coal resources are estimated from geological models constructed from an extensive historical database of drill holes and the Company's ongoing drilling program. Data from individual drill holes is compiled in a computerized drill-hole database, including the depth, thickness and, where core drilling is used, the quality of the coal observed. For coal deposits, the density of a drill pattern is one of the important factors which determine whether the related coal will be classified as measured, indicated, or inferred.

Mineral resource classifications are differentiated under subpart 1300 of Regulation S-K, in part, as follows:

- **Measured resource.** That part of a mineral resource with the highest level of geological confidence; quantity and grade or quality are estimated on the basis of conclusive geological evidence and sampling. The level of geological certainty associated with a measured mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit.
- **Indicated resource.** That part of a mineral resource with a level of geological confidence between that of measured and inferred resources; quantity and grade or quality are estimated on the basis of adequate geological evidence and sampling. The level of geological certainty associated with an indicated mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit.
- **Inferred resource.** That part of a mineral resource with the lowest level of geological confidence; quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. The level of geological uncertainty associated with an inferred mineral resource is too high to apply relevant technical and economic factors likely to influence the prospects of economic extraction in a manner useful for evaluation of economic viability.

The geological confidence surrounding resource classification is first determined by a drill hole spacing analysis performed by a QP using geostatistical techniques. A QP may also use qualitative analysis to determine the geologic confidence based on historical experience with a specific coal deposit. Resources are further evaluated using a set of structure and quality parameters to determine the reasonable prospects for economic extraction. The structure parameters include coal thickness, depth, dipping angle, and strip ratio, among others. The quality parameters include ash and sulfur content, yield, and heat value, among others. Each coal deposit is different with respect to geology, potential mining methods, logistics, and markets. The cut-off criteria of those structure and quality parameters are different for each deposit, and a QP generally forms those criteria based upon experience with the Company's existing mining operations or adjacent operations with similar geological conditions. Other factors, such as coal control, or surface and underground obstacles are also considered in connection with resource estimates. The reclassification of reported mineral resources from lower to higher levels of geological confidence should not be assumed.

The economically mineable part of a measured coal resource is considered a *proven* coal reserve and has the highest degree of assurance of economic viability. The economically mineable part of indicated, and sometimes measured, coal resources are considered *probable* coal reserves and have a moderate degree of assurance of economic viability.

For each mine or future mine, the Company develops Life-of-Mine (LOM) plans which employ a market-driven, risk-adjusted capital allocation process to guide long-term mine planning of active operations and development projects. QPs rely on LOM planning as an integral process for coal reserve and resource estimates. The LOM plans consider dilution and losses during mining and processing as recoverability factors to estimate saleable coal. The LOM plans are developed in consideration of market demands and operational constraints. The LOM plans project, among other things, annual quantities and qualities for each coal product. The saleable product mix for a mine may include multiple thermal and metallurgical products with different targeted qualities and sales prices. The expected volumes for each mine and product, as well as annual pricing forecasts for each product, developed as described below, and related cost forecasts, developed as described below, are then evaluated to determine the economically viable coal in the LOM plans. Other factors impacting the assessment include geological conditions, production expectations for certain areas, the effects of regulation and taxes by governmental agencies, future price and operating cost assumptions and adverse changes in market conditions and mine closure activities.

The Company periodically reviews and updates coal reserve and resource estimates to reflect the production of coal, new drill hole data, the effects of mining activities, analysis of new engineering and geological data, changes in property control, modification of mining methods and other factors.

## Mineral Rights

The Company controls coal rights through direct ownership and numerous lease agreements with government or private parties. The majority of the Company's coal reserves and resources are controlled through lease agreements with the U.S. and Australian governments. In addition, surface rights are required to conduct certain mining-related activities. The Company holds the majority of the required surface rights to meet mid- to long-term production requirements. The additional surface rights to meet long-term production requirements are expected to be acquired as needed.

The Company is party to numerous U.S. federal coal leases that are administered by the U.S. Department of the Interior under the Federal Coal Leasing Amendments Act of 1976. These leases cover Peabody's principal reserves in the Powder River Basin and other reserves and resources in Alabama, Colorado and New Mexico. Each of these leases continues indefinitely, provided there is diligent development of the property and continued operation of the related mine or mines. The U.S. Bureau of Land Management (BLM) has asserted the right to adjust the terms and conditions of these leases, including rent and royalties, after the first 20 years of their term and at 10-year intervals thereafter. Annual rents on surface land under federal coal leases are now set at \$3.00 per acre. Production royalties on federal leases are set by statute at 12.5% of the gross proceeds of coal mined and sold for surface-mined coal and 8% for underground-mined coal. The U.S. federal government limits by statute the amount of federal land that may be leased by any company and its affiliates at any time to 75,000 acres in any one state and 150,000 acres nationwide. As of December 31, 2022, the Company leased 1,610 acres of federal land in Alabama, 3,480 acres in Colorado, 282 acres in New Mexico and 38,915 acres in Wyoming, for a total of 44,287 acres nationwide subject to those limitations. The Company also lease coal-mining properties from various state governments in the U.S.

Private U.S. coal leases normally have terms of between 10 and 20 years and usually give the Company the right to renew the lease for a stated period or to maintain the lease in force until the exhaustion of mineable and merchantable coal contained on the relevant site. These private U.S. leases provide for royalties to be paid to the lessor either as a fixed amount per ton or as a percentage of the sales price. Many private U.S. leases also require payment of a lease bonus or minimum royalty, payable either at the time of execution of the lease or in periodic installments. The terms of private U.S. leases are normally extended by active production at or near the end of the lease term. Private U.S. leases containing undeveloped coal properties may expire or these leases may be renewed periodically.

Mining and exploration in Australia are generally carried out under leases or licenses granted by state governments. Mining leases are typically for an initial term of up to 21 years (but which may be renewed) and contain conditions relating to such matters as minimum annual expenditures, restoration and rehabilitation. Royalties are paid to the state government as a percentage of the sales price. Generally, landowners do not own the mineral rights or have the ability to grant rights to mine those minerals. These rights are retained by state governments. Compensation is payable to landowners for loss of access to the land, and the amount of compensation can be determined by agreement or court process. Surface rights are typically acquired directly from landowners through agreement or court determination, subject to some exceptions.

## Pricing

The pricing information used in support of the Company's reserve and resource estimates include internal, proprietary price forecasts and existing contract economics, in each case on a mine-by-mine and product-by-product basis. In general, price forecasts are based on a thorough analytical process utilizing detailed supply and demand models, global economic indicators, projected foreign exchange rates, analyses of price relationships among various commodities, competing fuels analyses, projected supply and demand fundamentals for steel production and electricity generation, analyses of supplier costs and other variables. Price forecasts, supply and demand models and other key assumptions and analyses are stress-tested against independent third-party research (not commissioned by the Company) to confirm the conclusions reached through analytical processes, and that price forecasts fall within the ranges of the projections included in this third-party research. The development of the analyses, price forecasts, supply and demand models and related assumptions are subject to multiple levels of management review.

Below is a description of some of the specific factors that the Company evaluates in developing price forecasts for thermal and metallurgical coal products on a mine-by-mine and product-by-product basis. Differences between the assumptions and analyses included in the price forecasts and realized factors could cause actual pricing to differ from the forecasts.

*Thermal.* Several factors can influence thermal coal supply and demand and pricing. Demand is sensitive to total electric power generation volumes, which are determined in part by the impact of weather on heating and cooling demand and economic activity, inter-fuel competition in the electric power generation mix (such as from natural gas and renewable sources), changes in capacity (additions and retirements), competition from other producers, coal stockpiles and policy and regulations. Supply considerations impacting pricing include coal reserve and resource positions, mining methods, strip ratios, production costs and capacity and the cost of new supply (greenfield developments or extensions at existing mines).

In the United States, natural gas is the most significant substitute for thermal coal for electricity generation and can be one of the largest drivers of shifts in supply and demand and pricing. The competitiveness of natural gas as a generation fuel source has been strengthened by accelerated growth in domestic natural gas production, new natural gas combined cycle generation capacity and comparatively low natural gas prices versus historic levels. The build out of renewable generation and subsidized power can also be a key driver of power market pricing and hence coal prices.

Internationally, thermal coal-fueled generation also competes with alternative forms of electricity generation. The competitiveness and availability of generation fueled by natural gas, oil, nuclear, hydro, wind, solar and biomass vary by country and region and can have a meaningful impact on coal pricing. Policy and regulations, which vary from country to country, can also influence prices. In addition, seaborne thermal coal import demand can be significantly impacted by the availability of domestic coal production, particularly in the two leading coal import countries, China and India, and the competitiveness of seaborne supply from leading thermal coal exporting countries, including Indonesia, Australia, Russia, Colombia, the U.S. and South Africa, among others.

*Metallurgical.* Several factors can influence metallurgical coal supply and demand and pricing. Demand is impacted by economic conditions, government policies and demand for steel, and is also impacted by competing technologies used to make steel, some of which do not use coal as a manufacturing input. Competition from other types of coal is also a key price consideration and can be impacted by the coal quality and characteristics, delivered energy cost (including transportation costs), customer service and support, and reliability of supply.

Seaborne metallurgical coal import demand can be significantly impacted by the availability of domestic coal production, particularly in leading metallurgical coal import countries such as China, among others, as well as country-specific policies restricting or promoting domestic supply. The competitiveness of seaborne metallurgical coal supply from leading metallurgical coal exporting countries of Australia, the U.S., Russia, Canada, Mongolia and Mozambique, among others, is also an important price consideration.

In addition to the factors noted above, the prices which may be obtained at each mine or future mine can be impacted by factors such as (i) the mine's location, which impacts the total delivered energy costs to its customers, (ii) quality characteristics, particularly if they are unique relative to competing mines, (iii) assumed transportation costs and (iv) other mine costs that are contractually passed on to customers in certain commercial relationships.

## Costs

The cost estimates used to establish LOM plans are generally made according to internal processes that project future costs based on historical costs and expected trends. The estimated costs normally include mining, processing, transportation, royalty, add-on tax and other mining-related costs. Estimated mining and processing costs reflect projected changes in prices of consumable commodities (mainly diesel fuel, explosives and steel), labor costs, geological and mining conditions, targeted product qualities and other mining-related costs. Estimates for other sales-related costs (mainly transportation, royalty and add-on tax) are based on contractual prices or fixed rates. Specific factors that may impact the Company's operating costs include:

- *Geological settings.* The geological characteristics of each mine are among the most important factors that determine the mining cost. Company geologists conduct the exploration program and provide geological models for the LOM process. Coal seam depth, thickness, dipping angle, partings and quality constrain the available mining methods and size of operations. Shallow coal is typically mined by surface mining methods by which the primary cost is overburden removal. Deep coal is typically mined by underground mining methods where the primary costs include coal extraction, conveyance and roof control.
- *Scale of operations and the equipment sizes.* For surface mines, dragline systems generally have a lower unit cost than truck-and-shovel systems for overburden removal. Longwall operations are generally more cost-effective than room-and-pillar operations for underground mines.
- *Commodity prices.* For surface mines, the costs of diesel fuel and explosives are major components of the total mining cost. For underground mines, the steel used for roof control represents a significant cost. Forecasted commodity prices are used to project those costs in the financial models used to establish reserve and resource estimates.
- *Target product quality.* By targeting a premium quality product, mining and processing processes may experience more coal losses. By lowering product quality the coal losses can be minimized and therefore a lower cost per ton can be achieved. In the Company's LOM plans, product qualities are estimated to correspond to existing contracts and forecasted market demands.
- *Transportation costs.* Transportation costs vary by region. Most of the Company's U.S. thermal operations sell coal at mine loadouts. Therefore, no transportation expenses are included in U.S. thermal cost estimates. The Company's seaborne operations typically sell coal at designated ports. The estimated costs for seaborne operations include rail and barge transportation and related fees at ports.
- *Royalty costs.* Royalty costs are based upon contractual agreements for the coal leased from governments or private owners. The royalty rates for coal leased from governments differ by country and, in some cases, by mining method. Estimated add-on taxes and other sales-related costs are determined according to government regulations or historical costs.
- *Exchange rates.* Costs related to the Company's Australian production are predominantly denominated in Australian dollars, while the Australian coal exported is sold in U.S. dollars. As a result, Australian/U.S. dollar exchange rates impact the U.S. dollar cost of Australian production.

## Summary of Coal Reserves and Resources

Peabody controlled an estimated 2.4 billion tons of coal reserves and 2.4 billion tons of coal resources as of December 31, 2022. Approximately 95% of the Company's coal reserves and 98% of the Company's coal resources are held under lease, and the remainder is held through fee ownership.

The following tables summarize the Company's estimated coal reserves and resources as of December 31, 2021. The quantity of the coal resources is estimated on an *in situ* basis as attributable to Peabody. Coal resources are reported exclusive of coal reserves. The quantity of the coal reserves is estimated on a saleable product basis as attributable to Peabody. The coal reserves and resources are reported on selected key quality parameters and on different moisture bases generally referenced by sales contracts for each mining property.

**SUMMARY COAL RESERVES AT END OF THE FISCAL YEAR ENDED DECEMBER 31, 2022 <sup>(1)</sup>**  
(Tons in millions)

Segment / Mining Complex	Country	State	Stage	Mining Method	Coal Type	Proven Coal Reserves				Probable Coal Reserves				Total Coal Reserves				Peabody Interest
						Amount	Quality			Amount	Quality			Amount	Quality			
							(10)											
Seaborne Thermal Mining: <sup>(2)(4)</sup>						Tons	%Ash	%Sulfur	Kcal/kg <sup>(6)</sup>	Tons	%Ash	%Sulfur	Kcal/kg <sup>(6)</sup>	Tons	%Ash	%Sulfur	Kcal/kg <sup>(6)</sup>	
Wilpinjong	AUS	NSW	P	S	T	63	24.2	0.5	5,953	4	30.4	0.4	5,422	67	24.5	0.5	5,924	100 %
Wambo Opencut <sup>(9)</sup>	AUS	NSW	P	S	T	29	10.9	0.3	6,448	2	10.6	0.3	6,478	31	10.9	0.3	6,450	50 %
Wambo Underground	AUS	NSW	P	U	T	2	13.7	0.4	6,473	3	12.2	0.4	6,588	5	12.9	0.4	6,534	100 %
South Wambo	AUS	NSW	E	U	T/C	—	—	—	—	74	9.8	0.3	7,034	74	9.8	0.3	7,034	100 %
Total						94				83				177				
Seaborne Metallurgical Mining: <sup>(3)</sup>						Tons	%Ash	%Sulfur	VM% <sup>(7)</sup>	Tons	%Ash	%Sulfur	VM% <sup>(7)</sup>	Tons	%Ash	%Sulfur	VM% <sup>(7)</sup>	
Shoal Creek	USA	AL	P	U	C	15	10.0	0.7	30.2	2	10.0	0.7	30.2	17	10.0	0.7	30.2	100 %
Coppabella	AUS	QLD	P	S	P	6	9.3	0.2	9.9	4	9.8	0.2	8.5	10	9.5	0.2	9.3	73.3 %
Moorvale	AUS	QLD	P	S	C/P/T	4	11.4	0.3	16.5	—	—	—	—	4	11.4	0.3	16.5	73.3 %
Metropolitan	AUS	NSW	P	U	C/T	3	13.9	0.4	18.6	7	13.8	0.4	18.7	10	13.8	0.4	18.6	100 %
North Goonyella	AUS	QLD	D	U	C	46	7.4	0.5	21.4	24	7.5	0.5	21.1	70	7.4	0.5	21.3	100 %
Moorvale South	AUS	QLD	P	S	C/P	3	11.1	0.4	18.4	2	9.8	0.4	17.4	5	10.6	0.4	18.0	73.3 %
Middlemount <sup>(9)</sup>	AUS	QLD	P	S	C/P	25	10.3	0.4	18.0	9	10.3	0.4	18.0	34	10.3	0.4	18.0	50.0 %
Total						102				48				150				
Powder River Basin Mining: <sup>(5)</sup>						Tons	%Ash	%Sulfur	Btu <sup>(8)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(8)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(8)</sup>	
North Antelope Rochelle	USA	WY	P	S	T	1,316	4.4	0.2	8,889	107	4.5	0.2	8,965	1,423	4.4	0.2	8,895	100 %
Caballo	USA	WY	P	S	T	274	5.1	0.3	8,517	68	5.6	0.3	8,313	342	5.2	0.3	8,476	100 %
Rawhide	USA	WY	P	S	T	115	5.6	0.4	8,278	2	5.2	0.3	8,362	117	5.6	0.4	8,279	100 %
Total						1,705				177				1,882				
Other U.S. Thermal Mining: <sup>(5)</sup>						Tons	%Ash	%Sulfur	Btu <sup>(8)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(8)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(8)</sup>	
Bear Run	USA	IN	P	S	T	84	10.6	3.1	11,058	52	10.0	2.5	11,045	136	10.4	2.9	11,055	100 %
El Segundo/Lee Ranch	USA	NM	P	S	T	13	15.8	0.9	9,249	1	12.3	0.7	9,526	14	15.6	0.9	9,266	100 %
Gateway North	USA	IL	P	U	T	38	8.9	2.9	10,888	5	9.0	3.0	10,874	43	8.9	2.9	10,886	100 %
Twentymile	USA	CO	P	U	T	10	10.7	0.5	11,280	1	10.2	0.5	11,230	11	10.6	0.5	11,272	100 %
Wild Boar	USA	IN	P	S	T	7	8.3	2.4	11,010	8	8.4	2.7	11,470	15	8.4	2.6	11,265	100 %
Francisco Underground	USA	IN	P	U	T	3	8.7	2.9	11,500	4	9.0	3.3	11,455	7	8.9	3.1	11,480	100 %
Total						155				71				226				
Grand total						2,056				379				2,435				

Stage	Mining Method	Coal Type
P Producing	S Surface Mine	T Thermal
I Idle	U Underground Mine	C Coking
D Development		P Pulverized Coal Injection
E Exploration		

**SUMMARY COAL RESOURCES AT END OF THE FISCAL YEAR ENDED DECEMBER 31, 2022<sup>(1)</sup>**  
(Tons in millions)

Deposit	Country	State	Stage	Mining Method	Coal Type	Measured and Indicated														Inferred Coal Resources	Peabody Interest <sup>(10)</sup>	
						Measured Coal Resources				Indicated Coal Resources				Coal Resources								
						Amount	Quality			Amount	Quality			Amount	Quality			Amount	Quality			
						Tons	%Ash	%Sulfur	Kcal/kg <sup>(6)</sup>	Tons	%Ash	%Sulfur	Kcal/kg <sup>(6)</sup>	Tons	%Ash	%Sulfur	Kcal/kg <sup>(6)</sup>	Tons	%Ash	%Sulfur	Kcal/kg <sup>(5)</sup>	
Seaborne Thermal Mining: <sup>(2)(4)</sup>						103	23.0	0.5	6,055	25	25.4	0.5	5,860	128	23.5	0.5	6,017	6	27.3	0.5	5,698	100 %
Wilpinjong	AUS	NSW	P	S	T	191	21.6	0.4	5,731	154	21.5	0.4	5,764	345	21.6	0.4	5,746	259	19.9	0.4	5,864	50 %
Wambo Opencut <sup>(8)</sup>	AUS	NSW	P	S/U	T	219	21.5	0.3	6,068	83	27.2	0.3	5,571	302	23.1	0.3	5,931	47	36.3	0.3	4,745	100 %
Wambo South	AUS	NSW	E	U	T/C																	
Total						513				262				775				312				
Seaborne Metallurgical Mining: <sup>(3)(4)</sup>						Tons	%Ash	%Sulfur	VM% <sup>(7)</sup>	Tons	%Ash	%Sulfur	VM% <sup>(7)</sup>	Tons	%Ash	%Sulfur	VM% <sup>(7)</sup>	Tons	%Ash	%Sulfur	VM% <sup>(7)</sup>	
Shoal Creek	USA	AL	P	U	C	40	9.6	0.7	25.1	35	9.9	0.7	24.1	75	9.8	0.7	24.6	7	10.3	0.7	24.0	100 %
Metropolitan	AUS	NSW	P	U	C/T	7	15.4	0.4	18.6	8	15.3	0.3	18.7	15	15.3	0.4	18.6	2	16.0	0.3	19.0	100 %
Coppabella	AUS	QLD	P	S	P	13	15.8	0.3	13.1	48	14.3	0.2	12.8	61	14.6	0.2	12.9	73	15.5	0.2	12.3	73.3 %
Moorvale	AUS	QLD	P	S	P	14	18.5	0.3	16.7	14	17.2	0.3	16.6	28	17.9	0.3	16.7	5	15.9	0.3	16.7	73.3 %
Moorvale South	AUS	QLD	P	S	C/P	3	18.3	0.4	18.4	7	18.2	0.4	18.3	10	18.2	0.4	18.3	6	16.8	0.4	17.7	73.3 %
NGC GLB2	AUS	QLD	E	U	C	—	—	—	—	1	15.3	0.6	20.7	1	15.3	0.6	20.7	8	13.6	0.5	20.7	100 %
Coppabella North	AUS	QLD	E	U	P	255	15.8	0.3	14.6	102	16.8	0.3	14.6	357	16.1	0.3	14.6	12	16.5	0.3	14.3	75.5 %
Yeerun	AUS	QLD	E	S	P	16	16.0	0.4	14.3	57	16.2	0.5	15.0	73	16.2	0.4	14.8	46	17.8	0.5	14.7	83.0 %
Moorvale North	AUS	QLD	E	U	P	21	26.0	0.4	12.9	25	24.5	0.5	13.2	46	25.2	0.4	13.1	25	23.2	0.5	13.4	73.3 %
Gundyer	AUS	QLD	E	U	P	—	—	—	—	54	16.4	0.2	19.7	54	16.4	0.2	19.7	70	18.3	0.2	18.3	90.0 %
Total						369				351				720				254				
Powder River Basin Mining: <sup>(5)</sup>						Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	
Caballo	USA	WY	P	S	T	15	5.3	0.4	8,218	65	5.2	0.4	8,211	80	5.2	0.4	8,212	1	5.5	0.4	8,263	100 %
Rawhide	USA	WY	P	S	T	1	5.4	0.4	8,277	95	5.2	0.3	8,356	96	5.2	0.3	8,355	7	5.7	0.4	8,252	100 %
Total						16				160				176				8				
Other U.S. Thermal Mining: <sup>(5)</sup>						Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	Tons	%Ash	%Sulfur	Btu <sup>(6)</sup>	
Bear Run	USA	IN	P	S	T	18	14.6	3.5	10,860	51	16.8	3.5	10,450	69	16.3	3.5	10,550	37	16.3	3.5	10,545	100 %
El Segundo/Lee Ranch	USA	NM	P	S	T	1	17.1	1.1	9,491	5	16.5	1.0	9,475	6	16.6	1.0	9,478	2	17.4	1.2	9,280	100 %
Wild Boar	USA	IN	P	S	T	—	—	—	—	3	12.9	6.1	10,940	3	12.9	5.4	11,020	1	12.9	5.9	10,960	100 %
Total						19				59				78				40				
Grand total						917				832				1,749				614				

- (1) The sales price assumptions supporting economic recoverability vary depending upon factors such as coal quality and existing customer volume commitments. For the five-year period 2023 through 2027, the estimated sales prices for seaborne metallurgical mines are based upon estimated premium hard coking coal benchmark prices ranging from \$172 to \$227 per tonne. The estimated sales prices for seaborne thermal mines are based upon estimated Newcastle benchmark prices ranging from \$86 to \$224 per tonne for the same period. For US domestic thermal mines, the estimated sales prices for the same period range from approximately \$10.42 to \$59.69 per ton. Subsequent to 2027, for all mines, sales price escalation is assumed at 2.0% to 3.0% per annum through the end of each LOM plan.
- (2) The moisture condition for Seaborne Thermal Mining segment coal quality is on an air-dry basis, except for Wambo Opencut, which is estimated on an as-shipped basis for reserves, and an in-situ moisture basis for resources.
- (3) The moisture condition for the Seaborne Metallurgical Mining segment coal quality is on an air-dry basis, except for Shoal Creek Mine which is on a dry basis.
- (4) The quantities for Australian coal reserves are estimated on an as-shipped moisture basis; quantities for Australian coal resources are estimated on an *in situ* moisture basis.
- (5) The quality and quantity estimates for U.S. thermal reserves are calculated on as-shipped moisture basis; the quality and quantity estimates for U.S. thermal resources are calculated on an *in situ* moisture basis.
- (6) Kcal/kg (kilocalories per kilogram) is the net calorific value (net heating value) of coal, except for Wambo Opencut which is estimated as gross calorific value.
- (7) VM (volatile matter) represents the proportion of certain organic and mineral components in coal, for example, water, carbon dioxide, or sulfur dioxide. Volatile matter is inversely related to coal rank.
- (8) Btu (British thermal unit) is the gross heating value of coal per pound, which includes the weight of moisture in coal on an as-sold basis. The range of variability of the moisture content in coal may affect the actual shipped Btu content.
- (9) Reserve and resource data is maintained and provided by joint venture managing partners utilizing the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves.
- (10) The quantities of reserves and resources are disclosed at Peabody's proportional ownership share.

## Individual Property Disclosure

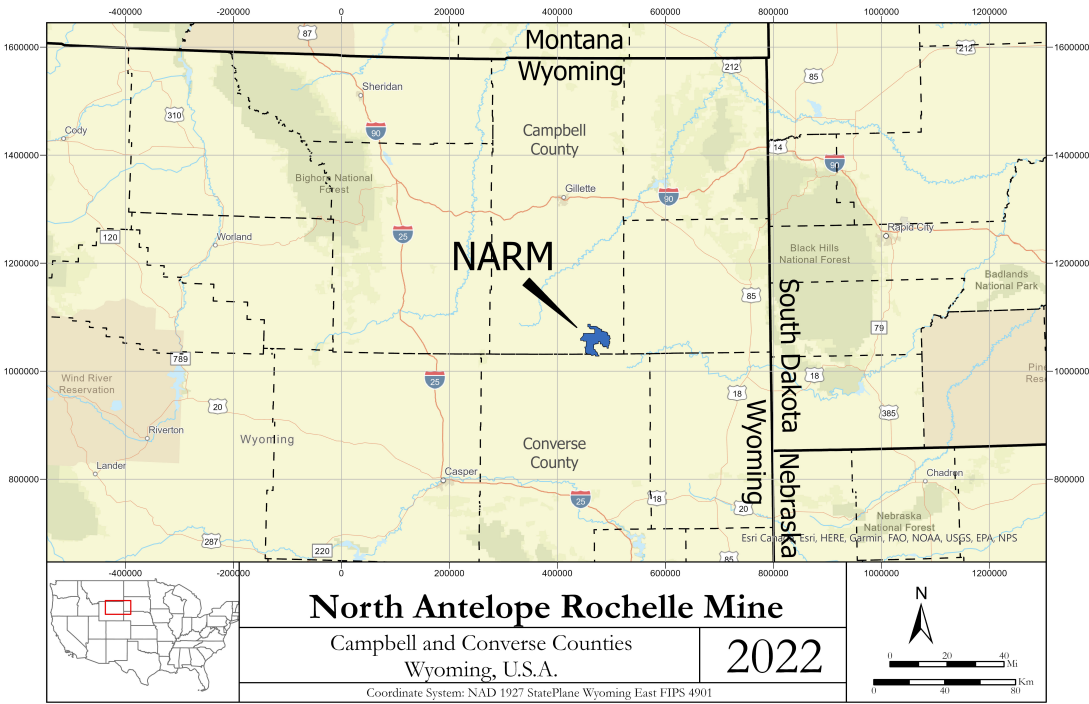
To determine the Company's individually material mining operations in accordance with subpart 1300 of Regulation S-K, management considered both quantitative and qualitative factors, assessed in the context of the Company's overall business and financial condition. Such assessment included the Company's aggregate mining operations on all of its mining properties, regardless of the stage of production or the type of coal produced. Quantitative factors included, among others, mining operations' relative contributions to the Company's aggregate historical and estimated revenue, cash flows, and Adjusted EBITDA (as defined in Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations.") Qualitative factors may include, as applicable, strategic priorities, the regulatory environment, capital expansion plans, and the long-term pricing outlook. The Company concluded that, as of December 31, 2021, its individually material mines are North Antelope Rochelle Mine (NARM), Shoal Creek Mine, Wilpinjong Mine, and the Coppabella-Moorvale Joint Venture. The Company also assesses material changes in the material properties mainly on the basis of the amount of reserves and resources over a period of three years. The Company concluded that, as of December 31, 2022, its material mining operations had no material changes. The Company will update its assessment of individually material mines on an annual basis.

The information that follows relating to such individually material mines is derived, for the most part, from, and in some instances is an extract from, the studies relating to such properties prepared in compliance with the Item 601(b)(96) and subpart 1300 of Regulation S-K. Portions of the following information are based on assumptions, qualifications and procedures that are not fully described herein. The changes from the previous year are not material and no updates for TRS are included in this filing. Other technical details regarding the individual properties should be referred to the previously disclosed TRS.



North Antelope Rochelle Mine

The North Antelope Rochelle Mine (NARM) is a production-stage surface coal mine located sixty-five miles south of Gillette, Wyoming, USA. NARM is situated in the Gillette Coal Field on the east flank of the Powder River Basin. NARM began operations in 1999 after Peabody combined its interests in the formerly separate North Antelope Mine and Rochelle Mine.



NARM extracts coal from the Wyodak-Anderson coal seam, which ranges from 60- to 80-feet thick and lies from 100 to 400 feet below the surface in the mining area. The Company has secured mineral rights through Federal and State lease agreements which cover 30,159 acres. The typical royalty rate for Federal and State coal leases is 12.5% of realized revenue. Generally, the leases continue indefinitely with periodic renewal, provided there is diligent coal production or other development within the lease area. As of December 31, 2022, all required licenses and permits were in place for the operations of NARM.

The mining operation consists of multiple open pits in four main mining areas, which allows for quality blending and other optimization strategies. Overburden is removed by dragline, truck and shovel, dozer and cast blasting methods. Coal is hauled by truck to one of five dump locations, where it is then crushed and conveyed to silos adjacent to rail load-outs for customer delivery. Coals of varying characteristics may be blended at a central blending facility along the loadout rail loop. Coal is sold unwashed, as a run-of-mine (ROM) product. NARM coal is well recognized for domestic thermal power generation.

The key supporting infrastructure for NARM includes rail services provided by the BNSF Railway Company and Union Pacific Corporation, road access via interstate and state highways and roads, electrical power from a dedicated substation with 230kV and 69kV transmission lines, and water supply from a mine dewatering system and deep wells. The mining industry in the Powder River Basin anchors numerous communities from which the mine attracts qualified personnel.

The property, plant, equipment and mine development assets of NARM had a net book value of approximately \$417 million at December 31, 2022. The mine's operating equipment and facilities meet contemporary mining standards and are adequately maintained to execute the LOM plan. Routine maintenance, overhauls, and necessary capital replacements are generally included in the LOM plan to support future production.

The table below presents NARM coal reserve estimates at December 31, 2022, along with comparative quantities at December 31, 2021. NARM did not hold any coal resources as of December 31, 2022. These reserve estimates were supported by the analyses of 4,778 total drill holes within the coal lease area. The quantity of the coal reserves is estimated on a saleable product basis and deemed 100% attributable to Peabody. In addition to quantity, the table presents selected key quality parameters on an as-shipped basis.

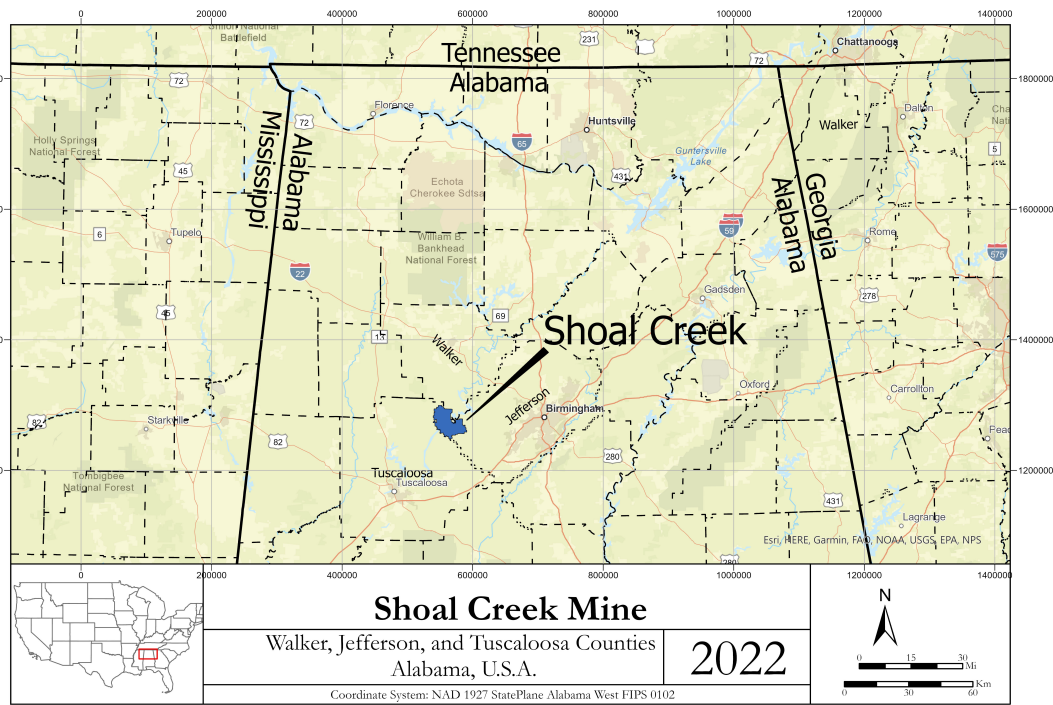
NARM - SUMMARY OF RESERVES <sup>(1)</sup> (Tons in millions)						
Coal Reserves <sup>(2)(3)(4)</sup>	December 31, 2022					December 31, 2021
	Tons	%Ash	%Sulfur	Btu	% Mine Yield <sup>(5)</sup>	Tons
Proven	1,316	4.4	0.2	8,889	100 %	1,378
Probable	107	4.5	0.2	8,965	100 %	106
Total	1,423					1,484
Year-over-year decrease	(4)%					

The year-over-year decrease in the quantity of coal reserves was driven by production depletion.

- <sup>(1)</sup> Economic recoverability is based upon an estimated average sales price per ton of \$14.64 for the five-year period ending December 31, 2027 and assumed escalation of 2.0% per annum during the subsequent period through the end of the LOM plan.
- <sup>(2)</sup> The cut-off grade and metallurgical recovery are not limiting factors for reserve estimates due to consistent coal thickness and established trends of coal quality in the leased area. The strip ratio increases gradually, but the existing pit length allows an average mineable strip ratio. Besides the results of drill hole analyses, the main limiting factors include surface infrastructure and lease boundaries.
- <sup>(3)</sup> The quality of coal reserves is estimated on an as-shipped basis.
- <sup>(4)</sup> The quantity of coal reserves is estimated on a saleable product basis, which takes into consideration 92% mining recovery. The results of the LOM planning process demonstrate the economic recoverability of the coal reserve estimates.
- <sup>(5)</sup> Mine yield is the ratio of estimated saleable product coal over ROM coal tons, with processing loss considered.

Shoal Creek Mine

The Shoal Creek Mine is a production-stage underground longwall metallurgical coal mine located thirty-five miles west of Birmingham, Alabama, USA. The mine is within the east-central portion of the Warrior Coal Field, which is part of the Southern Appalachian coal-producing region. The Drummond Corporation began producing coal at the mine in 1994. Peabody Energy acquired the mine from the Drummond Corporation in December 2018. The mine was idled in the fourth quarter of 2020 due to market conditions and resumed production in November 2021.



Shoal Creek Mine extracts coal from the Mary Lee and Blue Creek coal seams at depths of 1,000 to 1,300 feet. The Company has secured mineral rights through a combination of private, federal and state mineral leases and surface rights agreements which encompass a total of 31,747 acres of mineral control and 3,490 acres of surface land control. The majority of the mineral leases are private leases with negotiated royalty rates set at minimum amounts per ton or as percentages of sales realization. Shoal Creek Mine’s largest lease agreement, representing 28,517 acres of mineral control, expires in 2031 with an option to negotiate an extension. The expiration dates vary for other leases, but typically include extension provisions. As of December 31, 2022, all required licenses and permits were in place for the operations of the Shoal Creek Mine.

Coal is produced primarily using longwall systems. The mine also uses continuous miner units for longwall development and limited production. Mined coal is processed through a wash plant, conveyed to barge loadout facilities on the Black Warrior River, and transported by barge 370 miles to McDuffie Coal Terminal in Mobile Bay, Alabama, in the Gulf of Mexico, for export via ocean-going vessels. Shoal Creek Mine metallurgical coal has a well-established customer base in Europe, South America, and East Asia for steel making.

The key supporting infrastructure for Shoal Creek Mine includes road access via interstate and state highways and roads, third-party barge services and a barge loadout on the Black Warrior River, the McDuffie Coal Terminal, electrical power provided by 69kV transmission lines, and water supplied from the Black Warrior River and recycled underground water. The mine’s workforce is drawn primarily from Jasper and Tuscaloosa, Alabama and other adjacent communities.

The property, plant, equipment and mine development assets of Shoal Creek Mine had a net book value of approximately \$287 million at December 31, 2022. The mine's operating equipment and facilities meet contemporary mining standards and are adequately maintained to execute the LOM plan. Routine maintenance, overhauls and necessary capital replacements are generally included in the LOM plan to support future production. While the mine was idled for parts of 2020 and 2021, the Company upgraded the mine's coal handling and preparation plant and made other capital investments to improve its prospective cost structure.

The tables below present Shoal Creek Mine's estimated coal reserves and resources at December 31, 2022, along with comparative quantities at December 31, 2021. These reserve and resource estimates were supported by the analyses of 1,178 total drill holes within the coal lease area. The quantity of the coal resources is estimated on an *in situ* basis as 100% attributable to Peabody. Coal resources are reported exclusive of coal reserves. The quantity of the coal reserves and resources are estimated on a saleable product basis as 100% attributable to Peabody. Coal reserves and resources are reported on selected key quality parameters on a dry basis.

**SHOAL CREEK MINE - SUMMARY OF RESERVES AND RESOURCES <sup>(1)</sup>**  
(Tons in millions)

Coal Reserves <sup>(2)(4)(5)(6)</sup>	December 31, 2022					December 31, 2021
	Tons	%Ash	%Sulfur	%VM	% Mine Yield <sup>(7)</sup>	Tons
Proven	15	10.0	0.7	30.2	36 %	16
Probable	2	10.0	0.7	30.2	36 %	2
Total	17					18
Year-over-year decrease	(6)%					

Coal Resources <sup>(2)(3)(4)(5)</sup>	December 31, 2022				December 31, 2021
	Tons	%Ash	%Sulfur	VM%	Tons
Measured	40	9.6	0.7	25.1	40
Indicated	35	9.9	0.7	24.1	35
Measured and indicated	75	9.8	0.7	24.6	75
Inferred	7	10.2	0.7	24.0	7
Total	82				82

The year-over-year decrease in coal reserves reflects 2022 production depletion.

- <sup>(1)</sup> Economic recoverability is based upon an estimated average sales price per ton of \$159.45 for the five-year period ending December 31, 2027 and assumed escalation of 2.0% per annum during the subsequent period through the end of the LOM plan.
- <sup>(2)</sup> The quality of coal reserves and resources are estimated on a dry basis.
- <sup>(3)</sup> The quantity of resource estimates are on an *in situ* basis, which doesn't take into consideration coal loss during mining and processing.
- <sup>(4)</sup> The coal resource boundary is established by considering various factors, including results from drill hole analyses, coal control, geological features, faults and other surface features.
- <sup>(5)</sup> The cut-off grade and metallurgical recovery are not limiting factors for the reserve and resource estimates due to relatively consistent coal quality and float recovery from the lab results within the assessed area. The historically mined coal thickness has been used as the main criteria for the resource boundary based on the mine's actual performance in the last two decades.
- <sup>(6)</sup> The quantity of coal reserves is estimated on a saleable product basis, which takes into consideration of unmined coal (pillars, etc.), 20% coal loss during mining and processing, and additional washing recovery. The results from the LOM planning process demonstrate the economic recoverability of the coal reserve estimate.
- <sup>(7)</sup> Mine yield is the ratio of estimated saleable product coal over ROM coal tons with mainly processing loss considered.

Wilpinjong Mine

The Wilpinjong Mine is a production-stage surface thermal coal mine situated approximately 25 miles northeast of Mudgee in New South Wales, Australia. Peabody acquired the mine as part of its acquisition of Excel Coal Pty Ltd (Excel) in 2006. Excel began the development of Wilpinjong Mine in 2006 and it commenced production under Peabody ownership in 2007. A third-party contractor managed mining operations until 2013, when the Company converted the mine to owner-operated.



The Wilpinjong Mine extracts coal from the Moolarben and Ulan coal seams which have a combined thickness from 6 to 10 meters and a typical depth less than 60 meters in the Illawarra Coal Measures on the northwest margin of the Sydney Basin. The Company has secured three exploration licenses of 3,186 hectares and three mining licenses of 3,723 hectares through the New South Wales Minister of Planning. The typical royalty rate is 8.2% of the value of coal recovered. The mining licenses require renewal upon expiration in 2027 for 2,863 hectares and in 2039-2040 for 860 acres. The renewal application for two exploration licenses is currently pending approval and the third was granted in May 2022 for an initial term of 6 years. As of December 31, 2022, all required licenses and permits were in place for the operations of Wilpinjong.

Conventional open cut mining methods are used at the Wilpinjong Coal Mine, with multiple pits at a low strip ratio allowing for relatively rapid pit advance. Overburden is removed by a combination of cast blasting, doze, and truck and shovel methods. Haul trucks transport coal to various hoppers and pads for blending and temporary storage, as necessary, and then to a coal handling and processing plant to be crushed and washed. Coal is conveyed to a rail loadout and transported by train to either domestic customers or to the Port of Newcastle and seaborne customers for thermal power generation.

The key supporting infrastructure for Wilpinjong Mine includes road access via public roads, port service at two terminals at the Port of Newcastle, above and below rail services, electrical power from a 66kV transmission line, and water supply from captured surface runoff and deep wells. The mine's proximity to other large coal producers in the region provides access to a significant pool of experienced mining personnel.

The property, plant, equipment and mine development assets of Wilpinjong Mine had a net book value of approximately \$342 million at December 31, 2022. The mine's operating equipment meets contemporary mining standards and is adequately maintained to execute the LOM plan. Routine maintenance, overhauls and necessary capital replacements are generally included in the LOM plan to support future production. During 2018, the Company began an expansion project at Wilpinjong Mine that will extend the mine life from 2026 to 2030 by providing access to an additional 55 million tonnes of coal reserves. The Company capitalized approximately \$62 million related to the project through December 31, 2022 and expects the total cost to reach approximately \$76 million.

The tables below present Wilpinjong Mine's estimated coal reserves and resources at December 31, 2022, along with comparative quantities at December 31, 2021. These reserve and resource estimates were supported by the analyses of 1,271 total drill holes within the coal lease area. The quantity of the coal resources is estimated on an *in situ* basis as 100% attributable to Peabody. Coal resources are reported exclusive of coal reserves. The quantity of the coal reserves is estimated on a saleable product basis as 100% attributable to Peabody. Coal reserves and resources are reported on selected key quality parameters on an air-dried basis.

**WILPINJONG MINE - SUMMARY OF RESERVES AND RESOURCES <sup>(1)</sup>**  
(Tons in millions)

Coal Reserves <sup>(5)(6)</sup>	December 31, 2022					December 31, 2021
	Tons	%Ash	%Sulfur	Kcal/kg	% Mine Yield <sup>(7)</sup>	Tons
Proven	63	24.2	0.5	5,953	82 %	71
Probable	4	30.4	0.4	5,422	82 %	5
Total	67					76
Year-over-year decrease (12)%						

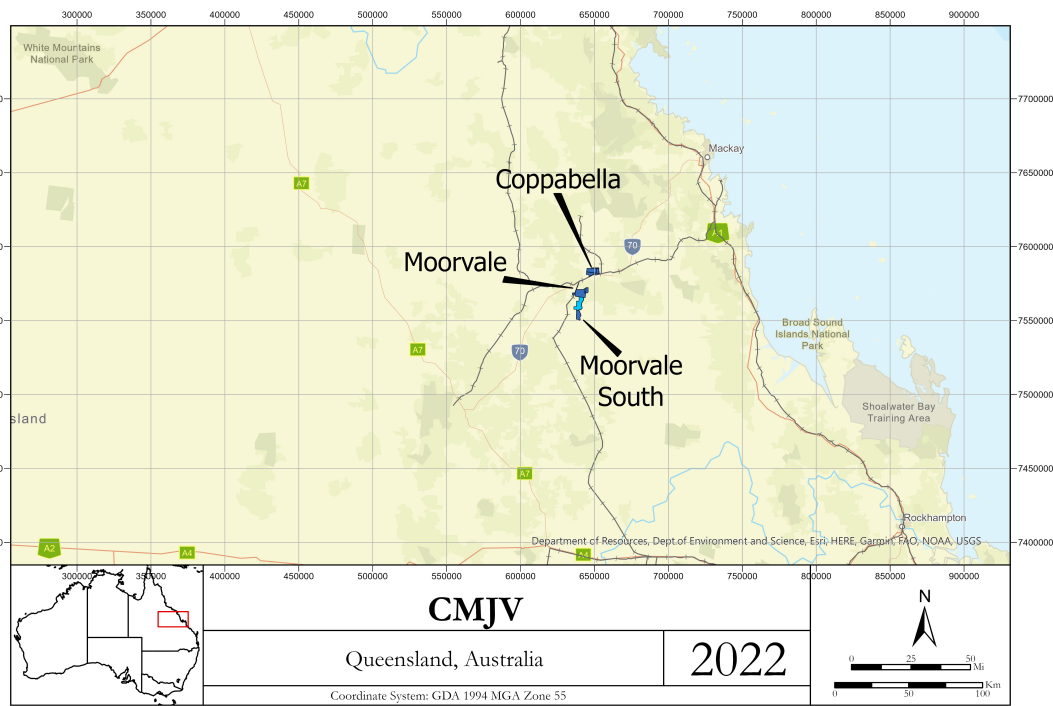
Coal Resources <sup>(2)(3)(4)</sup>	December 31, 2022				December 31, 2021
	Tons	%Ash	%Sulfur	Kcal/kg	Tons
Measured	103	23.0	0.5	6,055	103
Indicated	25	25.4	0.5	5,860	25
Measured and indicated	128	23.5	0.5	6,017	128
Inferred	6	27.3	0.5	5,698	6
Total	134				134

The year-over-year decrease in the quantity of coal reserves was driven by production depletion.

- <sup>(1)</sup> Economic recoverability is based upon product-specific estimated average sales prices per ton of \$51.99 for the five-year period ending December 31, 2027 and assumed escalation of 2.0% to 3.0% per annum during the subsequent period through the end of the LOM plan.
- <sup>(2)</sup> The quality of coal resources is on an *in situ*, air-dry basis.
- <sup>(3)</sup> The quantity of coal resource estimates is on an *in situ* basis, which does not take into consideration coal loss during mining and processing.
- <sup>(4)</sup> Besides the results from drill hole analyses, the raw ash is a key quality parameter that is relevant to both the cut-off grade and metallurgical recovery. The resource is limited by a maximum of 50% raw ash (air-dry basis). Due to the relatively consistent coal thickness and shallow depth, no other geological limiting factors are applied except for known geological anomalies such as paleochannels and igneous intrusion.
- <sup>(5)</sup> The quality of coal reserves is based on an air-dry basis. It is the laboratory results from the core samples with adjustments that reflect the reconciliation results from actual production.
- <sup>(6)</sup> The quantity of coal reserves is estimated on a saleable product basis, which takes into consideration of mining and processing loss. The economic results from the LOM planning process demonstrate the economic viability of the coal reserve estimate.
- <sup>(7)</sup> Mine yield is the ratio of estimated saleable product coal over ROM coal tons with mainly processing loss considered.

Coppabella-Moorvale Joint Venture

The Company's Coppabella Moorvale Joint Venture (CMJV) mines are located approximately 75 miles southwest of Mackay, near the township of Coppabella, in central Queensland, Australia. The CMJV includes two production-stage surface coal mines, the Coppabella Mine and the Moorvale Mine. During 2022, the Moorvale Mine substantially completed development of, and began production from, its Moorvale South pit. Peabody owns 73.3% of the joint venture and is responsible for operations management. CMJV originally was developed by Macarthur Coal Limited (Macarthur), with production commencing in 1998 at Coppabella Mine and 2002 at Moorvale Mine. Peabody acquired Macarthur in December 2011 and assumed its majority interest in CMJV.



The CMJV mines primarily extract coal from the Leichardt seam in the Rangal Coal Measures of the Bowen Basin. The seam has a thickness from 5 to 10 meters and a typical depth of less than 250 meters. The development of the Moorvale South pit made a portion of the Vermont seam economically mineable. The CMJV mines operate with a total of fourteen mining leases and one mineral development license issued by the Queensland state government, covering 13,459 hectares in total. Coal production is subject to royalties payable to the Queensland state government ranging from 7% to 40%, depending upon the realized revenue per tonne. In addition, there are special private royalty agreements established in relation to exploration efforts. The primary mining leases for the Coppabella Mine expire in 2040 and other peripheral leases expire between 2023 and 2035. The Moorvale Mine has two mining leases which expire in 2023, and a third in 2028. The Moorvale South pit has two mining leases which expire in 2030, and its relevant mineral development license expires in 2024. As of December 31, 2021, all required licenses and permits were in place for the operations of CMJV.

Conventional open cut mining methods are used at the CMJV mines. Coppabella Mine utilizes a dragline and two electric rope shovels to perform the majority of overburden removal, supplemented by diesel hydraulic excavators, which are also used to extract coal. The Moorvale Mine utilizes only diesel hydraulic excavators for overburden removal. All CMJV mines utilize cast and dozer push operations where applicable. Coal is trucked via internal haul roads for direct dumping to the hopper, or rehandled from pads to the dump hopper. Coal is crushed and washed at two processing plants, then transported by rail to the Dalrymple Bay Coal Terminal for seaborne customers. The CMJV produces a range of products including pulverized coal injection coal, coking coal and thermal coal.



The key supporting infrastructure for CMJV includes the port service at Dalrymple Bay Coal Terminal, above and below rail services, road access via public roads, electrical power from 66kV transmission lines, and water supply from captured surface runoff and commercial pipelines. Temporary housing near the mine sites provides employees with overnight accommodations, as necessary. The mines draw personnel primarily from nearby Moranbah, Nebo and Mackay, Queensland.

The property, plant, equipment and mine development assets of CMJV had a net book value of approximately \$173 million at December 31, 2021. The CMJV's operating equipment meets contemporary mining standards and is adequately maintained to execute the mine plan. Routine maintenance, overhauls and necessary capital replacements are generally included in the LOM plan to support future production.

The tables below present estimates of the CMJV coal reserves and resources as of December 31, 2022, along with comparative quantities at December 31, 2021. These reserve and resource estimates were supported by the analyses of 4,763 total drill holes within the coal lease areas. The quantity of the coal resources is estimated on an *in situ* basis as 73.3% attributable to Peabody. Coal resources are reported exclusive of coal reserves. The quantity of the coal reserves is estimated on a saleable product basis as 73.3% attributable to Peabody. Coal reserves and resources are reported on selected key quality parameters on an air-dry basis.

**CMJV - SUMMARY OF RESERVES AND RESOURCES <sup>(1)</sup>**  
(Tons in millions)

Coal Reserves <sup>(5)(6)</sup>	December 31, 2022					December 31, 2021	
	Tons	%Ash	%Sulfur	%VM	% Mine Yield <sup>(7)</sup>	Tons	
Proven	13	10.4	0.3	13.9	74 %	14	
Probable	6	9.8	0.3	11.5	76 %	6	
Total	19					20	

Year-over-year decrease (5)%

Coal Resources <sup>(2)(3)(4)</sup>	December 31, 2022				December 31, 2021	
	Tons	%Ash	%Sulfur	VM%	Tons	
Measured	30	17.3	0.3	15.3	34	
Indicated	69	15.3	0.3	14.1	69	
Measured and indicated	99	15.9	0.3	14.5	103	
Inferred	84	15.6	0.3	12.9	84	
Total	183				187	

Year-over-year decrease (2)%

The decrease in reserves reflects 2022 production depletion, partially offset by the reclassification of certain mine areas to reserves; the decrease in resources reflects this reclassification.

- (1) Economic recoverability is based upon product-specific estimated average sales prices per ton of \$122.75 for the five-year period ending December 31, 2027 and assumed escalation of 2% to 3% per annum during the subsequent period through the end of the LOM plan.
- (2) The quality of coal resources is estimated on an *in situ*, air-dry basis.
- (3) The quantity of coal resource is estimated on an *in situ* basis, which doesn't take into consideration coal loss during mining and processing.
- (4) Besides the results from drill hole analyses, the resource estimates are based on the following criteria:
- Open cut resources are limited to an area defined by pit shell with RF150 (revenue factor 150%), with exception of Moorvale South MDL 3034 open cut resources are limited to 150m depth of cover
  - Minimum mining thickness of 0.3m for open cut
  - Minimum mining thickness of 2m for underground resources
  - Underground resources excluded in areas of seam dip exceeding 15 degrees
  - Underground resources depth cutoff at 500m depth of cover, with exception of Moorvale Mine depth cutoff at 300m depth of cover
  - A seam quality cut-off greater than 50% raw ash (a.d.) is excluded from resources
  - No weathered coal included
  - Intrusive sills and dykes within seams are excluded from the resources
  - Heat-affected coal is included in the resources
  - Other limiting factors include surface infrastructure and lease boundary
- (5) The quality of coal reserves is estimated on an air-dry basis.
- (6) The quantity of coal reserves is estimated on a saleable product basis which takes into consideration of mining and processing loss. The economic results from the LOM planning process demonstrate the economic viability of the coal reserve estimate.
- (7) Mine yield is the ratio of estimated saleable product coal over ROM coal tons with mainly processing loss considered.

## Internal Controls

The preparation of coal reserve and resource estimates is completed in accordance with the Company's prescribed internal control procedures, which are designed specifically to ensure the reliability of such estimates presented herein. Annually, QPs and other employees review the estimates of mineral reserves and mineral resources, the supporting documentation, and compliance with applicable internal controls. Such controls employ management systems, standardized procedures, workflow processes, multi-functional supervision and management approval, internal and external reviews, reconciliations, and data security covering record keeping, chain of custody and data storage.

The internal controls for reserve and resource estimates also cover exploration activities, sample preparation and analysis, data verification, processing, metallurgical testing, recovery estimation, mine design and sequencing, and reserve and resource evaluations, with environmental, social and regulatory considerations. The quality assurance and control protocols over the assaying of drill hole samples are performed by reputable commercial laboratories following certification and accreditation programs established by the American Society for Testing and Materials (ASTM) or Australian National Association of Testing Authorities (NATA).

The reserve and resource estimates have inherent risks due to data accuracy, uncertainty from geological interpretation, mine plan assumptions, uncontrolled rights for mineral and surface properties, environmental challenges, uncertainty for future market supply and demand, and changes in laws and regulations. Management and QPs are aware of those risks that might directly impact the assessment of coal reserves and resources. The current coal reserves and resources are estimated based on the best information available and are subject to re-assessment when conditions change. Refer to Item 1A. "Risk Factors" for discussion of risks associated with the estimates of the Company's reserves and resources.

## Item 3. Legal Proceedings.

See Note 21. "Commitments and Contingencies" to the accompanying consolidated financial statements for a description of Peabody's pending legal proceedings, which information is incorporated herein by reference.

**Item 4. Mine Safety Disclosures.**

Peabody's "Safety and Sustainability Management System" has been designed to set clear and consistent expectations for safety, health and environmental stewardship across the Company's business. It aligns to the National Mining Association's CORESafety® framework and encompasses three fundamental areas: leadership and organization, risk management and assurance. Peabody also partners with other companies and certain governmental agencies to pursue new technologies that have the potential to improve its safety performance and provide better safety protection for employees.

Peabody continually monitors its safety performance and regulatory compliance. The information concerning mine safety violations or other regulatory matters required by SEC regulations is included in Exhibit 95 to this Annual Report on Form 10-K.

## PART II

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

Peabody's Common Stock is listed on the New York Stock Exchange, under the symbol "BTU." As of February 17, 2023 there were 173 holders of the Company's Common Stock, as determined by counting its record holders and the number of participants reflected in a security position listing provided to the Company by the Depository Trust Company (DTC). Because such DTC participants are brokers and other institutions holding shares of Peabody's Common Stock on behalf of their customers, the Company does not know the actual number of unique shareholders represented by these record holders.

**Dividends**

As more fully described within "Liquidity and Capital Resources" of Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," during the fourth quarter of 2020, the Company entered into a transaction support agreement with its surety bond providers which prohibits the payment of dividends through the earlier of December 31, 2025, or the maturity of the Credit Agreement (currently March 31, 2025) unless otherwise agreed to by the parties to the agreements. Additionally, restrictive covenants in its credit facility also limit the Company's ability to pay cash dividends.

**Share Relinquishments**

The Company routinely allows employees to relinquish Common Stock to pay estimated taxes upon the vesting of restricted stock units and the payout of performance units that are settled in Common Stock under its equity incentive plans. The value of Common Stock tendered by employees is determined based on the closing price of the Company's Common Stock on the dates of the respective relinquishments.

**Share Repurchase Program**

On August 1, 2017, the Company announced that its Board of Directors authorized a share repurchase program to allow repurchases of up to \$500 million of the then outstanding shares of its common stock and/or preferred stock (Repurchase Program), which was eventually expanded to \$1.5 billion during 2018. The Repurchase Program does not have an expiration date and may be discontinued at any time. Through December 31, 2022, the Company has repurchased 41.5 million shares of its Common Stock for \$1,340.3 million, which included commissions paid of \$0.8 million, leaving \$160.5 million available for share repurchase under the Repurchase Program.

Similar to the payment of dividends as described above, the same agreements with the Company's surety bond providers prohibit share repurchases through the earlier of December 31, 2025, or the maturity of the Credit Agreement (currently March 31, 2025) unless otherwise agreed to by the parties to the agreements. Additionally, restrictive covenants in its credit facility also limit the Company's ability to repurchase shares. Future repurchases will be made at the Company's discretion. The specific timing, price and size of purchases will depend upon the share price, general market and economic conditions and other considerations, including compliance with various debt agreements in effect at the time any repurchases are made.

### Issuances of Equity Securities

In June 2021, the Company announced an at-the-market equity offering program pursuant to which the Company could offer and sell up to 12.5 million shares of its Common Stock. The at-the-market equity offering program was further expanded to 32.5 million shares during 2021. The shares are offered and sold pursuant to the Company's Registration Statement on Form S-3, which was declared effective by the Securities and Exchange Commission on April 23, 2021, as supplemented by prospectus supplements dated June 4, 2021, September 17, 2021, and December 17, 2021 relating to the offer and sale of the shares. During the year ended December 31, 2021, the Company sold approximately 24.8 million shares for net cash proceeds of \$269.8 million. No sales were made under this at-the-market equity offering program during the year ended December 31, 2022, leaving approximately 7.7 million shares available for sale.

On March 7, 2022, the Company entered into an at-the-market equity offering program pursuant to which the Company could offer and sell shares of its common stock having an aggregate gross sales price of up to \$225 million. The shares are offered and sold pursuant to the Company's Registration Statement on Form S-3, which was declared effective by the Securities and Exchange Commission on April 23, 2021, as supplemented by a prospectus supplement dated March 7, 2022 relating to the offer and sale of the shares. During the year ended December 31, 2022, the Company sold approximately 10.1 million shares for net proceeds of \$222.0 million, thereby concluding this at-the-market equity offering program.

Also during the year ended December 31, 2021, the Company completed multiple bilateral transactions with holders of the 2022 Notes, the 2025 Notes and the 2024 Peabody Notes in which the Company issued an aggregate 10.0 million shares of its Common Stock in exchange for \$37.3 million aggregate principal amount of the 2022 Notes, \$47.2 million aggregate principal amount of the 2025 Notes and \$21.6 million aggregate principal amount of the 2024 Peabody Notes. No such bilateral transactions were completed during the year ended December 31, 2022. The issuance of shares of common stock in exchange for the 2022 Notes, the 2025 Notes and the 2024 Peabody Notes was made in reliance on the exemption from registration provided in Section 3(a)(9) under the Securities Act of 1933, based in part on representations of holders of the 2022 Notes, the 2025 Notes and the 2024 Peabody Notes, and on the basis that the exchange was completed with existing holders of the Company's securities and no commission or other remuneration was paid or given for soliciting the exchange.

### Purchases of Equity Securities

The following table summarizes all share purchases for the three months ended December 31, 2022:

Period	Total Number of Shares Purchased <sup>(1)</sup>	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Program	Maximum Dollar Value of Shares that May Yet Be Used to Repurchase Shares Under the Publicly Announced Program (In millions)
October 1 through October 31, 2022	—	\$ —	—	\$ 160.5
November 1 through November 30, 2022	—	—	—	160.5
December 1 through December 31, 2022	—	—	—	160.5
Total	—	—	—	—

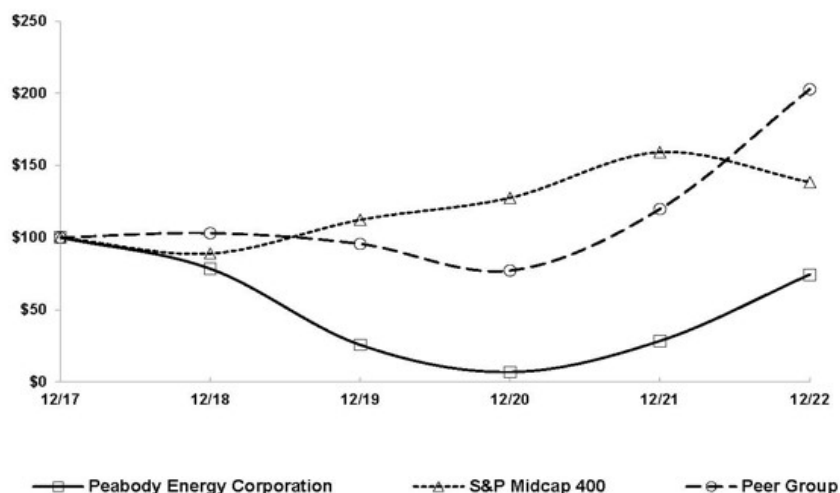
<sup>(1)</sup> Includes shares withheld to cover the withholding taxes upon the vesting of equity awards, which are not a part of the Repurchase Program Repurchase Program.

### Stock Performance Graph

The following performance graph compares the cumulative total return on Peabody's common stock with the cumulative total return of the following indices: (i) the S&P MidCap 400 Stock Index and (ii) Custom Composite Index (a peer group comprised of Arch Resources, Inc., Hallador Energy Co., and Warrior Met Coal, Inc.). The Custom Composite Index reflects publicly listed U.S. companies within the coal industry of similar size or product type. The graph assumes that the value of the investment in BTU and each index was \$100 at December 31, 2017. The graph also assumes that all dividends were reinvested and that the investments were held through December 31, 2022. These indices are included for comparative purposes only and do not necessarily reflect management's opinion that such indices are an appropriate measure of the relative performance of the stock involved and are not intended to forecast or be indicative of possible future performance of the common stock.

### COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\*

Among Peabody Energy Corporation, the S&P Midcap 400 Index,  
and a Peer Group



\*\$100 invested on 12/31/17 in stock or index, including reinvestment of dividends.  
Fiscal year ending December 31.

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#### Item 6. **Reserved.**

Not applicable.

#### Item 7. **Management's Discussion and Analysis of Financial Condition and Results of Operations.**

The Company's discussion and analysis of the year ended December 31, 2022 compared to the year ended December 31, 2021 is included herein. For discussion and analysis of the year ended December 31, 2021 compared to the year ended December 31, 2020, please refer to Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Peabody's Annual Report on Form 10-K for the year ended December 31, 2021, which was filed with the SEC on February 18, 2022 and is incorporated by reference herein.

#### Non-GAAP Financial Measures

The following discussion of Peabody's results of operations includes references to and analysis of Adjusted EBITDA and Total Reporting Segment Costs, which are financial measures not recognized in accordance with U.S. generally accepted accounting principles (U.S. GAAP). Adjusted EBITDA is used by management as the primary metric to measure each of its segments' operating performance and allocate resources. Total Reporting Segment Costs is also used by management as a component of a metric to measure each of its segments' operating performance.

Also included in the following discussion of Peabody's results of operations are references to Revenue per Ton, Costs per Ton and Adjusted EBITDA Margin per Ton for each reporting segment. These metrics are used by management to measure each of its reporting segments' operating performance. Management believes Costs per Ton and Adjusted EBITDA Margin per Ton best reflect controllable costs and operating results at the reporting segment level. The Company considers all measures reported on a per ton basis to be operating/statistical measures; however, the Company includes reconciliations of the related non-GAAP financial measures (Adjusted EBITDA and Total Reporting Segment Costs) in the "Reconciliation of Non-GAAP Financial Measures" section contained within this Item 7.

In its discussion of liquidity and capital resources, Peabody includes references to Free Cash Flow which is also a non-GAAP measure. Free Cash Flow is used by management as a measure of its financial performance and its ability to generate excess cash flow from its business operations.

Peabody believes non-GAAP performance measures are used by investors to measure its operating performance. These measures are not intended to serve as alternatives to U.S. GAAP measures of performance and may not be comparable to similarly-titled measures presented by other companies. Refer to the "Reconciliation of Non-GAAP Financial Measures" section contained within this Item 7 for definitions and reconciliations to the most comparable measures under U.S. GAAP.

## Overview

In 2022, Peabody produced and sold 122.9 million and 123.7 million tons of coal, respectively, from continuing operations.

As of December 31, 2022, the Company reports its results of operations primarily through the following reportable segments: Seaborne Thermal Mining, Seaborne Metallurgical Mining, Powder River Basin Mining, Other U.S. Thermal Mining and Corporate and Other.

The business of the Company's seaborne operating platform is primarily export focused with customers spread across several countries, with a portion of its thermal and metallurgical coal sold within Australia. Generally, revenue from individual countries vary year by year based on electricity and steel demand, the strength of the global economy, governmental policies and several other factors, including those specific to each country. The Company classifies its seaborne mines within the Seaborne Thermal Mining or Seaborne Metallurgical Mining segments based on the primary customer base and coal reserve type of each mining operation. A small portion of the coal mined by the Seaborne Thermal Mining segment is of a metallurgical grade. Similarly, a small portion of the coal mined by the Seaborne Metallurgical Mining segment is of a thermal grade. Additionally, the Company may market some of its metallurgical coal products as a thermal coal product from time to time depending on market conditions.

The Company's Seaborne Thermal Mining operations consist of mines in New South Wales, Australia. The mines in that segment utilize both surface and underground extraction processes to mine low-sulfur, high Btu thermal coal.

The Company's Seaborne Metallurgical Mining operations consist of mines in Queensland, Australia, one in New South Wales, Australia and one in Alabama, USA. The mines in that segment utilize both surface and underground extraction processes to mine various qualities of metallurgical coal. The metallurgical coal qualities include hard coking coal, semi-hard coking coal, semi-soft coking coal and pulverized coal injection coal.

The principal business of the Company's thermal operating segments in the U.S. is the mining, preparation and sale of thermal coal, sold primarily to electric utilities in the U.S. under long-term contracts, with a relatively small portion sold as international exports as conditions warrant. The Company's Powder River Basin Mining operations consist of its mines in Wyoming. The mines in that segment are characterized by surface mining extraction processes, coal with a lower sulfur content and Btu and higher customer transportation costs (due to longer shipping distances). The Company's Other U.S. Thermal Mining operations reflect the aggregation of its Illinois, Indiana, New Mexico and Colorado mining operations. The mines in that segment are characterized by a mix of surface and underground mining extraction processes, coal with a higher sulfur content and Btu and lower customer transportation costs (due to shorter shipping distances). Geologically, the Company's Powder River Basin Mining operations mine sub-bituminous coal deposits and its Other U.S. Thermal Mining operations mine both bituminous and sub-bituminous coal deposits.

The Company's Corporate and Other segment includes selling and administrative expenses, results from equity affiliates, corporate hedging activities, trading and brokerage activities, minimum charges on certain transportation-related contracts, the closure of inactive mining sites and certain commercial matters.

**Resource Management.** As of December 31, 2022, Peabody controlled approximately 2.4 billion tons of proven and probable coal reserves, 2.4 billion tons of resources and approximately 360,000 acres of surface property through ownership and lease agreements. The Company has an ongoing asset optimization program whereby its property management group regularly reviews these reserves, resources and surface properties for opportunities to generate earnings and cash flow through the sale or exchange of non-strategic coal reserves, resources and surface lands. These surface lands include acres where Peabody has completed post-mining reclamation. In addition, the Company generates revenue through royalties from coal reserves and oil and gas rights leased to third parties, farm income from surface lands under third-party contracts and lease income from surface lands under contracts with renewable energy ventures.

**Middlemount Mine.** Peabody owns a 50% equity interest in Middlemount, which owns the Middlemount Mine in Queensland, Australia. The mine predominantly produces semi-hard coking coal and low-volatile pulverized coal injection (LV PCI) coal for sale into seaborne coal markets through Abbot Point Coal Terminal, with some capacity also secured at Dalrymple Bay Coal Terminal. Mining operations first commenced at the Middlemount Mine in late 2011. During the years ended December 31, 2022 and 2021, the mine sold 1.6 million and 2.0 million tons of coal, respectively (on a 50% basis).

### Summary

Spot pricing for premium low-vol hard coking coal (Premium HCC), premium low-vol pulverized coal injection (Premium PCI) coal, Newcastle index thermal coal and API 5 index thermal coal, and prompt month pricing for PRB 8,880 Btu/Lb coal and Illinois Basin 11,500 Btu/Lb coal during the year ended December 31, 2022 is set forth in the table below.

The seaborne pricing included in the table below is not necessarily indicative of the pricing the Company realized during the year ended December 31, 2022 due to quality differentials and a portion of its seaborne sales being executed through annual and multi-year international coal supply agreements that contain provisions requiring both parties to renegotiate pricing periodically, with spot, index and quarterly sales arrangements also utilized. The Company's typical practice is to negotiate pricing for seaborne metallurgical coal contracts on a quarterly, spot or index basis and seaborne thermal coal contracts on an annual, spot or index basis.

In the U.S., the pricing included in the table below is also not necessarily indicative of the pricing the Company realized during the year ended December 31, 2022 since the Company generally sells coal under long-term contracts where pricing is determined based on various factors. Such long-term contracts in the U.S. may vary significantly in many respects, including price adjustment features, price reopener terms, coal quality requirements, quantity parameters, permitted sources of supply, treatment of environmental constraints, extension options, force majeure and termination and assignment provisions. Competition from alternative fuels such as natural gas and other fuel sources may also impact the Company's realized pricing.

	High		Low		Average	December 31, 2022		February 17, 2023
Premium HCC <sup>(1)</sup>	\$	670.50	\$	188.00	\$ 363.45	\$	294.50	\$ 390.00
Premium PCI coal <sup>(1)</sup>	\$	655.00	\$	180.50	\$ 330.81	\$	284.50	\$ 344.00
Newcastle index thermal coal <sup>(1)</sup>	\$	452.81	\$	201.54	\$ 362.78	\$	398.50	\$ 187.27
API 5 index thermal coal <sup>(1)</sup>	\$	284.20	\$	109.66	\$ 176.44	\$	133.38	\$ 117.72
PRB 8,800 Btu/Lb coal <sup>(2)</sup>	\$	27.50	\$	15.50	\$ 18.03	\$	15.50	\$ 14.80
Illinois Basin 11,500 Btu/Lb coal <sup>(2)</sup>	\$	196.00	\$	88.00	\$ 149.32	\$	134.00	\$ 83.00

<sup>(1)</sup> Prices expressed per metric tonne.

<sup>(2)</sup> Prices expressed per short ton.

Within the global coal industry, supply and demand for its products and the supplies used for mining have been impacted by the ongoing Russian-Ukrainian conflict and the COVID-19 pandemic. Furthermore, inflationary pressures and supply chain constraints have contributed to rising costs and may continue to impact future periods. As future developments related to the Russian-Ukrainian conflict, the COVID-19 pandemic and rising inflation are unknown, the global coal industry data for the year ended December 31, 2022 presented herein may not be indicative of their ultimate impacts.



Within the seaborne metallurgical coal market, the year ended December 31, 2022 was characterized by significant volatility as a weakened global macroeconomic environment was counteracted by tight coal supply and continued trade flow disruptions following sanctions imposed on Russian coal imports. Steel prices trended lower during the year ended December 31, 2022, causing some steelmakers to implement small-scale output cuts. The reduction in steel output is partially influencing short-term incremental metallurgical coal demand in some markets; however, it is being more than offset by transitioning demand from many steelmakers removing exposure to Russian coal by seeking additional volumes from other regions such as Australia, the U.S. and Canada. This is particularly so for PCI, where Russia typically accounts for approximately 35% of global traded volumes. In early January 2023, China partially restarted imports of Australian coal for the first time in two years, providing additional market depth and further support for prices. The Company believes energy shortages and the global inflationary environment present a risk to industrial activity in some markets, but the underlying market fundamentals remain constructive with continuing themes of supply tightness, resilient and improving demand in some markets and further economic stimulus in China and elsewhere.

Within the seaborne thermal coal market, global thermal coal prices ended the year at elevated levels, fueled by broader energy supply security concerns. These concerns have been driven by the Russian-Ukrainian conflict and the subsequent ban of Russian coal by European countries, as well as limited supply response out of Australia and Columbia due to weather and labor issues. In China, domestic coal production and renewable generation have been strong during the year ended December 31, 2022, which has lowered import demand. In India, strong growth in coal generation has supported increased import demand, despite elevated domestic coal production. Overall, global thermal coal markets remain turbulent as supply remains tight and European coal importers look to replace Russian coal.

In the United States, overall electricity demand increased more than 3% year-over-year, positively impacted by weather and economic activity. Through the year ended December 31, 2022, electricity generation from thermal coal has declined year-over-year due to coal conservation by utilities, transportation issues impacting coal deliveries and stronger renewable generation. Coal's share of electricity generation has declined to approximately 19% for the year ended December 31, 2022, while wind and solar's combined generation share has increased to 15%. Coal inventories have continued to decline since December 2021, with a decline of approximately 6% or 5 million tons. During the year ended December 31, 2022, utility consumption of PRB coal declined approximately 5% compared to the prior year period.

### ***Financing Transactions***

During the first quarter of 2022, Peabody issued convertible senior unsecured notes and used the proceeds of the offering to retire nearer term higher cost senior secured debt. This both lowered the Company's borrowing rates and extended debt maturities to 2028. Throughout 2022, Peabody continued to reduce its outstanding debt, and at December 31, 2022, all senior secured debt had been retired.

High demand and tight supply for coal globally has resulted in a substantial rise in seaborne thermal coal prices during 2022, which has been amplified by the Russian-Ukrainian conflict, resulting in unprecedented upward volatility in Newcastle coal pricing since late February 2022. As a result, Peabody posted additional cash margin of \$125.4 million during the year ended December 31, 2022 to satisfy the margin requirements for its derivative contracts.

Refer to the "Liquidity and Capital Resources" section contained within this Item 7 for a further discussion of these financing and liquidity transactions.

### ***North Goonyella Redevelopment***

During the third quarter of 2022, the Company initiated the redevelopment of its North Goonyella Mine, a premium hard-coking coal longwall operation in Australia with over 70 million tons of coal reserves. The project will utilize substantial existing infrastructure and equipment at the mine, including a new 300-meter longwall system, a coal handling preparation plant, a dedicated rail loop for transport to the Dalrymple Bay Coal Terminal and an accommodation village with housing and service amenities for more than 400 workers. North Goonyella is anticipated to increase the Company's production in its Seaborne Metallurgical Mining segment.

The Company's board of directors has approved redevelopment expenditures of \$120 million for 2023, which include ventilation, equipment, conveyance and infrastructure updates in anticipation of reaching development coal, subject to regulatory approvals, in the first quarter of 2024. Cash flow from operations is expected to fund all redevelopment costs as the Company continues to strengthen its balance sheet. Future decisions about the redevelopment of North Goonyella may be impacted by Queensland's increased royalty tiers. Development costs in addition to the current approved amount are estimated to be \$240 million, with longwall operations expected to commence in 2026.

## Other

In March 2022, the Company entered into a joint venture with unrelated partners to form R3 Renewables LLC (R3). R3 was formed with the intent of developing various sites, including certain reclaimed mining land held by the Company in the U.S., for utility-scale photovoltaic solar generation and battery storage. During 2022, R3 has advanced efforts with potential customers, finalized its management team and commenced site evaluations with project developer Treaty Oak Clean Energy, LLC. The Company's interest in R3 is accounted for as an equity method investment. The Company contributed \$10.9 million to R3 and recorded an equity loss of \$3.9 million from its operations during the year ended December 31, 2022.

In March 2022, Peabody Investments Corp., a wholly owned subsidiary of the Company, entered into a commitment agreement relating to one of its qualified pension plans (the Plan) with an insurer. Under the commitment agreement, the Plan purchased a buy-in group annuity contract for approximately \$500 million and the insurer will reimburse the Plan for benefit payments to be made to the Plan's participants. Under the terms of this transaction, the Plan continues to administer and pay the retirement benefits of Plan participants and is reimbursed by the insurer for the payment of all benefits covered by the group annuity contract. In May 2022, the board of directors of Peabody Investments Corp. approved the termination of the Plan effective July 31, 2022. Refer to Note 14. "Pension and Savings Plans" to the accompanying consolidated financial statements for a further discussion of this transaction.

## Results of Operations

### Year Ended December 31, 2022 Compared to Year Ended December 31, 2021

The increase in income from continuing operations, net of income taxes for the year ended December 31, 2022 compared to the same period in 2021 (\$970.0 million) was primarily driven by higher revenue (\$1,663.6 million) due to higher realized prices and a 20% increase in metallurgical sales volumes; improved results from equity affiliates (\$49.1 million); and lower interest expense (\$43.1 million). These favorable variances were partially offset by higher operating costs and expenses (\$737.7 million), which reflect increased sales price sensitive costs, the impacts of challenging weather conditions and inflationary pressures for commodities, materials, services, repairs and labor; and net losses on early debt extinguishments in the current year (\$91.1 million).

Adjusted EBITDA for the year ended December 31, 2022 reflected a 101% year-over-year increase of \$928.0 million.

## Tons Sold

The following table presents tons sold by operating segment:

	Year Ended December 31,		(Decrease) Increase to Volumes	
	2022	2021	Tons	%
	(Tons in millions)			
Seaborne Thermal Mining	15.6	17.3	(1.7)	(9.8)%
Seaborne Metallurgical Mining	6.6	5.5	1.1	20.0 %
Powder River Basin Mining	82.6	88.4	(5.8)	(6.6)%
Other U.S. Thermal Mining	18.4	16.9	1.5	8.9 %
Total tons sold from operating segments	123.2	128.1	(4.9)	(3.8)%
Corporate and Other	0.5	2.0	(1.5)	(75.0)%
Total tons sold	123.7	130.1	(6.4)	(4.9)%

## Supplemental Financial Data

The following table presents supplemental financial data by operating segment:

	Year Ended December 31,		Increase (Decrease)	
	2022	2021	\$	%
<b>Revenue per Ton - Mining Operations <sup>(1)</sup></b>				
Seaborne Thermal	\$ 86.07	\$ 54.09	\$ 31.98	59.1 %
Seaborne Metallurgical	243.78	131.83	111.95	84.9 %
Powder River Basin	12.89	10.99	1.90	17.3 %
Other U.S. Thermal	51.82	40.75	11.07	27.2 %
<b>Costs per Ton - Mining Operations <sup>(1) (2)</sup></b>				
Seaborne Thermal	\$ 44.65	\$ 33.64	\$ 11.01	32.7 %
Seaborne Metallurgical	125.92	99.55	26.37	26.5 %
Powder River Basin	12.06	9.46	2.60	27.5 %
Other U.S. Thermal	38.63	31.04	7.59	24.5 %
<b>Adjusted EBITDA Margin per Ton - Mining Operations <sup>(1) (2)</sup></b>				
Seaborne Thermal	\$ 41.42	\$ 20.45	\$ 20.97	102.5 %
Seaborne Metallurgical	117.86	32.28	85.58	265.1 %
Powder River Basin	0.83	1.53	(0.70)	(45.8)%
Other U.S. Thermal	13.19	9.71	3.48	35.8 %

<sup>(1)</sup> This is an operating/statistical measure not recognized in accordance with U.S. GAAP. Refer to the "Reconciliation of Non-GAAP Financial Measures" section below for definitions and reconciliations to the most comparable measures under U.S. GAAP.

<sup>(2)</sup> Includes revenue-based production taxes and royalties; excludes depreciation, depletion and amortization; asset retirement obligation expenses; selling and administrative expenses; restructuring charges; asset impairment; amortization of take-or-pay contract-based intangibles; and certain other costs related to post-mining activities.

## Revenue

The following table presents revenue by reporting segment:

	Year Ended December 31,		Increase to Revenue	
	2022	2021	\$	%
(Dollars in millions)				
Seaborne Thermal Mining	\$ 1,345.6	\$ 934.0	\$ 411.6	44.1 %
Seaborne Metallurgical Mining	1,616.9	727.7	889.2	122.2 %
Powder River Basin Mining	1,065.5	971.2	94.3	9.7 %
Other U.S. Thermal Mining	952.2	689.1	263.1	38.2 %
Corporate and Other	1.7	(3.7)	5.4	145.9 %
Revenue	\$ 4,981.9	\$ 3,318.3	\$ 1,663.6	50.1 %

**Seaborne Thermal Mining.** The increase in segment revenue during the year ended December 31, 2022 compared to the prior year was due to favorable realized prices (\$540.4 million), partially offset by unfavorable volumes (\$128.8 million) which were impacted by wet weather in the current year and mine plan considerations which included a longwall move at the Wambo Underground Mine in the first half of 2022.

**Seaborne Metallurgical Mining.** Segment revenue increased during the year ended December 31, 2022 compared to the prior year due to favorable realized prices at the Australian operations (\$583.1 million), the resumption of sales at the Shoal Creek Mine (\$236.6 million) and favorable volume and mix variances at the Australian operations (\$69.5 million). Sales volumes increased by 20% from the prior year.

**Powder River Basin Mining.** Segment revenue increased during the year ended December 31, 2022 compared to the prior year due to favorable realized prices (\$168.5 million), offset by unfavorable volumes (\$74.2 million) resulting from rail performance issues.

**Other U.S. Thermal Mining.** The increase in segment revenue during the year ended December 31, 2022 compared to the prior year was due to favorable realized prices (\$209.2 million) and favorable volumes (\$53.9 million).

**Corporate and Other.** Segment revenue increased during the year ended December 31, 2022 compared to the prior year due to lower net unrealized mark-to-market losses on derivative contracts related to forecasted coal sales (\$79.3 million), offset by lower results from trading activities (\$74.5 million) due to net realized losses on derivative contracts related to forecasted coal sales exceeding the higher margins recognized on the physical sale of coal.

### Adjusted EBITDA

The following table presents Adjusted EBITDA for each of the Company's reporting segments:

	Year Ended December 31,		Increase (Decrease) to Adjusted EBITDA	
	2022	2021	\$	%
	(Dollars in millions)			
Seaborne Thermal Mining	\$ 647.6	\$ 353.1	\$ 294.5	83.4 %
Seaborne Metallurgical Mining	781.7	178.2	603.5	338.7 %
Powder River Basin Mining	68.2	134.9	(66.7)	(49.4) %
Other U.S. Thermal Mining	242.4	164.2	78.2	47.6 %
Corporate and Other	104.8	86.3	18.5	21.4 %
Adjusted EBITDA <sup>(1)</sup>	<u>\$ 1,844.7</u>	<u>\$ 916.7</u>	<u>\$ 928.0</u>	101.2 %

<sup>(1)</sup> This is a financial measure not recognized in accordance with U.S. GAAP. Refer to the "Reconciliation of Non-GAAP Financial Measures" section below for definitions and reconciliations to the most comparable measures under U.S. GAAP.

**Seaborne Thermal Mining.** Segment Adjusted EBITDA increased during the year ended December 31, 2022 compared to the same period in the prior year as a result of higher realized prices net of sales sensitive costs (\$495.5 million) and favorable foreign currency impacts (\$25.2 million). The increases were offset by unfavorable operational costs (\$119.8 million) resulting from the impacts of wet weather, COVID-19-related staffing shortages, the longwall move at the Wambo Underground Mine in the first half of 2022 and inflationary pressures on supplies and outside services; lower volumes (\$64.7 million); higher port and demurrage costs (\$21.7 million) and higher commodity pricing (\$18.6 million).

**Seaborne Metallurgical Mining.** Segment Adjusted EBITDA increased during the year ended December 31, 2022 compared to the same period in the prior year due to higher realized prices net of sales sensitive costs at the Australian operations (\$466.9 million), favorable volumes from the resumption of sales at the Shoal Creek Mine (\$111.6 million) and favorable foreign currency impacts (\$36.3 million).

**Powder River Basin Mining.** Segment Adjusted EBITDA decreased during the year ended December 31, 2022 compared to the same period in the prior year as a result of increased overburden removal costs as the workforce focused on preparatory efforts in light of rail performance issues (\$63.3 million); higher costs for materials, services, repairs and labor (\$55.3 million) due in part to increased repairs for an aging equipment fleet and inflationary pressures on materials and services; the unfavorable impacts of higher commodity pricing (\$53.9 million); and lower volumes (\$19.9 million) resulting from rail performance issues. These decreases were offset by higher realized prices net of sales sensitive costs (\$146.7 million).

**Other U.S. Thermal Mining.** Segment Adjusted EBITDA increased during the year ended December 31, 2022 compared to the same period in the prior year due to higher realized prices net of sales sensitive costs (\$210.4 million) and favorable volumes (\$19.2 million). These increases were offset by higher costs for materials, services, repairs and labor (\$104.8 million) due in part to increased equipment repairs and headcount resulting from increasing volume demands and inflationary pressures on materials and services; and the unfavorable impacts of higher commodity pricing (\$44.2 million).

**Corporate and Other Adjusted EBITDA.** The following table presents a summary of the components of Corporate and Other Adjusted EBITDA:

	Year Ended December 31,		Increase (Decrease) to Income	
	2022	2021	\$	%
	(Dollars in millions)			
Middlemount <sup>(1)</sup>	\$ 132.8	\$ 48.2	\$ 84.6	175.5 %
Resource management activities <sup>(2)</sup>	29.3	6.9	22.4	324.6 %
Selling and administrative expenses	(88.8)	(84.9)	(3.9)	(4.6)%
Other items, net <sup>(3)</sup>	31.5	116.1	(84.6)	(72.9)%
Corporate and Other Adjusted EBITDA	<u>\$ 104.8</u>	<u>\$ 86.3</u>	<u>\$ 18.5</u>	<u>21.4 %</u>

<sup>(1)</sup> Middlemount's results are before the impact of related changes in deferred tax asset valuation allowance and reserves and amortization of basis difference. Middlemount's standalone results included (on a 50% attributable basis) aggregate amounts of depreciation, depletion and amortization, asset retirement obligation expenses, net interest expense and income taxes of \$62.7 million and \$42.0 million during the years ended December 31, 2022 and 2021, respectively.

<sup>(2)</sup> Includes gains (losses) on certain surplus coal reserve, resource and surface land sales and property management costs and revenue.

<sup>(3)</sup> Includes trading and brokerage activities, costs associated with post-mining activities, gains (losses) on certain asset disposals, minimum charges on certain transportation-related contracts, costs associated with suspended operations including the North Goonyella Mine and expenses related to other commercial activities.

Corporate and Other Adjusted EBITDA benefited during the year ended December 31, 2022 compared to the same period in the prior year from favorable variances in Middlemount's results due to the impact of higher sales pricing (\$84.6 million) and gains on various land sales in both the U.S. and Australia (\$20.0 million). This benefit was offset by unfavorable trading results (\$61.6 million) and a gain recognized in the prior year on the sale of the Company's Millennium Mine (\$26.1 million) as discussed in Note 17. "Other Events."

### **Income From Continuing Operations, Net of Income Taxes**

The following table presents income from continuing operations, net of income taxes:

	Year Ended December 31,		Increase (Decrease) to Income	
	2022	2021	\$	%
	(Dollars in millions)			
Adjusted EBITDA <sup>(1)</sup>	\$ 1,844.7	\$ 916.7	\$ 928.0	101.2 %
Depreciation, depletion and amortization	(317.6)	(308.7)	(8.9)	(2.9)%
Asset retirement obligation expenses	(49.4)	(44.7)	(4.7)	(10.5)%
Restructuring charges	(2.9)	(8.3)	5.4	65.1 %
Asset impairment	(11.2)	—	(11.2)	n.m.
Changes in deferred tax asset valuation allowance and reserves and amortization of basis difference related to equity affiliates	2.3	33.8	(31.5)	(93.2)%
Interest expense	(140.3)	(183.4)	43.1	23.5 %
Net (loss) gain on early debt extinguishment	(57.9)	33.2	(91.1)	(274.4)%
Interest income	18.4	6.5	11.9	183.1 %
Net mark-to-market adjustment on actuarially determined liabilities	27.8	43.4	(15.6)	(35.9)%
Unrealized losses on derivative contracts related to forecasted sales	(35.8)	(115.1)	79.3	68.9 %
Unrealized losses on foreign currency option contracts	(2.3)	(7.5)	5.2	69.3 %
Take-or-pay contract-based intangible recognition	2.8	4.3	(1.5)	(34.9)%
Income tax benefit (provision)	38.8	(22.8)	61.6	270.2 %
Income from continuing operations, net of income taxes	<u>\$ 1,317.4</u>	<u>\$ 347.4</u>	<u>\$ 970.0</u>	<u>279.2 %</u>

<sup>(1)</sup> This is a financial measure not recognized in accordance with U.S. GAAP. Refer to the "Reconciliation of Non-GAAP Financial Measures" section below for definitions and reconciliations to the most comparable measures under U.S. GAAP.

*Depreciation, Depletion and Amortization.* The following table presents a summary of depreciation, depletion and amortization expense by reporting segment:

	Year Ended December 31,		(Decrease) Increase to Income	
	2022	2021	\$	%
	(Dollars in millions)			
Seaborne Thermal Mining	\$ (114.4)	\$ (107.7)	\$ (6.7)	(6.2)%
Seaborne Metallurgical Mining	(88.8)	(73.3)	(15.5)	(21.1)%
Powder River Basin Mining	(42.5)	(41.5)	(1.0)	(2.4)%
Other U.S. Thermal Mining	(62.2)	(67.4)	5.2	7.7 %
Corporate and Other	(9.7)	(18.8)	9.1	48.4 %
Total	<u>\$ (317.6)</u>	<u>\$ (308.7)</u>	<u>\$ (8.9)</u>	<u>(2.9)%</u>

Additionally, the following table presents a summary of the Company's weighted-average depletion rate per ton for active mines in each of its operating segments:

	Year Ended December 31,	
	2022	2021
Seaborne Thermal Mining	\$ 2.61	\$ 2.19
Seaborne Metallurgical Mining	2.55	1.18
Powder River Basin Mining	0.32	0.25
Other U.S. Thermal Mining	1.23	1.15

The increase in the weighted-average depletion rate per ton for the Seaborne Thermal Mining segment during the year ended December 31, 2022 compared to the same period in the prior year reflects the impact of volume and mix variances across the segment. The increase in the Seaborne Metallurgical Mining segment during the year ended December 31, 2022 compared to the same period in the prior year reflects the resumption of sales at the Shoal Creek Mine.

*Asset Impairment.* The Company recognized \$11.2 million in aggregate asset impairment charges during the year ended December 31, 2022 related to the sale of certain land interests and an investment in equity securities. Refer to Note 3. "Asset Impairment" to the accompanying consolidated financial statements for further information regarding the nature and composition of those charges, which information is incorporated herein by reference.

*Changes in Deferred Tax Asset Valuation Allowance and Reserves and Amortization of Basis Difference Related to Equity Affiliates.* During the year ended December 31, 2021, the Company released a valuation allowance of approximately \$33 million previously recorded on Middlemount's deferred tax assets as a result of taxable income generated during 2021. As of December 31, 2021, no valuation allowance remained related to Middlemount's deferred tax assets so there is no release reflected in 2022. The current year income activity relates only to the amortization of basis differences which is comparable to prior periods. Refer to Note 5. "Equity Method Investments" to the accompanying consolidated financial statements for further information regarding these changes, which information is incorporated herein by reference.

*Interest Expense.* The decrease in interest expense during the year ended December 31, 2022 compared to the prior year primarily reflects debt retirements completed by the Company during 2022 and 2021 and prior year fees related to a series of refinancing transactions completed by the Company as further described in Note 10. "Long-term Debt" to the accompanying consolidated financial statements.

*Net (Loss) Gain on Early Debt Extinguishment.* The net loss (gain) on early debt extinguishment was primarily related to the redemption of existing notes during the years ended December 31, 2022 and 2021, as further discussed in Note 10. "Long-term Debt" to the accompanying consolidated financial statements.

*Interest Income.* The increase in interest income during the year ended December 31, 2022 compared to the prior year was primarily due to higher cash balances and interest rates in the current year.

**Net Mark-to-Market Adjustment on Actuarially Determined Liabilities.** The gain recorded during the year ended December 31, 2022 was driven by increases to the discount rates for actuarially determined liabilities (\$190.1 million) and the favorable impacts of changes for the postretirement benefit plans related to updated claims experience (\$28.6 million). These increases were offset by mark-to-market losses on pension and postretirement benefit plan assets (\$162.1 million); the unfavorable impact of the premium paid for the purchase of a buy-in group annuity contract for a qualified pension plan (\$17.6 million) and the unfavorable impacts of medical trend updates for the postretirement benefit plans (\$15.7 million).

The gain recorded during the year ended December 31, 2021 was driven by increases to the discount rates for actuarially determined liabilities (\$37.6 million); the favorable impacts of changes for the postretirement benefit plans related to updated claims experience (\$22.0 million) and a mortality update (\$16.6 million); and the favorable impact of an update to the Company's census data for actuarially determined liabilities (\$10.3 million). These increases were offset by mark-to-market losses on pension and postretirement benefit plan assets (\$43.1 million).

**Unrealized Losses on Derivative Contracts Related to Forecasted Sales.** Unrealized losses primarily relate to mark-to-market activity on derivative contracts related to forecasted coal sales. For additional information, refer to Note 6. "Derivatives and Fair Value Measurements" to the accompanying consolidated financial statements.

**Unrealized Losses on Foreign Currency Option Contracts.** Unrealized losses primarily relate to mark-to-market activity on foreign currency option contracts. For additional information, refer to Note 6. "Derivatives and Fair Value Measurements" to the accompanying consolidated financial statements.

**Income Tax Benefit (Provision).** The income tax benefit recorded during the year ended December 31, 2022 was primarily due to the release of valuation allowance related to Australian NOLs, partially offset by year-over-year increases in pretax income. Refer to Note 8. "Income Taxes" to the accompanying consolidated financial statements for additional information.

#### **Net Income Attributable to Common Stockholders**

The following table presents net income attributable to common stockholders:

	Year Ended December 31,		Increase (Decrease) to Income	
	2022	2021	\$	%
	(Dollars in millions)			
Income from continuing operations, net of income taxes	\$ 1,317.4	\$ 347.4	\$ 970.0	279.2 %
Income from discontinued operations, net of income taxes	1.7	24.0	(22.3)	(92.9)%
Net income	1,319.1	371.4	947.7	255.2 %
Less: Net income attributable to noncontrolling interests	22.0	11.3	10.7	94.7 %
Net income attributable to common stockholders	\$ 1,297.1	\$ 360.1	\$ 937.0	260.2 %

**Income from Discontinued Operations, Net of Income Taxes.** The decrease in income from discontinued operations, net of income taxes during the year ended December 31, 2022 compared to the prior year period was primarily driven by the prior year gain of \$24.6 million recognized on the sale of the Wilkie Creek Mine as discussed in Note 17. "Other Events" to the accompanying consolidated financial statements.

**Net Income Attributable to Noncontrolling Interests.** The increase in net income attributable to noncontrolling interests during the year ended December 31, 2022 compared to the prior year period was primarily due to stronger financial results of Peabody's majority-owned mines in which there is an outside non-controlling interest.

#### **Diluted EPS**

The following table presents diluted EPS:

	Year Ended December 31,		Increase (Decrease) to EPS	
	2022	2021	\$	%
Diluted EPS attributable to common stockholders:				
Income from continuing operations	\$ 8.29	\$ 3.00	\$ 5.29	176.3 %
Income from discontinued operations	0.02	0.22	(0.20)	(90.9)%
Net income attributable to common stockholders	\$ 8.31	\$ 3.22	\$ 5.09	158.1 %



Diluted EPS is commensurate with the changes in results from continuing operations and discontinued operations during that period. Diluted EPS reflects weighted average diluted common shares outstanding of 157.2 million and 112.0 million for the years ended December 31, 2022 and 2021, respectively.

### Reconciliation of Non-GAAP Financial Measures

Adjusted EBITDA is defined as income from continuing operations before deducting net interest expense, income taxes, asset retirement obligation expenses and depreciation, depletion and amortization. Adjusted EBITDA is also adjusted for the discrete items that management excluded in analyzing each of its segment's operating performance, as displayed in the reconciliations below.

	Year Ended December 31,	
	2022	2021
	(Dollars in millions)	
Income from continuing operations, net of income taxes	\$ 1,317.4	\$ 347.4
Depreciation, depletion and amortization	317.6	308.7
Asset retirement obligation expenses	49.4	44.7
Restructuring charges	2.9	8.3
Asset impairment	11.2	—
Changes in deferred tax asset valuation allowance and reserves and amortization of basis difference related to equity affiliates	(2.3)	(33.8)
Interest expense	140.3	183.4
Net loss (gain) on early debt extinguishment	57.9	(33.2)
Interest income	(18.4)	(6.5)
Net mark-to-market adjustment on actuarially determined liabilities	(27.8)	(43.4)
Unrealized losses on derivative contracts related to forecasted sales	35.8	115.1
Unrealized losses on foreign currency option contracts	2.3	7.5
Take-or-pay contract-based intangible recognition	(2.8)	(4.3)
Income tax (benefit) provision	(38.8)	22.8
Adjusted EBITDA	<u>\$ 1,844.7</u>	<u>\$ 916.7</u>

Total Reporting Segment Costs is defined as operating costs and expenses adjusted for the discrete items that management excluded in analyzing each of its segments' operating performance, as displayed in the reconciliations below:

	Year Ended December 31,	
	2022	2021
	(Dollars in millions)	
Operating costs and expenses	\$ 3,290.8	\$ 2,553.1
Unrealized losses on foreign currency option contracts	(2.3)	(7.5)
Take-or-pay contract-based intangible recognition	2.8	4.3
Net periodic benefit credit, excluding service cost	(49.0)	(38.3)
Total Reporting Segment Costs	<u>\$ 3,242.3</u>	<u>\$ 2,511.6</u>

The following table presents Total Reporting Segment Costs by reporting segment:

	Year Ended December 31,	
	2022	2021
	(Dollars in millions)	
Seaborne Thermal Mining	\$ 698.0	\$ 580.9
Seaborne Metallurgical Mining	835.2	549.5
Powder River Basin Mining	997.3	836.3
Other U.S. Thermal Mining	709.8	524.9
Corporate and Other	2.0	20.0
Total Reporting Segment Costs	<u>\$ 3,242.3</u>	<u>\$ 2,511.6</u>

Revenue per Ton and Adjusted EBITDA Margin per Ton are equal to revenue by segment and Adjusted EBITDA by segment, respectively, divided by segment tons sold. Costs per Ton is equal to Revenue per Ton less Adjusted EBITDA Margin per Ton.

The following tables present tons sold, revenue, Total Reporting Segment Costs and Adjusted EBITDA by operating segment:

	Year Ended December 31, 2022			
	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining
	(Amounts in millions, except per ton data)			
Tons sold	15.6	6.6	82.6	18.4
Revenue	\$ 1,345.6	\$ 1,616.9	\$ 1,065.5	\$ 952.2
Total Reporting Segment Costs	698.0	835.2	997.3	709.8
Adjusted EBITDA	\$ 647.6	\$ 781.7	\$ 68.2	\$ 242.4
Revenue per Ton	\$ 86.07	\$ 243.78	\$ 12.89	\$ 51.82
Costs per Ton	44.65	125.92	12.06	38.63
Adjusted EBITDA Margin per Ton	\$ 41.42	\$ 117.86	\$ 0.83	\$ 13.19

	Year Ended December 31, 2021			
	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining
	(Amounts in millions, except per ton data)			
Tons sold	17.3	5.5	88.4	16.9
Revenue	\$ 934.0	\$ 727.7	\$ 971.2	\$ 689.1
Total Reporting Segment Costs	580.9	549.5	836.3	524.9
Adjusted EBITDA	\$ 353.1	\$ 178.2	\$ 134.9	\$ 164.2
Revenue per Ton	\$ 54.09	\$ 131.83	\$ 10.99	\$ 40.75
Costs per Ton	33.64	99.55	9.46	31.04
Adjusted EBITDA Margin per Ton	\$ 20.45	\$ 32.28	\$ 1.53	\$ 9.71

Free Cash Flow is defined as net cash provided by operating activities less net cash used in investing activities and excludes cash outflows related to business combinations. See the table below for a reconciliation of Free Cash Flow to its most comparable measure under U.S. GAAP.

	Year Ended December 31,	
	2022	2021
	(Dollars in millions)	
Net cash provided by operating activities	\$ 1,173.6	\$ 420.0
Net cash used in investing activities	(28.7)	(131.5)
Free Cash Flow	\$ 1,144.9	\$ 288.5

## Liquidity and Capital Resources

### Overview

The Company's primary source of cash is proceeds from the sale of its coal production to customers. The Company has also generated cash from the sale of non-strategic assets, including coal reserves, resources and surface lands, and, from time to time, borrowings under its credit facilities and the issuance of securities. The Company's primary uses of cash include the cash costs of coal production, capital expenditures, coal reserve lease and royalty payments, debt service costs, capital and operating lease payments, postretirement plans, take-or-pay obligations, post-mining reclamation obligations, collateral and margining requirements, and selling and administrative expenses. Recently, the Company has also used cash for early debt retirements, and, historically, it has also used cash for dividends and share repurchases.

Any future determinations to return capital to stockholders, such as dividends or share repurchases will depend on a variety of factors, including the restrictions set forth under the Company's debt and surety agreements, its net income or other sources of cash, liquidity position and potential alternative uses of cash, such as internal development projects or acquisitions, as well as economic conditions and expected future financial results. The Company's ability to declare dividends or repurchase shares in the future will depend on its future financial performance, which in turn depends on the successful implementation of its strategy and on financial, competitive, regulatory, technical and other factors, general economic conditions, demand for and selling prices of coal and other factors specific to its industry, many of which are beyond the Company's control. The Company has presently suspended the payment of dividends and share repurchases, as discussed in Part II, Item 5. "Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities."

### **Liquidity**

As of December 31, 2022, the Company's cash balances totaled \$1,307.3 million, including approximately \$412 million held by U.S. subsidiaries, approximately \$863 million held by Australian subsidiaries, and the remainder held by other foreign subsidiaries in accounts predominantly domiciled in the U.S. A significant majority of the cash held by the Company's foreign subsidiaries is denominated in U.S. dollars. This cash is generally used to support non-U.S. liquidity needs, including capital and operating expenditures in Australia. From time to time, the Company may repatriate excess cash from its foreign subsidiaries to the U.S. During the year ended December 31, 2022, the Company repatriated approximately \$1.3 billion. If additional foreign-held cash is repatriated in the future, the Company does not expect restrictions or potential taxes will have a material effect to its near-term liquidity.

The Company's available liquidity increased from \$995.9 million as of December 31, 2021 to \$1,317.8 million as of December 31, 2022. Available liquidity was comprised of the following:

	December 31,	
	2022	2021
	(Dollars in millions)	
Cash and cash equivalents	\$ 1,307.3	\$ 954.3
Credit facility availability	3.5	15.3
Accounts receivable securitization program availability	7.0	26.3
Total liquidity	<u>\$ 1,317.8</u>	<u>\$ 995.9</u>

### **Collateral Requirements**

In November 2020, the Company entered into an agreement with the providers of its surety bond portfolio to resolve previous collateral demands. In accordance with the agreement, the Company initially provided \$75.0 million of collateral, in the form of letters of credit. The Company subsequently granted second liens on \$200.0 million of certain mining equipment and is further required to post an additional \$25.0 million of collateral per year from 2021 through 2024 for the benefit of the surety providers. The collateral postings further increase to the extent the Company generates more than \$100.0 million of free cash flow (as defined in the surety agreement) in any twelve-month period or has cumulative asset sales in excess of \$10.0 million, as of the last quarter end during the term of the agreement. Based upon the Company's free cash flow since entering into the surety agreement, additional collateral of \$102.4 million was posted during the year ended December 31, 2022 and \$74.4 million was posted in January 2023, in the form of cash-collateralized letters of credit. The Company is unable to accurately estimate future additional collateral postings due to the sensitivity of free cash flow to external market factors such as coal pricing.

Under the agreement, the relevant surety providers agreed to a standstill through December 31, 2025, during which time, the surety providers will not demand collateral incremental to that described above, draw on letters of credit posted for the benefit of themselves or cancel any existing surety bond. The Company will not pay dividends or make share repurchases during the standstill period, unless otherwise agreed between parties.

The Company is currently in negotiations with its surety providers to amend the existing agreement, including a modification to permit shareholder returns.

### ***Collateralized Letter of Credit Agreement***

In February 2022, the Company entered into a new agreement, which provides up to \$250.0 million of capacity for irrevocable standby letters of credit, expected to primarily support reclamation bonding requirements. The agreement requires the Company to provide cash collateral at a level of 103% of the aggregate amount of letters of credit outstanding under the arrangement (limited to \$5.0 million total excess collateralization.) Outstanding letters of credit bear a fixed fee in the amount of 0.75% per annum. The Company receives a variable deposit rate on the amount of cash collateral posted in support of letters of credit. The agreement has an initial expiration date of December 31, 2025. At December 31, 2022, letters of credit of \$103.3 million were outstanding under the agreement, which were collateralized by cash of \$111.0 million, which includes interest earned on deposits.

### ***Margin Requirements***

From time to time, the Company enters into hedging arrangements, including economic hedging arrangements, to manage various risks, including coal price volatility. Most hedging arrangements require the Company to post margin with its clearing broker based on the value of the related instruments and other credit factors. If the fair value of its exchange-cleared hedge portfolio moves significantly, the Company could be required to post additional margin, which could negatively impact its liquidity.

During 2022, the Company's margin requirements have been driven primarily by coal derivative contracts entered into in the first half of 2021 related to 1.9 million metric tons of production at the Wambo Underground Mine in the Company's Seaborne Thermal Mining segment. Based on planned production, the contracts were expected to settle at a rate of 1.2 million metric tons in 2022 and 0.7 million metric tons in 2023.

High demand and tight supply for coal globally during 2022 has resulted in a substantial rise in seaborne thermal coal prices, which has been amplified by the Russian-Ukrainian conflict resulting in unprecedented upward volatility in Newcastle coal pricing since late February 2022. The Newcastle financial price reached over \$450 per metric ton during 2022, compared to approximately \$166 per metric ton on December 31, 2021. As a result, the Company's total initial and variation margin requirements reached approximately \$750 million during March 2022. Margin is returned to the Company upon reductions in the underlying market coal price or, absent such reductions, cash is recovered as the Company delivers coal into the market at spot prices.

In order to meet its near-term liquidity requirements, particularly with respect to cash margin, the Company entered into a \$150 million unsecured revolving credit facility in March 2022. Concurrently with this agreement, the Company entered into an agreement for at-the-market equity offerings of up to \$225.0 million of the Company's common stock. During the three months ended March 31, 2022, the Company borrowed and repaid \$225.0 million under the revolving credit facility using net proceeds of \$222.0 million from at-the-market issuances of 10.1 million shares of common stock and available cash. The Company made no additional borrowings and terminated the facility prior to its scheduled 2025 maturity, on August 4, 2022.

To reduce exposure to additional margin requirements, during 2022, the Company converted 0.8 million metric tons of financial hedges into fixed price physical sales. As of December 31, 2022, 0.6 million metric tons remain outstanding and are projected to settle during the first half of 2023.

On December 31, 2022, the Company had \$255.5 million of margin posted. On February 17, 2023, the Company had \$80.5 million of margin posted. For additional information regarding the Company's coal derivative contracts, refer to Part II, Item 7A. "Quantitative and Qualitative Disclosures About Market Risk."

## Indebtedness

The Company's total indebtedness as of December 31, 2022 and 2021 is presented in the table below.

Debt Instrument (defined below, as applicable)	December 31,	
	2022	2021
	(Dollars in millions)	
6.000% Senior Secured Notes due March 2022 (2022 Notes)	\$ —	\$ 23.1
8.500% Senior Secured Notes due December 2024 (2024 Peabody Notes)	—	62.6
10.000% Senior Secured Notes due December 2024 (2024 Co-Issuer Notes)	—	193.9
Senior Secured Term Loan due 2024 (Co-Issuer Term Loans)	—	206.0
6.375% Senior Secured Notes due March 2025 (2025 Notes)	—	334.9
Senior Secured Term Loan due 2025, net of original issue discount (Senior Secured Term Loan)	—	322.8
3.250% Convertible Senior Notes due March 2028 (2028 Convertible Notes)	320.0	—
Finance lease obligations	23.6	29.3
Less: Debt issuance costs	(9.8)	(34.8)
	333.8	1,137.8
Less: Current portion of long-term debt	13.2	59.6
Long-term debt	\$ 320.6	\$ 1,078.2

As further described below, during 2021, the Company completed a significant debt restructuring to extend maturities on its existing debt and obtain covenant relief. Subsequent to these restructuring activities, the Company utilized various methods allowable or required under its relevant debt agreements to retire all of its senior secured long-term debt by December 31, 2022, as only the 2028 Convertible Notes, which are further described below, and finance lease obligations remain outstanding.

The Company's remaining indebtedness requires estimated contractual principal and interest payments, assuming interest rates in effect at December 31, 2022, of approximately \$25 million in 2023, \$16 million in 2024, \$14 million in 2025, \$13 million in 2026, \$11 million in 2027 and \$322 million thereafter.

Cash interest payments amounted to \$118.5 million, \$174.9 million and \$126.9 million during the years ended December 31, 2022, 2021, and 2020, respectively.

### 2021 Debt Restructuring

During the first quarter of 2021, the Company completed a series of financing transactions to provide the Company with maturity extensions and covenant relief, while allowing it to maintain near-term operating liquidity. These transactions included a senior notes exchange, a revolving credit facility exchange, various amendments to the Company's existing debt agreements and a support agreement with the Company's surety bond providers. These transactions were preceded by an organizational realignment in which the Company formed certain wholly-owned subsidiaries (the Co-Issuers) to indirectly own and conduct the operations of the Company's Wilpinjong Mine in Australia and the designation of such entities as unrestricted subsidiaries under the Company's then-existing credit agreement (Credit Agreement) and senior notes' indenture.

The senior notes exchange involved the tender of \$398.7 million aggregate principal amount of the Company's 2022 Notes for aggregate consideration consisting of (a) \$193.9 million aggregate principal amount of new 2024 Co-Issuer Notes, (b) \$195.1 million aggregate principal amount of new 2024 Peabody Notes issued by the Company and (c) a cash payment of approximately \$9.4 million.

Concurrently with the senior notes exchange, the Company solicited consents from holders of the 2022 Notes to certain proposed amendments to its existing senior notes' indenture to (i) eliminate substantially all of the restrictive covenants, certain events of default applicable to the 2022 Notes and certain other provisions contained in their indenture and (ii) release the collateral securing the 2022 Notes and eliminate certain other related provisions. The Company received the requisite consents from holders of the 2022 Notes and entered into a supplemental indenture to reflect such amendments.

The Company also restructured \$216.0 million of existing revolving loans under the Credit Agreement by (i) paying down \$10.0 million aggregate principal amount of such loans, (ii) compelling the Co-Issuers to incur \$206.0 million of Co-Issuer Term Loans under a separate credit agreement, (iii) entering into a letter of credit facility (the Company LC Agreement) and (iv) amending the Credit Agreement.

Under the Company LC Agreement, the Company obtained a \$324.0 million letter of credit facility under which its existing letters of credit under the Credit Agreement were deemed to be issued. Undrawn letters of credit under the Company LC Agreement bear interest at 6.00% per annum and unused commitments are subject to a 0.50% per annum commitment fee. The Company LC Agreement was subsequently amended during 2022 to mandatorily reduce its capacity by approximately \$22 million to make allowable certain previously restricted payments for joint venture investments. The amendment creates an investment basket which allows payments of \$30.0 million per year specifically limited to investment in renewable energy-related projects. The Company has no contractual commitment for such project investment. Unused portions of the basket carryover from year-to-year, and the total amount of investment will further reduce the credit facility capacity by a like amount, or a minimum of \$10.0 million per year, through the maturity of the credit facility. In February 2023, the Company LC Agreement was further amended to reduce its capacity by an additional \$65.0 million, accelerate its expiration date to December 31, 2023 from December 31, 2024, and eliminate the prepayment premium due upon any reduction of commitments thereunder prior to July 29, 2023.

The Company expects to utilize its collateralized letter of credit agreement to offset reductions in the capacity of the Company LC Agreement.

Completion of the 2021 debt restructuring transactions allowed the Company to finalize the surety transaction support agreement described above.

#### **2021 Debt Retirements**

During the remainder of 2021, the Company retired \$293.3 million of debt principal for cash at an aggregate cost of \$250.3 million, and \$106.1 million of debt principal in exchange for 10.0 million shares of its common stock, as further described below.

In March 2021, as a requirement of the senior notes exchange, the Company purchased \$22.4 million of the 2024 Peabody Notes at 80% of their accreted value, plus accrued and unpaid interest.

In June 2021, the Company announced an at-the-market equity offering program pursuant to which, as amended, the Company could offer and sell up to 32.5 million shares of its common stock. During the year ended December 31, 2021, the Company sold approximately 24.8 million shares for net cash proceeds of \$269.8 million. Such proceeds were utilized, in part, for the retirement of debt as described below.

During the year ended December 31, 2021, the Company retired \$91.4 million of 2024 Peabody Notes, \$117.8 million of 2025 Notes and \$61.7 million of its Senior Secured Term Loan primarily through various open market purchases at an aggregate cost of \$232.4 million.

Also during the year ended December 31, 2021, the Company completed multiple bilateral transactions with note holders in which the Company issued an aggregate 10.0 million shares of its common stock in exchange for \$37.3 million aggregate principal amount of the 2022 Notes, \$47.2 million aggregate principal amount of the 2025 Notes and \$21.6 million aggregate principal amount of the 2024 Peabody Notes.

#### **2022 Debt Retirements**

During 2022, the Company retired \$1,143.8 million of debt principal for cash at an aggregate cost of \$1,172.0 million, as further described below. Such amounts exclude the \$225.0 million principal amount borrowed and repaid under the now-terminated revolving facility described above.

On March 31, 2022, the Company retired the remaining principal balance of 2022 Notes upon maturity for \$23.1 million.

During the three months ended March 31, 2022, \$62.5 million principal amount of the 2024 Peabody Notes was retired using proceeds from the offering of 2028 Convertible Notes, as further described below, and the remaining \$0.1 million principal amount was retired through a mandatory repurchase offer required under the terms of their indenture and the Company LC Agreement. Such mandatory repurchase offers were required when the Company made open market repurchases of its debt. In general, the repurchase offers equated to 25% of the principal amount of priority lien debt repurchased in the preceding quarter at a price equal to the weighted average repurchase price paid over that quarter. In addition to the \$0.1 million principal amount of 2024 Peabody Notes repurchased through such offers, the Company repurchased \$42.2 million of aggregate priority lien obligations under the Company LC Agreement during 2022 at approximately 95%. The repurchases of Company LC Agreement commitments were effected by the posting of \$40.1 million of collateral with the administrative agent and did not reduce the availability under the facility.

In March 2022, \$257.4 million principal amount of the 2025 Notes was retired using proceeds from the offering of 2028 Convertible Notes, as further described below. The remaining 2025 Notes were retired through an open market repurchase of \$11.4 million principal amount at 98.00% in September 2022 and, in accordance with the notes' indenture, a voluntary prepayment of \$66.1 million principal amount at 101.59% in December 2022.

The Senior Secured Term Loan was retired through various open market purchases of \$44.1 million principal amount throughout 2022 at an aggregate cost of \$42.1 million, scheduled quarterly principal amortization payments of \$3.0 million, and, in accordance with the terms of the Credit Agreement, a voluntary prepayment of \$276.2 million principal amount at par in December 2022.

The 2024 Co-Issuer Notes and the Co-Issuer Term Loans were subject to mandatory prepayment offers at the end of each six-month period, beginning with June 30, 2021, whereby the Excess Cash Flow (as defined in the 2024 Co-Issuer Notes indenture) generated by the Wilpinjong Mine during each such period could be applied to the principal of such notes and loans on a pro rata basis, provided that the liquidity attributable to the Wilpinjong Mine would not fall below \$60.0 million. Such prepayments could be accepted or declined at the option of the debt holders. Based upon the Wilpinjong Mine's results for the six-month periods ended December 31, 2021 and June 30, 2022 and the resultant mandatory prepayment offers, during 2022, the Company prepaid \$18.5 million principal amount of 2024 Co-Issuer Notes at an aggregate cost of \$19.2 million and \$17.2 million principal amount of Co-Issuer Term Loans at par.

Voluntary repurchases of Co-Issuer Term Loans were permissible through various methods, including a modified Dutch auction process in which the Company could solicit acceptable prices from holders. During the year ended December 31, 2022, the Company solicited bids from all holders of Co-Issuer Term Loans at various dates for the repurchase of the remaining outstanding principal amount, resulting in the valid tender and purchase of \$185.9 million principal amount at an aggregate cost of \$195.8 million.

The underlying terms of the 2024 Co-Issuer Notes and Co-Issuer Term Loans required parity between the holders of Co-Issuer Term Loans and holders of the 2024 Co-Issuer Notes with respect to repurchase offers such as those undertaken through the auction processes described above. As such, the Company solicited commensurate bids from all holders of 2024 Co-Issuer Notes at various dates during the year ended December 31, 2022 for the repurchase of the remaining outstanding principal amount, resulting in the valid tender and purchase of \$147.3 million principal amount at an aggregate cost of \$154.1 million.

Subsequent to the modified Dutch auction processes and related transactions, during the fourth quarter of 2022, the Company voluntarily prepaid the remaining \$28.1 million principal amount of 2024 Co-Issuer Notes and \$2.9 million principal amount of Co-Issuer Term Loans at an aggregate cost of \$32.8 million, including certain make whole premium amounts.

### **3.250% Convertible Senior Notes due 2028**

On March 1, 2022, through a private offering, the Company issued \$320.0 million in aggregate principal amount of 3.250% Convertible Senior Notes due 2028 (the 2028 Convertible Notes). The 2028 Convertible Notes are senior unsecured obligations of the Company and are governed under an indenture.

The Company used the proceeds of the offering of the 2028 Convertible Notes to redeem the remaining \$62.5 million of its outstanding 2024 Peabody Notes and, together with available cash, approximately \$257.4 million of its outstanding 2025 Notes, and to pay related premiums, fees and expenses relating to the offering of the 2028 Convertible Notes and the redemptions.

The 2028 Convertible Notes will mature on March 1, 2028, unless earlier converted, redeemed or repurchased in accordance with their terms, as described in Note 10. "Long-term Debt" of the accompanying consolidated financial statements. The 2028 Convertible Notes will bear interest at a rate of 3.250% per year payable semi-annually in arrears on March 1 and September 1 of each year.

During the fourth quarter of 2022, the Company's reported common stock prices reached levels which prompted the conversion feature of the 2028 Convertible Notes. As a result, the 2028 Convertible Notes are convertible at the option of the holders during the first quarter of 2023. The Company cannot currently satisfy the conversion obligation in cash because the terms of the Credit Agreement generally prohibit the Company from retiring unsecured debt with cash. It is the Company's current intent and policy to settle any conversions of notes through shares of its common stock. Through February 17, 2023, the Company has not received any conversion requests and does not anticipate receiving any conversion requests in the near term as the market value of the 2028 Convertible Notes exceeds their conversion value.

#### ***Covenant Compliance***

The Company was compliant with all relevant covenants under its debt agreements at December 31, 2022, including the minimum aggregate liquidity requirement under the Company LC Agreement which requires the Company's restricted subsidiaries to maintain minimum aggregate liquidity of \$125.0 million at the end of each quarter through December 31, 2023. The Company's restricted subsidiaries' relevant liquidity amounted to \$1,250.4 million at December 31, 2022.

#### ***Accounts Receivable Securitization Program***

As described in Note 20. "Financial Instruments, Guarantees With Off-Balance-Sheet Risk and Other Guarantees" of the accompanying consolidated financial statements, the Company entered into an accounts receivable securitization program during 2017. The securitization program was amended in January 2022 to extend its maturity to January 2025 and reduce the available funding capacity from \$250.0 million to \$175.0 million. Funding capacity is limited to the availability of eligible receivables and is accounted for as a secured borrowing. Funding capacity under the program may also be utilized for letters of credit in support of other obligations. At December 31, 2022, the Company had no outstanding borrowings and \$168.0 million of letters of credit outstanding under the program, which were primarily in support of portions of the Company's reclamation obligations. The Company had no cash collateral posted under the Securitization Program at December 31, 2022.

The securitization program was amended again in February 2023 to increase the available funding capacity to \$225.0 million and adjust the relevant interest rate for borrowings to a secured overnight financing rate (SOFR).

#### ***Capital Expenditures***

For 2023, the Company is targeting total capital expenditures of approximately \$325 million. Approximately \$200 million of such amount is appropriated to major projects and growth capital expenditures, including approximately \$120 million for the initial redevelopment of the Company's North Goonyella mine.

#### ***Other Requirements***

The Company will incur significant future cash outflows for certain liabilities related to its prior mining activities and former employees. Such cash flows pertain to postretirement benefit plans, work-related injuries and illnesses, defined benefit pension plans, mine reclamation and end-of-mine closure costs and exploration obligations and are estimated to amount to approximately \$235 million in 2023, \$100 million in 2024, \$110 million in 2025, \$100 million in 2026, \$100 million in 2027 and \$1,685 million thereafter.

The Company has various short- and long-term take-or-pay arrangements in Australia and the U.S. associated with rail and port commitments for the delivery of coal, including amounts relating to export facilities. The estimated future cash flows associated with such arrangements are approximately \$100 million in 2023, \$110 million in 2024, \$105 million in 2025, \$100 million in 2026, \$100 million in 2027 and \$875 million thereafter.

The Company's operating lease commitments, excluding potential contingent rental amounts, will require cash payments of approximately \$19 million in 2023, \$7 million in 2024 and \$4 million thereafter.



### Cash Flows and Free Cash Flow

The following table summarizes the Company's cash flows for the years ended December 31, 2022 and 2021, as reported in the accompanying consolidated financial statements. Free Cash Flow is a financial measure not recognized in accordance with U.S. GAAP. Refer to the "Reconciliation of Non-GAAP Financial Measures" section above for definitions and reconciliations to the most comparable measures under U.S. GAAP.

	Year Ended December 31,	
	2022	2021
	(Dollars in millions)	
Net cash provided by operating activities	\$ 1,173.6	\$ 420.0
Net cash used in investing activities	(28.7)	(131.5)
Net cash used in financing activities	(681.6)	(43.4)
Net change in cash, cash equivalents and restricted cash	463.3	245.1
Cash, cash equivalents and restricted cash at beginning of period	954.3	709.2
Cash, cash equivalents and restricted cash at end of period	\$ 1,417.6	\$ 954.3
Net cash provided by operating activities	\$ 1,173.6	\$ 420.0
Net cash used in investing activities	(28.7)	(131.5)
Free Cash Flow	\$ 1,144.9	\$ 288.5

**Operating Activities.** The net increase in net cash provided by operating activities for the year ended December 31, 2022 compared to the prior year was driven by a year-over-year increase in cash from the Company's mining operations (\$879.0 million) partially offset by increased cash utilized to satisfy the margin requirements associated with derivative financial instruments (\$125.4 million).

**Investing Activities.** The decrease in net cash used in investing activities for the year ended December 31, 2022 compared to the prior year was driven by increased cash receipts from Middlemount and other related parties (\$126.7 million) and increased asset disposal proceeds (\$22.8 million), partially offset by increased capital expenditures and payments of capital accruals (\$48.5 million).

**Financing Activities.** The increase in net cash used in financing activities for the year ended December 31, 2022 compared to the prior year was driven by higher repayments of debt principal (\$1,122.0 million), decreased proceeds from common stock issuances in the current year (\$47.8 million) and higher distributions to non-controlling interests (\$13.6 million) partially offset by proceeds from long-term debt issuances of \$545.0 million during the year ended December 31, 2022.

### Off-Balance-Sheet Arrangements

In the normal course of business, the Company is a party to various guarantees and financial instruments that carry off-balance-sheet risk and are not reflected in the accompanying consolidated balance sheets. At December 31, 2022, such instruments included \$1,376.8 million of surety bonds and \$569.6 million of letters of credit. Such financial instruments provide support for its reclamation bonding requirements, lease obligations, insurance policies and various other performance guarantees. The Company periodically evaluates the instruments for on-balance-sheet treatment based on the amount of exposure under the instrument and the likelihood of required performance. The Company does not expect any material losses to result from these guarantees or off-balance-sheet instruments in excess of liabilities provided for in its consolidated balance sheets.

As of December 31, 2022, the Company was party to financial instruments with off-balance sheet risk in support of the following obligations:

	Reclamation	Health and welfare	Contract performance	Leased property and equipment	Other <sup>(3)</sup>	Total
	(Dollars in millions)					
Surety bonds and bank guarantees	\$ 1,250.1	\$ 40.5	\$ 35.2	\$ 35.0	\$ 16.0	\$ 1,376.8
Letters of credit outstanding under letter of credit facilities	300.8	91.9	3.9	5.0	—	401.6
Letters of credit outstanding under accounts receivable securitization program	137.0	19.2	11.8	—	—	168.0
	1,687.9	151.6	50.9	40.0	16.0	1,946.4
Less: Letters of credit in support of surety bonds <sup>(4)</sup>	(431.7)	(31.9)	(4.1)	(1.2)	—	(468.9)
Obligations supported, net	\$ 1,256.2	\$ 119.7	\$ 46.8	\$ 38.8	\$ 16.0	\$ 1,477.5

<sup>(1)</sup> Obligations include pension and health care plans, workers' compensation, and property and casualty insurance.

<sup>(2)</sup> Obligations pertain to customer and vendor contracts.

<sup>(3)</sup> Obligations primarily pertain to the disturbance or alteration of public roadways in connection with the Company's mining activities that is subject to future restoration.

<sup>(4)</sup> Serve as collateral for certain surety bonds at the request of surety bond providers.

Not presented in the above table is approximately \$187 million of cash collateral posted by the Company and included in the accompanying consolidated balance sheet at December 31, 2022. Such collateral is primarily in support of the financial instruments noted above, including in relation to the Company's collateralized letter of credit agreement, mandatory repurchases of credit facility capacity, additional collateral in support of certain surety bonds, and amounts held directly with beneficiaries which are not supported by surety bonds.

Financial assurances associated with new reclamation bonding requirements, surety bonds or other obligations may require additional collateral in the form of cash or letters of credit causing a decline in the Company's liquidity.

As described in Note 20. "Financial Instruments, Guarantees With Off-Balance-Sheet Risk and Other Guarantees" to the accompanying consolidated financial statements, the Company is required to provide various forms of financial assurance in support of its mining reclamation obligations in the jurisdictions in which it operates. Such requirements are typically established by statute or under mining permits.

At December 31, 2022, the Company had total asset retirement obligations of \$750.0 million which were backed by a combination of surety bonds, bank guarantees and letters of credit.

Bonding requirement amounts may differ significantly from the related asset retirement obligation because such requirements are calculated under the assumption that reclamation begins currently, whereas the Company's accounting liabilities are discounted from the end of a mine's economic life (when final reclamation work would begin) to the balance sheet date.

*Guarantees and Other Financial Instruments with Off-Balance Sheet Risk.* See Note 20. "Financial Instruments, Guarantees With Off-Balance-Sheet Risk and Other Guarantees" to the accompanying consolidated financial statements for a discussion of the Company's accounts receivable securitization program and guarantees and other financial instruments with off-balance sheet risk.

### Critical Accounting Policies and Estimates

The Company's discussion and analysis of its financial condition, results of operations, liquidity and capital resources is based upon its financial statements, which have been prepared in accordance with U.S. GAAP. The Company is also required under U.S. GAAP to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, the Company evaluates its estimates. The Company bases its estimates on historical experience and on various other assumptions that it believes are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

**Asset Retirement Obligations.** The Company's asset retirement obligations primarily consist of spending estimates for surface land reclamation and support facilities at both surface and underground mines in accordance with applicable reclamation laws and regulations in the U.S. and Australia as defined by each mining permit. Asset retirement obligations are determined for each mine using various estimates and assumptions including, among other items, estimates of disturbed acreage as determined from engineering data, estimates of future costs to reclaim the disturbed acreage and the timing of these cash flows, escalated for inflation and then discounted using a credit-adjusted, risk-free rate. As changes in estimates occur (such as mine plan revisions, changes in estimated costs or changes in timing of the performance of reclamation activities), the revisions to the obligation and asset are recognized at the appropriate credit-adjusted, risk-free rate. If the Company's assumptions do not materialize as expected, actual cash expenditures and costs that it incurs could be materially different than currently estimated. Moreover, regulatory changes could increase its obligation to perform reclamation and mine closing activities. Amortization associated with the Company's asset retirement obligation assets of \$26.5 million for the year ended December 31, 2022 was included in "Depreciation, depletion and amortization" in the Company's consolidated statements of operations. Asset retirement obligation expense, consisting of both accretion expense and changes in estimates for the Company's inactive locations, for the year ended December 31, 2022 was \$49.4 million and payments totaled \$52.6 million. See Note 12. "Asset Retirement Obligations" to the accompanying consolidated financial statements for additional information regarding the Company's asset retirement obligations.

**Impairment of Long-Lived Assets.** The Company evaluates its long-lived assets held and used in operations for impairment as events and changes in circumstances indicate that the carrying amount of such assets might not be recoverable. Factors that would indicate potential impairment to be present include, but are not limited to, a sustained history of operating or cash flow losses, an unfavorable change in earnings and cash flow outlook, prolonged adverse industry or economic trends and a significant adverse change in the extent or manner in which a long-lived asset is being used or in its physical condition. The Company generally does not view short-term declines in thermal and metallurgical coal prices as a triggering event for conducting impairment tests because of historic price volatility. However, the Company generally views a sustained trend of depressed coal pricing (for example, over periods exceeding one year) as an indicator of potential impairment. Because of the volatile and cyclical nature of coal prices and demand, it is reasonably possible that coal prices may decrease and/or fail to improve in the near term, which, absent sufficient mitigation such as an offsetting reduction in the Company's operating costs, may result in the need for future adjustments to the carrying value of its long-lived mining assets and mining-related investments.

Assets are grouped at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other groups of assets. For its active mining operations, the Company generally groups such assets at the mine level, or the mining complex level for mines that share infrastructure, with the exception of impairment evaluations triggered by mine closures. In those cases involving mine closures, the related assets are evaluated at the individual asset level for remaining economic life based on transferability to ongoing operating sites or for expected salvage. For its development and exploration properties and portfolio of surface land and coal reserve and resource holdings, the Company considers several factors to determine whether to evaluate those assets individually or on a grouped basis for purposes of impairment testing. Such factors include geographic proximity to one another, the expectation of shared infrastructure upon development based on future mining plans and whether it would be most advantageous to bundle such assets in the event of a sale to a third party.

When indicators of impairment are present, the Company evaluates its long-lived assets for recoverability by comparing the estimated undiscounted cash flows in the LOM plan expected to be generated by those assets under various assumptions to their carrying amounts. If such undiscounted cash flows indicate that the carrying value of the asset group is not recoverable, impairment losses are measured by comparing the estimated fair value of the asset group to its carrying amount. As quoted market prices are unavailable for the Company's individual mining operations, fair value is determined through the use of an expected present value technique based on the income approach, except for non-strategic coal reserves and resources, surface lands and undeveloped coal properties excluded from its long-range mine planning. In those cases, a market approach is utilized based on the most comparable market multiples available. The estimated future cash flows and underlying assumptions used to assess recoverability and, if necessary, measure the fair value of the Company's long-lived mining assets are derived from those developed in connection with its planning and budgeting process. The Company believes its assumptions to be consistent with those a market participant would use for valuation purposes. The most critical assumptions underlying its projections and fair value estimates include those surrounding future tons sold, coal prices for unpriced coal, production costs (including costs for labor, commodity supplies and contractors), transportation costs, foreign currency exchange rates and a risk-adjusted, cost of capital (all of which generally constitute unobservable Level 3 inputs under the fair value hierarchy), in addition to market multiples for non-strategic coal reserves and resources, surface lands and undeveloped coal properties excluded from the Company's long-range mine planning (which generally constitute Level 2 inputs under the fair value hierarchy).

Impairment charges related to long-lived assets of \$9.5 million were recorded for the year ended December 31, 2022. The assumptions used are based on the Company's best knowledge at the time it prepares its analysis but can vary significantly due to the volatile and cyclical nature of coal prices and demand, regulatory issues, unforeseen mining conditions, commodity prices and cost of labor. These factors may cause the Company to be unable to recover all or a portion of the carrying value of its long-lived assets.

See Note 3. "Asset Impairment" to the accompanying consolidated financial statements for additional information regarding impairment charges.

**Income Taxes.** Peabody accounts for income taxes in accordance with accounting guidance which requires deferred tax assets and liabilities to be recognized using enacted tax rates for the effect of temporary differences between the book and tax bases of recorded assets and liabilities. The guidance also requires that deferred tax assets be reduced by a valuation allowance if it is "more likely than not" that some portion or all of the deferred tax asset will not be realized. In its evaluation of the need for a valuation allowance, Peabody takes into account various factors, including the expected level of future taxable income, available tax planning strategies, reversals of existing taxable temporary differences and taxable income in carryback years. During the year ended December 31, 2022, the Company released valuation allowances of \$74.7 million recorded against the Australian NOLs and net deferred tax asset position due to the significant current year utilization of NOLs and expected future realization of the deferred tax assets. At December 31, 2022, the Company maintained valuation allowances for income taxes totaling \$1,451.0 million. If actual results differ from the assumptions made in the annual evaluation of its valuation allowance, Peabody may record a change in valuation allowance through income tax expense in the period such determination is made.

Peabody's liability for unrecognized tax benefits contains uncertainties because management is required to make assumptions and to apply judgment to estimate the exposures associated with its various filing positions. Peabody recognizes the tax benefit from an uncertain tax position only if it is "more likely than not" that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position must be measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. At December 31, 2022, the Company had net unrecognized tax benefits of \$9.5 million included in recorded liabilities in the consolidated balance sheet. Peabody believes that its judgments and estimates are reasonable; however, to the extent it prevails in matters for which liabilities have been established, or are required to pay amounts in excess of its recorded liabilities, the Company's effective tax rate in a given period could be materially affected.

See Note 8. "Income Taxes" to the accompanying consolidated financial statements for additional information regarding valuation allowances and unrecognized tax benefits.

**Postretirement Benefit and Pension Liabilities.** Peabody has long-term liabilities for its employees' postretirement benefit costs and defined benefit pension plans. Its pension obligations are funded in accordance with the provisions of applicable laws and the Company's policies. Liabilities for postretirement benefit costs are funded at its discretion. For the year ended December 31, 2022, Peabody recorded a total benefit related to postretirement benefit costs and pension of \$49.1 million, while employer contributions were \$15.9 million. An actuarial gain of \$30.6 million was recorded for the year ended December 31, 2022.

Each of these liabilities is actuarially determined and Peabody uses various actuarial assumptions, including the discount rate, future cost trends, mortality tables, demographic assumptions and expected asset returns to estimate the costs and obligations for these items. Peabody's discount rate is determined by utilizing a hypothetical bond portfolio model which approximates the future cash flows necessary to service its liabilities. The Company makes assumptions related to future trends for medical care costs in the estimates of postretirement benefit costs. Its medical trend assumption is developed by annually examining the historical trend of cost per claim data. In deciding which mortality tables to use, the Company periodically reviews its population's actual mortality experience and evaluates results against its current assumptions as well as consider recent mortality tables published by the Society of Actuaries Retirement Plans Experience Committee in order to select mortality tables for use in its year end valuations. In addition, the Company makes assumptions related to rates of return on plan assets. If its assumptions do not materialize as expected, actual cash expenditures and costs that Peabody incurs could differ materially from its current estimates. Moreover, regulatory changes could affect Peabody's obligation to satisfy these or additional obligations.

For the Company's postretirement benefit obligation, assumed discount rates and health care cost trend rates have a significant effect on the expense and liability amounts reported for its health care plans. Below the Company has provided two separate sensitivity analyses to demonstrate the significance of these assumptions in relation to reported amounts.

	For Year Ended December 31, 2022	
	One-Percentage-Point Increase	One-Percentage-Point Decrease
	(Dollars in millions)	
Health care cost trend rate:		
Effect on total net periodic postretirement benefit cost	\$ 0.5	\$ (0.4)
Effect on total postretirement benefit obligation	\$ 11.3	\$ (10.2)

	For Year Ended December 31, 2022	
	One-Half Percentage- Point Increase	One-Half Percentage- Point Decrease
	(Dollars in millions)	
Discount rate:		
Effect on total net periodic postretirement benefit cost	\$ 0.9	\$ (0.9)
Effect on total postretirement benefit obligation	\$ (6.0)	\$ 6.4

<b>Expected return on assets:</b>		
Effect on total net periodic postretirement benefit cost	\$ (0.1)	\$ 0.1

For the Company's pension obligation, assumed discount rates and expected returns on assets have a significant effect on the expense and funded status amounts reported for its defined benefit pension plans. Below the Company has provided two separate sensitivity analyses to demonstrate the significance of these assumptions in relation to reported amounts.

	For Year Ended December 31, 2022	
	One-Half Percentage- Point Increase	One-Half Percentage- Point Decrease
	(Dollars in millions)	
Discount rate:		
Effect on total net periodic pension cost	\$ 2.4	\$ (2.7)
Effect on defined benefit pension plans' projected benefit obligation	\$ (5.0)	\$ 5.4

<b>Expected return on assets:</b>		
Effect on total net periodic pension cost	\$ (3.7)	\$ 3.7

As a result of discretionary contributions made in recent years, its defined benefit pension plans have become nearly fully funded. As a result of the funding level, the asset allocation mix reflected Peabody's target asset mix of 100% fixed income investments and the pensions plans' assets provide a significant hedge to the funded status against interest rate movements. If the discount rate moves, Peabody's actual results would be different than those shown above as substantially all of the change in the discount rate should be offset by changes to the expected return on plan assets.

See Note 13. "Postretirement Health Care and Life Insurance Benefits" and Note 14. "Pension and Savings Plans" to the accompanying consolidated financial statements for additional information regarding postretirement benefit and pension plans.

**Contingent liabilities.** From time to time, Peabody is subject to legal and environmental matters related to its continuing and discontinued operations and certain historical, non-coal producing operations. In connection with such matters, the Company is required to assess the likelihood of any adverse judgments or outcomes, as well as potential ranges of probable losses.

A determination of the amount of reserves required for these matters is made after considerable analysis of each individual issue. Peabody accrues for legal and environmental matters within "Operating costs and expenses" when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. If a range of possible loss exists and no anticipated loss within the range is more likely than any other anticipated loss, the Company records the accrual at the low end of the range, in accordance with Accounting Standards Codification 450, "Contingencies."

Peabody provides disclosure surrounding loss contingencies when it believes that it is at least reasonably possible that a material loss may be incurred or an exposure to loss in excess of amounts already accrued may exist. Adjustments to contingent liabilities are made when additional information becomes available that affects the amount of estimated loss, which information may include changes in facts and circumstances, changes in interpretations of law in the relevant courts, the results of new or updated environmental remediation cost studies and the ongoing consideration of trends in environmental remediation costs.

Accrued contingent liabilities exclude claims against third parties and are not discounted. The current portion of these accruals is included in "Accounts payables and accrued expenses" and the long-term portion is included in "Other noncurrent liabilities" in the Company's consolidated balance sheets. In general, legal fees related to environmental remediation and litigation are charged to expense. The Company includes the interest component of any litigation-related penalties within "Interest expense" in its consolidated statements of operations. See Note 21. "Commitments and Contingencies" to the accompanying consolidated financial statements for further discussion of the Company's contingent liabilities.

#### **Newly Adopted Accounting Standards and Accounting Standards Not Yet Implemented**

See Note 1. "Summary of Significant Accounting Policies" to the accompanying consolidated financial statements for a discussion of newly adopted accounting standards and accounting standards not yet implemented.

#### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

The potential for changes in the market value of the Company's coal and freight-related trading, crude oil, diesel fuel and foreign currency contract portfolios, as applicable, is referred to as "market risk." Market risk related to its coal trading and freight-related contract portfolio, which includes bilaterally-settled and over-the-counter (OTC) exchange-settled trading, in addition to, from time to time, the brokered trading of coal, is evaluated using a value at risk (VaR) analysis. VaR analysis is not used to evaluate the Company's non-trading diesel fuel or foreign currency hedging portfolios, as applicable, or coal trading activities it employs in support of coal production (as discussed below). The Company attempts to manage market price risks through diversification, controlling position sizes and executing hedging strategies. Due to a lack of quoted market prices and the long-term, illiquid nature of the positions, the Company has not quantified market price risk related to its non-trading, long-term coal supply agreement portfolio.

#### **Coal Trading Activities and Related Commodity Price Risk**

*Coal Price Risk Monitored Using VaR.* Peabody engages in direct and brokered trading of physical coal and freight-related commodities in OTC markets. These activities give rise to commodity price risk, which represents the potential loss that can be caused by an adverse change in the market value of a particular commitment. Peabody actively measures, monitors, manages and hedges market price risk due to current and anticipated trading activities to remain within risk limits prescribed by management. For example, it has policies in place that limit the amount of market price risk, as measured by VaR, that the Company may assume at any point in time from its trading and brokerage activities.

Peabody generally accounts for its coal trading activities using the fair value method, which requires it to reflect contracts with third parties that meet the definition of a derivative at market value in its consolidated financial statements, with the exception of contracts for which it has elected to apply the normal purchases and normal sales exception. Peabody's trading portfolio included futures, forwards and options as of December 31, 2022. The use of VaR allows the Company to quantify in dollars, on a daily basis, a measure of price risk inherent in its trading portfolio. VaR represents the expected loss in portfolio value due to adverse market price movements over a defined time horizon (liquidation period) within a specified confidence level. Peabody's VaR model is based on a variance/co-variance approach, which captures its potential loss exposure related to future, forward, swap and option positions. Peabody's VaR model assumes a 15-day holding period at the time of VaR measurement and produces an output corresponding with a 95% one-tailed confidence interval, which means that there is a one in 20 statistical chance that its portfolio could lose more than the VaR estimates during the assumed liquidation period. Peabody's volatility calculation incorporates an exponentially weighted moving average algorithm based on price movements during the previous 60 market days, which makes its volatility more representative of recent market conditions while still reflecting an awareness of historical price movements. VaR does not estimate the maximum potential loss expected in the 5% of the time that changes in the portfolio value during the assumed liquidation period is expected to exceed measured VaR. The Company uses stress testing and scenario analysis to help provide visibility in such cases, as discussed further below.

VaR analysis allows the Company to aggregate market price risk across products in the portfolio, compare market price risk on a consistent basis and identify the drivers of risk and changes thereto over time. Peabody uses historical data to estimate price volatility as an input to VaR. Given its reliance on historical data, the Company believes VaR is reasonably effective in characterizing market price risk exposures in markets in which there are not sudden fundamental changes or shifts in market conditions. Nonetheless, an inherent limitation of VaR is that past changes in market price risk factors may not produce accurate predictions of future market price risk. Due to that limitation, combined with the subjectivity in the choice of the liquidation period and reliance on historical data to calibrate its models, the Company performs stress and scenario analyses as needed to estimate the impacts of market price changes on the value of the portfolio. Additionally, back-testing is regularly performed to monitor the effectiveness of its VaR measure. The results of these analyses are used to supplement the VaR methodology and identify additional market price-related risks.

During the year ended December 31, 2022, the actual low, high and average VaR associated with the Company's trading and brokerage function was \$0.6 million, \$23.0 million and \$5.4 million, respectively.

*Other Risk Exposures.* Peabody also uses its coal trading and brokerage platform to support various coal production-related activities. These transactions may involve coal to be produced from its mines, coal sourcing arrangements with third-party mining companies, joint venture positions with producers or offtake agreements with producers. While the support activities (such as the forward sale of coal to be produced and/or purchased) may ultimately involve instruments sensitive to market price risk, the sourcing of coal in these arrangements does not involve market risk sensitive instruments and does not encompass the commodity price risks that the Company monitors through VaR analysis, as discussed above.

*Future Realization.* As of December 31, 2022, the total estimated future realization of the value of the Company's trading portfolio is expected to occur during 2023.

Peabody also monitors other types of risk associated with its coal trading activities, including credit, market liquidity and counterparty nonperformance.

### **Credit and Nonperformance Risk**

The fair values of Peabody's derivative instruments utilized for corporate hedging and coal trading activities reflect adjustments for credit risk, as necessary. The Company's exposure is substantially with electric utilities, energy marketers, steel producers and nonfinancial trading houses. Its policy is to independently evaluate each counterparty's creditworthiness prior to entering into transactions and to regularly monitor exposures. Peabody manages its counterparty risk from its hedging activities related to foreign currency and fuel exposures, as applicable, through established credit standards, diversification of counterparties, utilization of investment grade commercial banks, adherence to established tenor limits based on counterparty creditworthiness and continual monitoring of that creditworthiness. If the Company engages in a transaction with a counterparty that does not meet its credit standards, the Company seeks to protect its position by requiring the counterparty to provide an appropriate credit enhancement. Also, when appropriate (as determined by its credit management function), Peabody has taken steps to reduce its exposure to customers or counterparties whose credit has deteriorated and who may pose a higher risk of failure to perform under their contractual obligations. These steps include obtaining letters of credit or cash collateral (margin), requiring prepayments for shipments or the creation of customer trust accounts held for Peabody's benefit to serve as collateral in the event of a failure to pay or perform. To reduce its credit exposure related to trading and brokerage activities, Peabody seeks to enter into netting agreements with counterparties that permit it to offset asset and liability positions with such counterparties and, to the extent required, Peabody will post or receive margin amounts associated with exchange-cleared and certain OTC positions. Peabody also continually monitors counterparty and contract nonperformance risk, if present, on a case-by-case basis.



## Foreign Currency Risk

The Company has historically utilized currency forwards and options to hedge currency risk associated with anticipated Australian dollar expenditures. The accounting for these derivatives is discussed in Note 6. "Derivatives and Fair Value Measurements" to the accompanying consolidated financial statements. As of December 31, 2022, the Company had currency options outstanding with an aggregate notional amount of \$745.0 million Australian dollars to hedge currency risk associated with anticipated Australian dollar expenditures during the first nine months of 2023. Assuming the Company had no foreign currency hedging instruments in place, its exposure in operating costs and expenses due to a \$0.10 change in the Australian dollar/U.S. dollar exchange rate is approximately \$190 to \$200 million for the next twelve months. Based upon the Australian dollar/U.S. dollar exchange rate at December 31, 2022, the currency option contracts outstanding at that date would limit the Company's net exposure to a \$0.10 unfavorable change in the exchange rate to approximately \$167 million for the next twelve months. Subsequent to December 31, 2022, the Company entered into additional average rate options with an aggregate notional amount of \$135.0 million Australian dollars related to the second and third quarters of 2023 and purchased collars with an aggregate notional amount of \$150.0 million Australian dollars related to the second half of 2023. The additional average rate options have a strike price of \$0.75. The purchased collars have a floor and ceiling of \$0.63 and \$0.75, respectively, whereby the Company would incur a loss on the instruments for rates below the floor and gain for rates above the ceiling. The Company anticipates it will continue to use options and collars to hedge Australian dollar currency risk.

## Coal Price Risk

The Company predominantly manages its commodity price risk for its non-trading, long-term coal contract portfolio through the use of long-term coal supply agreements (those with terms longer than one year) to the extent possible, rather than through the use of derivative instruments. Sales under such agreements comprised approximately 85%, 84% and 89% of its worldwide sales (by volume) for the years ended December 31, 2022, 2021 and 2020, respectively. As of December 31, 2022, the Company had approximately 111 million tons of U.S. thermal coal priced and committed for 2023. This includes approximately 92 million tons of PRB coal and 19 million tons of other U.S. thermal coal. The Company has the flexibility to increase volumes should demand warrant. Peabody is estimating 2023 thermal coal sales volumes from its Seaborne Thermal Mining segment of 14.5 million to 15.5 million tons comprised of thermal export volume of 9.0 million to 10.0 million tons and domestic volume of 5.5 million tons. Peabody is estimating full year 2023 metallurgical coal sales from its Seaborne Metallurgical Mining segment of 7.0 million to 8.0 million tons. Sales commitments in the metallurgical coal market are typically not long-term in nature, and the Company is therefore subject to fluctuations in market pricing.

As of December 31, 2022, the Company held coal derivative contracts related to a portion of its forecasted sales with an aggregate notional volume of 0.6 million tonnes. Such financial contracts may include futures, forwards and options. The notional volume is related predominantly to financial derivatives entered to support the profitability of the Wambo Underground Mine as part of a strategy to extend the mine's life. All such tonnes will settle in 2023. The Newcastle thermal coal index was \$398.50 per tonne on December 31, 2022, and the Company had posted \$198 million of variation margin for the related derivative contracts at such date. A change in the Newcastle forward curve of \$100 per tonne would increase or decrease the Company's variation margin requirement by approximately \$55 million and result in comparable unrealized gains or losses.

## Diesel Fuel Price Risk

Previously, the Company managed price risk of the diesel fuel used in its mining activities through the use of derivatives, primarily swaps. As of December 31, 2022, the Company did not have any diesel fuel derivative instruments in place. The Company also manages the price risk of diesel fuel through the use of cost pass-through contracts with certain customers.

The Company expects to consume 100 to 110 million gallons of diesel fuel during the next twelve months. A \$10 per barrel change in the price of crude oil (the primary component of a refined diesel fuel product) would increase or decrease its annual diesel fuel costs by approximately \$26 million based on its expected usage.

## Interest Rate Risk

Peabody's objectives in managing exposure to interest rate changes are to limit the impact of interest rate changes on earnings and cash flows and to lower overall borrowing costs. As of December 31, 2022, Peabody had approximately \$320.0 million of fixed-rate borrowings and no variable-rate borrowings outstanding and had no interest rate swaps in place. A one percentage point increase in interest rates would result in a decrease of approximately \$23 million in the estimated fair value of these borrowings.



**Item 8. Financial Statements and Supplementary Data.**

See Part IV, Item 15. "Exhibits and Financial Statement Schedules" of this report for the information required by this Item 8, which information is incorporated by reference herein.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures.****Evaluation of Disclosure Controls and Procedures**

Peabody's disclosure controls and procedures are designed to, among other things, provide reasonable assurance that material information, both financial and non-financial, and other information required under the securities laws to be disclosed is accumulated and communicated to senior management, including the principal executive officer and principal accounting officer, on a timely basis. As of December 31, 2022, the end of the period covered by this Annual Report on Form 10-K, the Company carried out an evaluation of the effectiveness of the design and operation of its disclosure controls and procedures. Based upon that evaluation, Peabody's Chief Executive Officer and Chief Financial Officer have concluded that such disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of December 31, 2022 were effective to provide reasonable assurance that the desired control objectives were achieved.

**Changes in Internal Control Over Financial Reporting**

Peabody periodically reviews its internal control over financial reporting as part of its efforts to ensure compliance with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002. In addition, Peabody routinely reviews its system of internal control over financial reporting to identify potential changes to its processes and systems that may improve controls and increase efficiency, while ensuring that the Company maintains an effective internal control environment. Changes may include such activities as implementing new systems; consolidating the activities of acquired business units; migrating certain processes to its shared services organizations and/or managed third parties; formalizing and refining policies, procedures and control documentation requirements; improving segregation of duties and adding monitoring controls. In addition, when Peabody acquires new businesses, it incorporate its controls and procedures into the acquired business as part of its integration activities.

There have been no changes in Peabody's internal control over financial reporting that occurred during the three months ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

**Management's Report on Internal Control Over Financial Reporting**

Management is responsible for maintaining and establishing adequate internal control over financial reporting. An evaluation of the effectiveness of the design and operation of the Company's internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act, as of the end of the period covered by this report was performed under the supervision and with the participation of management, including its Chief Executive Officer and Chief Financial Officer. This evaluation is performed to determine if the Company's internal controls over financial reporting 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.

Because of inherent limitations, any system of 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.

Management conducted an assessment of the effectiveness of the Company's internal control over financial reporting using the criteria set by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control - Integrated Framework (2013)*. Based on this assessment, management concluded that the Company's internal control over financial reporting was effective to provide reasonable assurance that the desired control objectives were achieved as of December 31, 2022.

Peabody's Independent Registered Public Accounting Firm, Ernst & Young LLP, has audited Peabody's internal control over financial reporting, as stated in their unqualified opinion report included herein.

/s/ James C. Grech  
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James C. Grech  
*President and Chief Executive Officer*

/s/ Mark A. Spurbeck  
\_\_\_\_\_  
Mark A. Spurbeck  
*Executive Vice President and Chief Financial Officer*

February 24, 2023

## Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Peabody Energy Corporation

### Opinion on Internal Control Over Financial Reporting

We have audited Peabody Energy Corporation's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Peabody Energy Corporation (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of Peabody Energy Corporation as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income (loss), changes in stockholders' equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements") and our report dated February 24, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

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

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

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

### Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ Ernst & Young, LLP

St. Louis, Missouri

February 24, 2023

**Item 9B. Other Information.**

None.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.**

Not applicable.

## PART III

**Item 10. Directors, Executive Officers and Corporate Governance.**

The information required by Item 401 of Regulation S-K is included under the caption Proposal 1 - "Election of Directors" in Peabody's 2023 Proxy Statement and in Part I, Item 1. "Business" of this report under the caption "Information About Our Executive Officers." The information required by Items 405, 406 and 407(c)(3), (d)(4) and (d)(5) of Regulation S-K is included under the captions "Stock Ownership," "Additional Information Concerning the Board of Directors - Corporate Governance - Code of Business Conduct and Ethics" and "Additional Information Concerning the Board of Directors - Committee Overview - Audit Committee" in Peabody's 2023 Proxy Statement. Such information is incorporated herein by reference.

**Item 11. Executive Compensation.**

The information required by Items 402 and 407(e)(4) and (e)(5) of Regulation S-K is included under the captions "Additional Information Concerning the Board of Directors - Director Compensation," "Compensation Discussion and Analysis," "Compensation Committee Interlocks and Insider Participation," "Compensation Committee Report," "Risk Assessment in Compensation Programs," "Executive Compensation Tables," "Pay Ratio Disclosure" and "Pay Versus Performance Disclosure" in Peabody's 2023 Proxy Statement and is incorporated herein by reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

The information required by Item 403 of Regulation S-K is included under the caption "Stock Ownership - Security Ownership of Directors and Management and Certain Beneficial Owners" in Peabody's 2023 Proxy Statement and is incorporated herein by reference.

**Equity Compensation Plan Information**

As required by Item 201(d) of Regulation S-K, the following table provides information regarding Peabody's equity compensation plans as of December 31, 2022:

Plan Category	(a) Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
Equity compensation plans approved by security holders	624,553 <sup>(1)</sup>	\$ — <sup>(2)</sup>	6,907,901
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>624,553</b>	<b>\$ —</b>	<b>6,907,901</b>

<sup>(1)</sup> Shares issuable pursuant to outstanding performance units and vested but not issued deferred stock units. Performance units are shown at target and could change based on actual metrics achieved.

<sup>(2)</sup> The weighted-average exercise price shown in the table does not take into account outstanding deferred stock units or performance awards.

Refer to Note 16. "Share-Based Compensation" to the accompanying consolidated financial statements for additional information regarding the material features of Peabody's current equity compensation plans.

**Item 13. Certain Relationships and Related Transactions, and Director Independence.**

The information required by Items 404 and 407(a) of Regulation S-K is included under the captions “Review of Related Person Transactions” and “Additional Information Concerning the Board of Directors - Board Independence” in Peabody’s 2023 Proxy Statement and is incorporated herein by reference.

**Item 14. Principal Accountant Fees and Services.**

The information required by Item 9(e) of Schedule 14A is included under the caption “Audit Fees” in Peabody’s 2023 Proxy Statement and is incorporated herein by reference.

**PART IV****Item 15. Exhibits and Financial Statement Schedules.**

## (a) Documents Filed as Part of the Report

## (1) Financial Statements.

The following consolidated financial statements of Peabody Energy Corporation and the report thereon of the independent registered public accounting firm are included herein on the pages indicated:

	<b>Page</b>
<a href="#">Report of Independent Registered Public Accounting Firm (PCAOB ID: 42)</a>	<a href="#">F-1</a>
<a href="#">Consolidated Statements of Operations — For the Years Ended December 31, 2022, 2021 and 2020</a>	<a href="#">F-3</a>
<a href="#">Consolidated Statements of Comprehensive Income (Loss) — For the Years Ended December 31, 2022, 2021 and 2020</a>	<a href="#">F-4</a>
<a href="#">Consolidated Balance Sheets — December 31, 2022 and 2021</a>	<a href="#">F-5</a>
<a href="#">Consolidated Statements of Cash Flows — For the Years Ended December 31, 2022, 2021 and 2020</a>	<a href="#">F-6</a>
<a href="#">Consolidated Statements of Changes in Stockholders’ Equity — For the Years Ended December 31, 2022, 2021 and 2020</a>	<a href="#">F-8</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">F-9</a>

## (2) Financial Statement Schedules.

The following financial statement schedule of Peabody Energy Corporation is at the page indicated:

	<b>Page</b>
<a href="#">Valuation and Qualifying Accounts</a>	<a href="#">F-63</a>

All other schedules for which provision is made in the applicable accounting regulation of the Securities and Exchange Commission are not required under the related instructions or are not applicable and, therefore, have been omitted.

## (3) Exhibits.

The exhibits below are numbered in accordance with the Exhibit Table of Item 601 of Regulation S-K.

Exhibit No.	Description of Exhibit
2.1	<a href="#">Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code as revised March 15, 2017 (Incorporated by reference to Exhibit 2.2 of the Registrant’s Current Report on Form 8-K, filed March 20, 2017).</a>
2.2	<a href="#">Order Confirming Debtors’ Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code on March 17, 2017 (Incorporated by reference to Exhibit 2.1 of the Registrant’s Current Report on Form 8-K, filed March 20, 2017).</a>

2.3	<a href="#">Asset Purchase Agreement, dated as of September 20, 2018, by and between Drummond Company, Inc. and Peabody Southeast Mining, LLC, and, for certain limited purposes, Peabody Energy Corporation (Incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K, filed September 24, 2018).</a>
2.4	<a href="#">Implementation Agreement, dated as of June 18, 2019, between Peabody Energy Corporation and Arch Coal, Inc. (Incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K/A filed on June 19, 2019).</a>
3.1	<a href="#">Fourth Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed April 3, 2017).</a>
3.2	<a href="#">Amended and Restated By-Laws of the Registrant (Incorporated by reference to Exhibit 3.3 of the Registrant's Current Report on Form 8-K filed April 3, 2017).</a>
4.1	<a href="#">Specimen of stock certificate representing the Registrant's common stock, \$.01 par value (Incorporated by reference to Exhibit 4.13 to Amendment No. 4 to the Registrant's Form S-1 Registration Statement No. 333-55412, filed May 1, 2001).</a>
4.2	<a href="#">Indenture, dated as of February 15, 2017, between Peabody Securities Finance Corporation and Wilmington Trust, National Association, as Trustee, governing 6.000% Senior Secured Notes due 2022 and 6.375% Senior Secured Notes due 2025 (Incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, filed February 15, 2017).</a>
4.3	<a href="#">First Supplemental Indenture, dated as of April 3, 2017, among the Registrant, Peabody Securities Finance Corporation, the subsidiary guarantors party thereto and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.3 of the Registrant's Current Report on Form 8-K, filed April 3, 2017).</a>
4.4	<a href="#">Second Supplemental Indenture, dated as of May 7, 2018, among the Registrant, NGS Acquisition Corp., LLC, and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.4 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018).</a>
4.5	<a href="#">Third Supplemental Indenture, dated as of August 9, 2018, between the Registrant and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2018).</a>
4.6	<a href="#">Fourth Supplemental Indenture, dated as of December 7, 2018, among the Registrant, Peabody Southeast Mining, LLC, and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.6 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018).</a>
4.7	<a href="#">Description of Securities (Incorporated by reference to Exhibit 4.7 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2019).</a>
4.8	<a href="#">Indenture dated as of January 29, 2021, by and among the Co-Issuers, Wilmington Trust, National Association, as trustee, and the Company, (on a limited basis, to the extent of its obligations specifically set forth therein) (Incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
4.9	<a href="#">Indenture dated as of January 29, 2021, by and among Peabody, the guarantors party thereto, and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
4.10	<a href="#">Seventh Supplemental Indenture, dated as of January 8, 2021, by and among the Company and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
4.11	<a href="#">Eighth Supplemental Indenture, dated as of January 29, 2021, by and among the Company and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.4 to the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
4.12	<a href="#">First Supplemental Indenture, dated as of February 3, 2021, by and among the Co-Issuers, Wilmington Trust, National Association, as trustee, and Peabody (on a limited basis, to the extent of its obligations specifically set forth therein) (Incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on February 5, 2021).</a>
4.13	<a href="#">First Supplemental Indenture, dated as of February 3, 2021, by and among Peabody, the guarantors party thereto, and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on February 5, 2021).</a>
4.14	<a href="#">Indenture, dated as of March 1, 2022, between Peabody Energy Corporation and Wilmington Trust, National Association, as trustee (Incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on March 1, 2022).</a>
10.1	<a href="#">Federal Coal Lease WYW0321779: North Antelope/Rochelle Mine (Incorporated by reference to Exhibit 10.3 of the Registrant's Form S-4 Registration Statement No. 333-59073, filed July 14, 1998).</a>
10.2	<a href="#">Federal Coal Lease WYW119554: North Antelope/Rochelle Mine (Incorporated by reference to Exhibit 10.4 of the Registrant's Form S-4 Registration Statement No. 333-59073, filed July 14, 1998).</a>
10.3	<a href="#">Federal Coal Lease WYW5036: Rawhide Mine (Incorporated by reference to Exhibit 10.5 of the Registrant's Form S-4 Registration Statement No. 333-59073, filed July 14, 1998).</a>

10.4	<a href="#">Federal Coal Lease WYW3397: Caballo Mine (Incorporated by reference to Exhibit 10.6 of the Registrant's Form S-4 Registration Statement No. 333-59073, filed July 14, 1998).</a>
10.5	<a href="#">Federal Coal Lease WYW83394: Caballo Mine (Incorporated by reference to Exhibit 10.7 of the Registrant's Form S-4 Registration Statement No. 333-59073, filed July 14, 1998).</a>
10.6	<a href="#">Federal Coal Lease WYW136142 (Incorporated by reference to Exhibit 10.8 of Amendment No. 1 to the Registrant's Form S-4 Registration Statement No. 333-59073, filed September 8, 1998).</a>
10.7	<a href="#">Royalty Prepayment Agreement by and among Peabody Natural Resources Company, Gallo Finance Company and Chaco Energy Company, dated September 30, 1998 (incorporated by reference to Exhibit 10.9 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1998).</a>
10.8	<a href="#">Federal Coal Lease WYW154001: North Antelope Rochelle South (Incorporated by reference to Exhibit 10.68 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004).</a>
10.9	<a href="#">Federal Coal Lease WYW150210: North Antelope Rochelle Mine (Incorporated by reference to Exhibit 10.8 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2005).</a>
10.10	<a href="#">Federal Coal Lease WYW151134 effective May 1, 2005: West Roundup (Incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2005).</a>
10.11	<a href="#">Federal Coal Lease Readjustment WYW78633: Caballo (Incorporated by reference to Exhibit 10.24 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012).</a>
10.12	<a href="#">Transfer by Assignment and Assumption of Federal Coal Lease WYW172657: Caballo West (Incorporated by reference to Exhibit 10.25 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012).</a>
10.13	<a href="#">Federal Coal Lease WYW176095: Porcupine South (Incorporated by reference to Exhibit 10.26 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012).</a>
10.14	<a href="#">Federal Coal Lease WYW173408: North Porcupine (Incorporated by reference to Exhibit 10.27 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012).</a>
10.15	<a href="#">Federal Coal Lease WYW172413: School Creek (Incorporated by reference to Exhibit 10.28 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012).</a>
10.16	<a href="#">Separation Agreement, Plan of Reorganization and Distribution, dated October 22, 2007, between the Registrant and Patriot Coal Corporation (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed October 25, 2007).</a>
10.17	<a href="#">Tax Separation Agreement, dated October 22, 2007, between the Registrant and Patriot Coal Corporation (Incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K, filed October 25, 2007).</a>
10.18	<a href="#">Coal Act Liabilities Assumption Agreement, dated October 22, 2007, among Patriot Coal Corporation, Peabody Holding Company, LLC and the Registrant (Incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K, filed October 25, 2007).</a>
10.19	<a href="#">Salaried Employee Liabilities Assumption Agreement, dated October 22, 2007, among Patriot Coal Corporation, Peabody Holding Company, LLC, Peabody Coal Company, LLC and the Registrant (Incorporated by reference to Exhibit 10.5 of the Registrant's Current Report on Form 8-K, filed October 25, 2007).</a>
10.20	<a href="#">Coal Supply Agreement, dated October 22, 2007, between Patriot Coal Sales LLC and COALSALES II, LLC (Incorporated by reference to Exhibit 10.6 of the Registrant's Current Report on Form 8-K, filed October 25, 2007).</a>
10.21	<a href="#">Settlement Agreement entered into as of October 24, 2013, by and among Patriot Coal Corporation, on behalf of itself and its affiliates, the Registrant, on behalf of itself and its affiliates, and the United Mine Workers of America, on behalf of itself and the UMW Employees and UMW Retirees (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed October 30, 2013).</a>
10.22	<a href="#">Purchase and Sale Agreement, dated as of November 20, 2015, by and between Four Star Holdings, LLC and Western Megawatt Resources, LLC (Incorporated by reference to Exhibit 10.28 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2015).</a>
10.23*	<a href="#">Contract of Employment, dated October 22, 2020, between Peabody Energy Australia Coal Pty Ltd and Darren R. Yeates (Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed October 26, 2020).</a>
10.24*	<a href="#">Variation of Employment Contract, dated August 11, 2021, between Peabody Energy Australia Coal Pty Ltd and Darren R. Yeates (Incorporated by reference to Exhibit 99.1 of the Registrant's Current Report on Form 8-K, filed August 13, 2021).</a>
10.25*	<a href="#">Peabody Energy Corporation 2019 Executive Severance Plan, (Incorporated by reference to Exhibit 10.32 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018).</a>
10.26	<a href="#">Termination Agreement, dated as of October 5, 2020, between Peabody Energy Corporation and Arch Resources, Inc. (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed on October 6, 2020).</a>

- 10.27 [Limited Waiver to Purchase and Sale Agreement by and between Four Star Holdings, LLC and Western Megawatt Resources, LLC dated March 30, 2016 \(Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed March 31, 2016\).](#)
- 10.28 [Fifth Amended and Restated Receivables Purchase Agreement, dated as of March 25, 2016, by and among P&L Receivables Company, LLC, Peabody Energy Corporation, the various Sub-Servicers listed on the signature pages thereto, all Conduit Purchasers listed on the signature pages thereto, all Committed Purchasers listed on the signature pages thereto, all Purchaser Agents listed on the signature pages thereto, all LC Participants listed on the signature pages thereto, and PNC Bank, National Association, as Administrator and as LC Bank \(Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed March 31, 2016\).](#)
- 10.29 [First Amendment to the Fifth Amended and Restated Receivables Purchase Agreement, dated as of April 12, 2016, by and among P&L Receivables Company, LLC, Peabody Energy Corporation, the various Sub-Servicers listed on the signature pages thereto, and PNC Bank, National Association, as Administrator and as the Sole Purchaser, Committed Purchaser, LC Bank and LC Participant \(Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed April 13, 2016\).](#)
- 10.30 [Second Amendment to the Fifth Amended and Restated Receivables Purchase Agreement, dated as of April 18, 2016, by and among Peabody Energy Corporation, P&L Receivables Company, LLC, the various Sub-Servicers listed on the signature pages thereto, and PNC Bank, National Association, as Administrator and as the Sole Purchaser, Committed Purchaser, LC Bank and LC Participant \(Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed April 22, 2016\).](#)
- 10.31 [Sixth Amendment to the Sixth Amended and Restated Receivables Purchase Agreement, dated as of June 30, 2020, by and among P&L Receivables Company, LLC, Peabody Energy Corporation, all Committed Purchasers listed on the signature pages thereto, all Purchaser Agents listed on the signature pages thereto, all LC Participants listed on the signature pages thereto, and PNC Bank, National Association, as Administrator and as LC Bank \(Incorporated by reference to Exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020\).](#)
- 10.32 [Receivables Purchase Facility Commitment Letter entered into as of January 27, 2017, by and among the Registrant, P&L Receivables Company, LLC and PNC Bank, National Association \(Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on January 27, 2017\).](#)
- 10.33 [Notice Letter and Term Sheet dated as of February 15, 2017, for Amendments to the Receivables Purchase Facility Commitment Letter entered into as of January 27, 2017, by and among the Registrant, P&L Receivables Company, LLC and PNC Bank, National Association \(Incorporated by reference to Exhibit 10.128 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016\).](#)
- 10.34 [Settlement Agreement dated as of March 13, 2017 by and among the Registrant, certain subsidiaries of the Registrant, and the United Mine Workers of America 1974 Pension Plan and Trust \(Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 17, 2017\).](#)
- 10.35 [Sixth Amended and Restated Receivables Purchase Agreement, dated as of April 3, 2017, by and among P&L Receivables Company, LLC, Peabody Energy Corporation, the various Sub-Servicers listed on the signature pages thereto, all Conduit Purchasers listed on the signature pages thereto, all Committed Purchasers listed on the signature pages thereto, all Purchaser Agents listed on the signature pages thereto, all LC Participants listed on the signature pages thereto, and PNC Bank, National Association, as Administrator and as LC Bank \(Incorporated by reference to Exhibit 10.4 of the Registrant's Current Report on Form 8-K filed April 3, 2017\).](#)
- 10.36 [First Amendment to the Sixth Amended and Restated Receivables Purchase Agreement, dated as of June 30, 2017, by and among P&L Receivables Company, LLC, Peabody Energy Corporation, the various parties identified on the signature pages thereto as Sub-Servicers, Metropolitan Collieries Pty Ltd, and PNC Bank, National Association, as Administrator and as the sole Purchaser Agent, Committed Purchaser, LC Bank and LC Participant on the date thereof \(Incorporated by reference to Exhibit 10.9 of the Registrant's Quarterly Report on Form 10-Q, filed August 14, 2017\).](#)
- 10.37 [Second Amendment to the Sixth Amended and Restated Receivables Purchase Agreement, dated as of December 13, 2017, by and among P&L Receivables Company, LLC, Peabody Energy Corporation, Regions Bank, and PNC Bank, National Association, as Administrator and as the sole Purchaser Agent, Committed Purchaser, LC Bank and LC Participant on the date thereof \(Incorporated by reference to Exhibit 10.57 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2017\).](#)
- 10.38 [Fifth Amendment to the Sixth Amended and Restated Receivables Purchase Agreement, dated as of April 3, 2019, by and among P&L Receivables Company, LLC, Peabody Energy Corporation, all Committed Purchasers listed on the signature pages thereto, all Purchaser Agents listed on the signature pages thereto, all LC Participants listed on the signature pages thereto, and PNC Bank, National Association, as Administrator and as LC Bank \(Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed April 4, 2019\).](#)
- 10.39 [Credit Agreement dated as of April 3, 2017, among the Registrant, as Borrower, Goldman Sachs Bank USA, as Administrative Agent, and the other lenders party thereto \(Incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K, filed April 3, 2017\).](#)



10.40	<a href="#">Amendment No. 1 to Credit Agreement, by and among Peabody Energy Corporation, the subsidiaries of the Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto and Goldman Sachs Bank USA, as administrative agent, dated as of September 18, 2017 (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed September 18, 2017).</a>
10.41	<a href="#">Amendment No. 2 to Credit Agreement, by and among Peabody Energy Corporation, the subsidiaries of Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto and Goldman Sachs Bank USA, as administrative agent, dated as of November 17, 2017 (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed November 20, 2017).</a>
10.42	<a href="#">Amendment No. 3 to Credit Agreement, by and among Peabody Energy Corporation, the subsidiaries of Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto and Goldman Sachs Bank USA, as administrative agent, dated as of December 18, 2017 (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed December 19, 2017).</a>
10.43	<a href="#">Amendment No. 4 to Credit Agreement, by and among Peabody Energy Corporation, the subsidiaries of Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto and Goldman Sachs Bank USA, as administrative agent, dated as of April 11, 2018 (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed April 11, 2018).</a>
10.44	<a href="#">Amendment No. 5 to Credit Agreement, by and among Peabody Energy Corporation, the subsidiaries of Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto and Goldman Sachs Bank USA, as administrative agent, dated as of June 27, 2018 (Incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018).</a>
10.45	<a href="#">Amendment No. 6 to Credit Agreement, by and among Peabody Energy Corporation, the subsidiaries of Peabody Energy Corporation party thereto as reaffirming parties, the incremental revolving lenders party thereto, Goldman Sachs Bank USA, as existing administrative agent, and JPMorgan Chase Bank, N.A., as successor administrative agent, dated as of September 17, 2019 (Incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019).</a>
10.46	<a href="#">Amendment No. 7 to Credit Agreement by and among Peabody Energy Corporation, the subsidiaries of the Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto, and JPMorgan Chase Bank, N.A., as successor administrative agent, dated as of September 17, 2019 (Incorporated by reference to Exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019).</a>
10.47	<a href="#">Amendment No. 8 to Credit Agreement by and among Peabody Energy Corporation, the subsidiaries of Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto, and JPMorgan Chase Bank, N.A., as administrative agent, dated as of January 29, 2021 (as successor to Goldman Sachs Bank USA in its capacity as administrative agent) (Incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
10.48	<a href="#">Credit Agreement, dated as of January 29, 2021, among the Co-Issuers, as borrowers, Peabody Energy Corporation, as parent, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
10.49	<a href="#">Credit Agreement, dated as of January 29, 2021, among the Registrant, as borrower, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto (Incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
10.50*	<a href="#">Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 4.6 of the Registrant's Registration Statement on Form S-8, filed April 3, 2017).</a>
10.51	<a href="#">Registration Rights Agreement, dated as of April 3, 2017, among the Registrant and the stockholders party thereto (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed, April 3, 2017).</a>
10.52	<a href="#">Form of Indemnification Agreement (Incorporated by reference to Exhibit 10.9 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2017).</a>
10.53*	<a href="#">Form of Restricted Stock Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.7 of the Registrant's Current Report on Form 8-K, filed April 3, 2017).</a>
10.54*	<a href="#">Form of Restrictive Covenant Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.8 of the Registrant's Current Report on Form 8-K, filed April 3, 2017).</a>
10.55*	<a href="#">Form of Deferred Stock Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.12 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2017).</a>
10.56*	<a href="#">Form of Performance Share Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.68 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2017).</a>
10.57	<a href="#">Form of Indemnification Agreement (Incorporated by reference to Exhibit 10.73 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018).</a>

10.58*	<a href="#">Form of Deferred Stock Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.74 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018).</a>
10.59*	<a href="#">Form of Restricted Stock Unit Agreement (ELT Level 2019 Special Award) under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.75 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019).</a>
10.60*	<a href="#">Form of Restricted Stock Unit Agreement (Director Level and Above 2019 Special Award) under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.76 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019).</a>
10.61*	<a href="#">Form of Deferred Stock Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020).</a>
10.62*	<a href="#">Form of Restricted Stock Unit Agreement (Director Level and Above 2020 Off-Cycle Award) under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.3 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020).</a>
10.63*	<a href="#">Form of Performance Share Units Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.4 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020).</a>
10.64*	<a href="#">Form of Restricted Stock Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.5 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020).</a>
10.65*	<a href="#">Form of 2021 Service-Based Cash Award Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on March 5, 2021).</a>
10.66*	<a href="#">Form of Amendment No. 1 to 2021 Service-Based Cash Award Agreement under the Peabody Energy Corporation 2017 Incentive Plan (Incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K filed on March 5, 2021).</a>
10.67*	<a href="#">Form of 2022 Service-Based Cash Award Agreement under the Peabody Energy Corporation 2017 Incentive Plan (US Employees) (Incorporated by reference to Exhibit 10.75 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.68*	<a href="#">Form of 2022 Performance-Based Cash Award Agreement under the Peabody Energy Corporation 2017 Incentive Plan (US Employees) (Incorporated by reference to Exhibit 10.76 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.69*	<a href="#">Form of 2022 Restricted Stock Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (US Employees) (Incorporated by reference to Exhibit 10.77 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.70*	<a href="#">Form of 2022 Global Restricted Stock Unit Agreement under the Peabody Energy Corporation 2017 Incentive Plan (AUS Employees) (Incorporated by reference to Exhibit 10.78 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.71*	<a href="#">Offer of Restricted Stock Units to Australian Resident Grantees under the Peabody Energy Corporation 2017 Incentive Plan (AUS Employees) (Incorporated by reference to Exhibit 10.79 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.72*	<a href="#">Form of 2022 Service-Based Cash Award Agreement under the Peabody Energy Corporation 2017 Incentive Plan (AUS Employees) (Incorporated by reference to Exhibit 10.80 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.73*	<a href="#">Form of 2022 Performance-Based Cash Award Agreement under the Peabody Energy Corporation 2017 Incentive Plan (AUS Employees) (Incorporated by reference to Exhibit 10.81 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.74	<a href="#">Agreement, dated as of February 4, 2020, by and among Peabody Energy Corporation, Elliott Investment Management L.P., Elliott Associates, L.P. and Elliott International, L.P. (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed February 5, 2020).</a>
10.75	<a href="#">Management Services Agreement, dated as of August 4, 2020, by and between Peabody Investments Corp. and each of the Client Companies listed on the signature page thereto (Incorporated by reference to Exhibit 10.3 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020).</a>
10.76	<a href="#">Management Services Agreement, dated as of August 4, 2020, by and between Peabody Energy Australia Pty Ltd and each of the Client Companies listed on the signature page thereto (Incorporated by reference to Exhibit 10.4 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020).</a>

10.77	<a href="#">Transaction Support Agreement, dated as of November 6, 2020, between Peabody Energy Corporation, certain subsidiaries of Peabody Energy Corporation and the Participating Sureties (Incorporated by reference to Exhibit 10.5 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020).</a>
10.78	<a href="#">Transaction Support Agreement, dated as of December 24, 2020, between Peabody, certain subsidiaries of Peabody, the Revolving Lenders, the Administrative Agent, and the Consenting Noteholders (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed December 28, 2020).</a>
10.79	<a href="#">Amended and Restated Transaction Support Agreement, dated as of December 31, 2020, between Peabody, certain subsidiaries of Peabody, the Revolving Lenders, the Administrative Agent, and the Consenting Noteholders (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed January 4, 2021).</a>
10.80	<a href="#">First Amendment to Amended and Restated Transaction Support Agreement, dated as of January 29, 2021, between Peabody, certain subsidiaries of Peabody, the Revolving Lenders, the Administrative Agent, and the Consenting Noteholders (Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K/A filed on February 1, 2021).</a>
10.81	<a href="#">Agreement for Irrevocable Standby Letters of Credit, dated as of February 17, 2022, between Peabody and Goldman Sachs Bank USA (Incorporated by reference to Exhibit 10.89 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
10.82	<a href="#">Eighth Amendment to the Sixth Amended and Restated Receivables Purchase Agreement, dated as of January 28, 2022, by and among P&amp;L Receivables Company, LLC, Peabody Energy Corporation, all Committed Purchasers listed on the signature pages thereto, all Purchaser Agents listed on the signature pages thereto, all LC Participants listed on the signature pages thereto, PNC Bank, National Association, as Administrator and as LC Bank and PNC Capital Markets LLC, as Structuring Agent (Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on January 31, 2022).</a>
10.83	<a href="#">Credit Agreement, dated March 7, 2022, by and among Peabody Energy Corporation, as borrower, Goldman Sachs Lending Partners LLC, as administrative agent, and the lenders party thereto (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed March 7, 2022).</a>
10.84	<a href="#">Commitment Agreement, dated March 23, 2022, by and among Peabody Investments Corp., The Prudential Insurance Company of America and Fiduciary Counselors Inc. (Incorporated by reference to Exhibit 10.4 of the Registrant's Current Report on Form 10-Q, filed May 5, 2022).</a>
10.85†	<a href="#">Amendment No. 1 to Credit Agreement, dated as of March 7, 2022, among the Peabody Energy Corporation, certain subsidiaries of Peabody Energy Corporation party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto.</a>
10.86†	<a href="#">Amendment No. 2 to Credit Agreement, dated as of April 29, 2022, among the Peabody Energy Corporation, certain subsidiaries of Peabody Energy Corporation party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto.</a>
10.87	<a href="#">Amendment No. 3 to Credit Agreement, dated as of February 3, 2023, by and among Peabody Energy Corporation, the subsidiaries of Peabody Energy Corporation party thereto as reaffirming parties, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed February 6, 2023).</a>
10.88	<a href="#">Ninth Amendment to the Sixth Amended and Restated Receivables Purchase Agreement, dated as of February 13, 2023, by and among P&amp;L Receivables Company, LLC, Peabody Energy Corporation, all Committed Purchasers listed on the signature pages thereto, all Purchaser Agents listed on the signature pages thereto, all LC Participants listed on the signature pages thereto, PNC Bank, National Association, as Administrator and as LC Bank and PNC Capital Markets LLC, as Structuring Agent (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed February 14, 2023).</a>
21†	<a href="#">List of Subsidiaries.</a>
23.1†	<a href="#">Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm.</a>
23.2†	<a href="#">Consents of Qualified Persons for Technical Report Summary for the North Antelope Rochelle Mine.</a>
23.3†	<a href="#">Consents of Qualified Persons for Technical Report Summary for the Shoal Creek Mine.</a>
23.4†	<a href="#">Consents of Qualified Persons for Technical Report Summary for the Wilpinjong Mine.</a>
23.5†	<a href="#">Consents of Qualified Persons for Technical Report Summary for the Coppabella Moorvale Joint Venture.</a>
31.1†	<a href="#">Certification of periodic financial report by the Registrant's Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2†	<a href="#">Certification of periodic financial report by the Registrant's Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1†	<a href="#">Certification of periodic financial report pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by the Registrant's Chief Executive Officer.</a>

32.2†	<a href="#">Certification of periodic financial report pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by the Registrant's Chief Financial Officer.</a>
95†	<a href="#">Mine Safety Disclosure required by Item 104 of Regulation S-K.</a>
96.1	<a href="#">Technical Report Summary for the North Antelope Rochelle Mine, effective as of December 31, 2021 (Incorporated by reference to Exhibit 96.1 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
96.2	<a href="#">Technical Report Summary for the Shoal Creek Mine, effective as of December 31, 2021 (Incorporated by reference to Exhibit 96.2 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
96.3	<a href="#">Technical Report Summary for the Wilpinjong Mine, effective as of December 31, 2021 (Incorporated by reference to Exhibit 96.3 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
96.4	<a href="#">Technical Report Summary for the Coppabella Moorvale Joint Venture, effective as of December 31, 2021 (Incorporated by reference to Exhibit 96.4 of the Registrant's Annual Report on Form 10-K, filed February 18, 2022).</a>
101.INS	Inline XBRL Instance Document - the instance document does not appear in the interactive data file because XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).
*	These exhibits constitute all management contracts, compensatory plans and arrangements required to be filed as an exhibit to this form pursuant to Item 15(a)(3) and 15(b) of this report.
†	Filed herewith.

Pursuant to the Instructions to Exhibits, certain instruments defining the rights of holders of long-term debt securities of the Company and its consolidated subsidiaries are not filed because the total amount of securities authorized under any such instrument does not exceed 10% of the total assets of the Company and its subsidiaries on a consolidated basis. A copy of such instrument will be furnished to the Securities and Exchange Commission upon request.

**Item 16. Form 10-K Summary.**

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PEABODY ENERGY CORPORATION

\_\_\_\_\_  
/s/ JAMES C. GRECH  
James C. Grech  
*President and Chief Executive Officer*

Date: February 24, 2023

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.

Signature	Title	Date
/s/ JAMES C. GRECH James C. Grech	President and Chief Executive Officer, Director (principal executive officer)	February 24, 2023
/s/ MARK A. SPURBECK Mark A. Spurbeck	Executive Vice President and Chief Financial Officer (principal financial and accounting officer)	February 24, 2023
/s/ SAMANTHA ALGAZE Samantha Algaze	Director	February 24, 2023
/s/ ANDREA BERTONE Andrea Bertone	Director	February 24, 2023
/s/ BILL CHAMPION Bill Champion	Director	February 24, 2023
/s/ NICHOLAS CHIREKOS Nicholas Chirekos	Director	February 24, 2023
/s/ STEPHEN GORMAN Stephen Gorman	Director	February 24, 2023
/s/ JOE LAYMON Joe Laymon	Director	February 24, 2023
/s/ ROBERT MALONE Robert Malone	Chairman	February 24, 2023
/s/ DAVID MILLER David Miller	Director	February 24, 2023

## Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Peabody Energy Corporation

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Peabody Energy Corporation (the Company) as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income (loss), changes in stockholders' equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 24, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

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

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

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

**Asset Retirement Obligation Liability****Description of the Matter**

At December 31, 2022, the Company's asset retirement obligation (ARO) liabilities totaled \$750.0 million. As discussed in Note 1 and Note 12 of the consolidated financial statements, the Company estimates its ARO liabilities in the U.S. and Australia for final reclamation and mine closure based upon detailed engineering calculations of the amount and timing of the future cash spending for a third party to perform the required work. The Company records an ARO asset associated with the discounted liability for final reclamation and mine closure. The obligation and corresponding asset are recognized in the period in which the liability is incurred. As changes in estimates occur, the revisions to the obligation and asset are recognized at the appropriate credit-adjusted, risk-free rate.

Management's estimate involves a high degree of subjectivity and auditing the significant assumptions utilized by management in estimating the amount of the liability requires judgment. In particular, the obligation is determined using a discounted cash flow technique based upon various assumptions including credit-adjusted risk-free rates, inflation rates, estimates of disturbed acreage, timing of reclamation activities, and reclamation costs.

**How We Addressed the Matter in Our Audit**

We obtained an understanding, evaluated the design, and tested the operating effectiveness of the controls over the Company's accounting for ARO liabilities, including controls over management's review of the ARO calculation and the significant assumptions and data inputs described above.

To audit the ARO liabilities, our procedures included evaluating the methodology used, and testing the significant assumptions discussed above and the underlying data used by the Company in its estimate. We compared assumptions including the credit-adjusted risk-free rate and inflation rate to current market data. In addition, to assess the estimates of disturbed acreage, timing of reclamation activities, and reclamation costs, we evaluated significant changes from the prior estimate, evaluated consistency between timing of reclamation activities and projected mine life, evaluated the estimated costs based on mine type, compared anticipated costs to recent operating data, and recalculated management's estimate. Additionally, we involved our specialists to assist in our assessment of the Company's ARO liability. As part of this effort, our specialists interviewed members of the Company's engineering staff, assessed the completeness of the mine reclamation estimate with respect to meeting mine closure and post closure plan regulatory requirements, and evaluated the reasonableness of the engineering estimates and assumptions.

/s/ Ernst & Young, LLP

We have served as the Company's auditor since 1991.

St. Louis, Missouri

February 24, 2023

**PEABODY ENERGY CORPORATION**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions, except per share data)		
<b>Revenue</b>	\$ 4,981.9	\$ 3,318.3	\$ 2,881.1
<b>Costs and expenses</b>			
Operating costs and expenses (exclusive of items shown separately below)	3,290.8	2,553.1	2,524.9
Depreciation, depletion and amortization	317.6	308.7	346.0
Asset retirement obligation expenses	49.4	44.7	45.7
Selling and administrative expenses	88.8	84.9	99.5
Restructuring charges	2.9	8.3	37.9
Transaction costs related to joint ventures	—	—	23.1
Other operating (income) loss:			
Net gain on disposals	(29.2)	(31.5)	(15.2)
Asset impairment	11.2	—	1,487.4
(Income) loss from equity affiliates	(131.2)	(82.1)	60.1
<b>Operating profit (loss)</b>	<u>1,381.6</u>	<u>432.2</u>	<u>(1,728.3)</u>
Interest expense	140.3	183.4	139.8
Net loss (gain) on early debt extinguishment	57.9	(33.2)	—
Interest income	(18.4)	(6.5)	(9.4)
Net periodic benefit credit, excluding service cost	(49.0)	(38.3)	(1.8)
Net mark-to-market adjustment on actuarially determined liabilities	(27.8)	(43.4)	(5.1)
<b>Income (loss) from continuing operations before income taxes</b>	<u>1,278.6</u>	<u>370.2</u>	<u>(1,851.8)</u>
Income tax (benefit) provision	(38.8)	22.8	8.0
<b>Income (loss) from continuing operations, net of income taxes</b>	<u>1,317.4</u>	<u>347.4</u>	<u>(1,859.8)</u>
Income (loss) from discontinued operations, net of income taxes	1.7	24.0	(14.0)
<b>Net income (loss)</b>	<u>1,319.1</u>	<u>371.4</u>	<u>(1,873.8)</u>
Less: Net income (loss) attributable to noncontrolling interests	22.0	11.3	(3.5)
<b>Net income (loss) attributable to common stockholders</b>	<u>\$ 1,297.1</u>	<u>\$ 360.1</u>	<u>\$ (1,870.3)</u>
<b>Income (loss) from continuing operations:</b>			
<b>Basic income (loss) per share</b>	<u>\$ 9.12</u>	<u>\$ 3.03</u>	<u>\$ (18.99)</u>
<b>Diluted income (loss) per share</b>	<u>\$ 8.29</u>	<u>\$ 3.00</u>	<u>\$ (18.99)</u>
<b>Net income (loss) attributable to common stockholders:</b>			
<b>Basic income (loss) per share</b>	<u>\$ 9.13</u>	<u>\$ 3.24</u>	<u>\$ (19.14)</u>
<b>Diluted income (loss) per share</b>	<u>\$ 8.31</u>	<u>\$ 3.22</u>	<u>\$ (19.14)</u>

*See accompanying notes to consolidated financial statements*



**PEABODY ENERGY CORPORATION**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
<b>Net income (loss)</b>	\$ 1,319.1	\$ 371.4	\$ (1,873.8)
Postretirement plans (net of \$0.0 tax provisions in each period)	(53.8)	93.1	168.1
Foreign currency translation adjustment	(1.6)	(1.0)	6.1
<b>Other comprehensive (loss) income, net of income taxes</b>	(55.4)	92.1	174.2
<b>Comprehensive income (loss)</b>	1,263.7	463.5	(1,699.6)
Less: Net income (loss) attributable to noncontrolling interests	22.0	11.3	(3.5)
<b>Comprehensive income (loss) attributable to common stockholders</b>	\$ 1,241.7	\$ 452.2	\$ (1,696.1)

*See accompanying notes to consolidated financial statements*

**PEABODY ENERGY CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**

	December 31,	
	2022	2021
	(Amounts in millions, except per share data)	
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 1,307.3	\$ 954.3
Accounts receivable, net of allowance for credit losses of \$0.0 at December 31, 2022 and 2021	465.5	350.5
Inventories, net	296.1	226.7
Other current assets	303.6	270.2
Total current assets	2,372.5	1,801.7
Property, plant, equipment and mine development, net	2,865.0	2,950.6
Operating lease right-of-use assets	26.9	35.5
Restricted cash and collateral arrangements	187.4	23.8
Investments and other assets	84.3	138.2
Deferred income taxes	74.7	—
Total assets	\$ 5,610.8	\$ 4,949.8
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Current portion of long-term debt	\$ 13.2	\$ 59.6
Accounts payable and accrued expenses	905.5	872.1
Total current liabilities	918.7	931.7
Long-term debt, less current portion	320.6	1,078.2
Deferred income taxes	20.4	27.3
Asset retirement obligations	665.8	654.8
Accrued postretirement benefit costs	156.5	212.1
Operating lease liabilities, less current portion	11.0	27.2
Other noncurrent liabilities	223.0	197.7
Total liabilities	2,316.0	3,129.0
Stockholders' equity		
Preferred Stock — \$0.01 per share par value; 100.0 shares authorized, no shares issued or outstanding as of December 31, 2022 or 2021	—	—
Series Common Stock — \$0.01 per share par value; 50.0 shares authorized, no shares issued or outstanding as of December 31, 2022 or 2021	—	—
Common Stock — \$0.01 per share par value; 450.0 shares authorized, 187.1 shares issued and 143.9 shares outstanding as of December 31, 2022 and 176.3 shares issued and 133.3 shares outstanding as of December 31, 2021	1.9	1.8
Additional paid-in capital	3,975.9	3,745.6
Treasury stock, at cost — 43.2 and 43.0 common shares as of December 31, 2022 and 2021	(1,372.9)	(1,370.3)
Retained earnings (accumulated deficit)	383.9	(913.2)
Accumulated other comprehensive income	242.5	297.9
Peabody Energy Corporation stockholders' equity	3,231.3	1,761.8
Noncontrolling interests	63.5	59.0
Total stockholders' equity	3,294.8	1,820.8
Total liabilities and stockholders' equity	\$ 5,610.8	\$ 4,949.8

*See accompanying notes to consolidated financial statements*

**PEABODY ENERGY CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
<b>Cash Flows From Operating Activities</b>			
Net income (loss)	\$ 1,319.1	\$ 371.4	\$ (1,873.8)
(Income) loss from discontinued operations, net of income taxes	(1.7)	(24.0)	14.0
Income (loss) from continuing operations, net of income taxes	1,317.4	347.4	(1,859.8)
Adjustments to reconcile income (loss) from continuing operations, net of income taxes to net cash provided by (used in) operating activities:			
Depreciation, depletion and amortization	317.6	308.7	346.0
Noncash interest expense, net	17.7	21.3	16.2
Deferred income taxes	(81.6)	(7.5)	27.8
Noncash share-based compensation	8.4	10.0	13.5
Asset impairment	11.2	—	1,487.4
Net gain on disposals	(29.2)	(31.5)	(15.2)
Net loss (gain) on early debt extinguishment	57.9	(33.2)	—
(Income) loss from equity affiliates	(131.2)	(82.1)	60.1
Foreign currency option contracts	2.3	5.8	(13.0)
Changes in current assets and liabilities:			
Accounts receivable	(115.0)	(105.6)	84.6
Inventories	(69.4)	35.0	69.9
Other current assets	(29.3)	(57.6)	21.0
Accounts payable and accrued expenses	68.0	128.1	(192.4)
Collateral arrangements	(53.3)	(6.3)	(15.0)
Asset retirement obligations	(22.3)	6.8	22.5
Workers' compensation obligations	(0.9)	(2.0)	1.8
Postretirement benefit obligations	(109.3)	(108.2)	(12.1)
Pension obligations	18.6	11.6	(28.4)
Other, net	2.7	—	0.1
<b>Net cash provided by continuing operations</b>	<b>1,180.3</b>	<b>440.7</b>	<b>15.0</b>
Net cash used in discontinued operations	(6.7)	(20.7)	(24.7)
<b>Net cash provided by (used in) operating activities</b>	<b>1,173.6</b>	<b>420.0</b>	<b>(9.7)</b>

*See accompanying notes to consolidated financial statements*

**PEABODY ENERGY CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS - (Continued)**

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
<b>Cash Flows From Investing Activities</b>			
Additions to property, plant, equipment and mine development	(221.5)	(183.1)	(191.4)
Changes in accrued expenses related to capital expenditures	(2.7)	7.4	(6.1)
Proceeds from disposal of assets, net of receivables	40.6	17.8	27.1
Contributions to joint ventures	(645.9)	(485.6)	(343.0)
Distributions from joint ventures	631.6	470.8	330.3
Advances to related parties	(1.5)	(0.5)	(23.2)
Cash receipts from Middlemount Coal Pty Ltd and other related parties	171.8	44.7	—
Other, net	(1.1)	(3.0)	(0.4)
<b>Net cash used in investing activities</b>	<b>(28.7)</b>	<b>(131.5)</b>	<b>(206.7)</b>
<b>Cash Flows From Financing Activities</b>			
Proceeds from long-term debt	545.0	—	375.0
Repayments of long-term debt	(1,407.4)	(285.3)	(169.5)
Payment of debt issuance and other deferred financing costs	(21.1)	(22.5)	(7.0)
Proceeds from common stock issuances, net of costs	222.0	269.8	—
Repurchase of employee common stock relinquished for tax withholding	(2.6)	(1.4)	(1.6)
Distributions to noncontrolling interests	(17.5)	(4.0)	(3.5)
<b>Net cash (used in) provided by financing activities</b>	<b>(681.6)</b>	<b>(43.4)</b>	<b>193.4</b>
<b>Net change in cash, cash equivalents and restricted cash</b>	<b>463.3</b>	<b>245.1</b>	<b>(23.0)</b>
<b>Cash, cash equivalents and restricted cash at beginning of period</b>	<b>954.3</b>	<b>709.2</b>	<b>732.2</b>
<b>Cash, cash equivalents and restricted cash at end of period <sup>(1)</sup></b>	<b>\$ 1,417.6</b>	<b>\$ 954.3</b>	<b>\$ 709.2</b>

<sup>(1)</sup> The following table provides a reconciliation of "Cash, cash equivalents and restricted cash at end of period" at December 31, 2022:

Cash and cash equivalents	\$ 1,307.3
Restricted cash included in "Restricted cash and collateral arrangements"	110.3
Cash, cash equivalents and restricted cash at end of period	<u>\$ 1,417.6</u>

*See accompanying notes to consolidated financial statements*

**PEABODY ENERGY CORPORATION**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**

	Peabody Energy Corporation Stockholders' Equity							
	Common Stock	Additional Paid-in Capital	Treasury Stock	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income	Noncontrolling Interests	Total Stockholders' Equity	
	(Dollars in millions)							
December 31, 2019	\$ 1.4	\$ 3,351.1	\$ (1,367.3)	\$ 597.0	\$ 31.6	\$ 58.7	\$ 2,672.5	
Net loss	—	—	—	(1,870.3)	—	(3.5)	(1,873.8)	
Postretirement plans (net of \$0.0 tax provision)	—	—	—	—	168.1	—	168.1	
Foreign currency translation adjustment	—	—	—	—	6.1	—	6.1	
Share-based compensation for equity-classified awards	—	13.5	—	—	—	—	13.5	
Repurchase of employee common stock relinquished for tax withholding	—	—	(1.6)	—	—	—	(1.6)	
Distributions to noncontrolling interests	—	—	—	—	—	(3.5)	(3.5)	
December 31, 2020	\$ 1.4	\$ 3,364.6	\$ (1,368.9)	\$ (1,273.3)	\$ 205.8	\$ 51.7	\$ 981.3	
Net income	—	—	—	360.1	—	11.3	371.4	
Postretirement plans (net of \$0.0 tax provision)	—	—	—	—	93.1	—	93.1	
Foreign currency translation adjustment	—	—	—	—	(1.0)	—	(1.0)	
Share-based compensation for equity-classified awards	—	10.0	—	—	—	—	10.0	
Common stock issued in exchange for debt retirement	0.1	101.8	—	—	—	—	101.9	
Common stock issuances, net of cost	0.3	269.2	—	—	—	—	269.5	
Repurchase of employee common stock relinquished for tax withholding	—	—	(1.4)	—	—	—	(1.4)	
Distributions to noncontrolling interests	—	—	—	—	—	(4.0)	(4.0)	
December 31, 2021	\$ 1.8	\$ 3,745.6	\$ (1,370.3)	\$ (913.2)	\$ 297.9	\$ 59.0	\$ 1,820.8	
Net income	—	—	—	1,297.1	—	22.0	1,319.1	
Postretirement plans (net of \$0.0 tax provision)	—	—	—	—	(53.8)	—	(53.8)	
Foreign currency translation adjustment	—	—	—	—	(1.6)	—	(1.6)	
Share-based compensation for equity-classified awards	—	8.4	—	—	—	—	8.4	
Common stock issuances, net of cost	0.1	221.9	—	—	—	—	222.0	
Repurchase of employee common stock relinquished for tax withholding	—	—	(2.6)	—	—	—	(2.6)	
Distributions to noncontrolling interests	—	—	—	—	—	(17.5)	(17.5)	
December 31, 2022	\$ 1.9	\$ 3,975.9	\$ (1,372.9)	\$ 383.9	\$ 242.5	\$ 63.5	\$ 3,294.8	

*See accompanying notes to consolidated financial statements*

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(1) Summary of Significant Accounting Policies**

***Basis of Presentation***

The consolidated financial statements include the accounts of Peabody Energy Corporation (PEC) and its affiliates. The Company, or Peabody, are used interchangeably to refer to Peabody Energy Corporation, to Peabody Energy Corporation and its subsidiaries, or to such subsidiaries, as appropriate to the context. Interests in subsidiaries controlled by the Company are consolidated with any outside stockholder interests reflected as noncontrolling interests, except when the Company has an undivided interest in an unincorporated joint venture. In those cases, the Company includes its proportionate share in the assets, liabilities, revenue and expenses of the jointly controlled entities within each applicable line item of the consolidated financial statements. All intercompany transactions, profits and balances have been eliminated in consolidation. Certain amounts from prior years have been reclassified to conform with the 2022 presentation.

***Description of Business***

The Company is engaged in the mining of thermal coal for sale primarily to electric utilities and metallurgical coal for sale to industrial customers. The Company's mining operations are located in the United States (U.S.) and Australia, including an equity-affiliate mining operation in Australia. The Company also markets and brokers coal from other coal producers and trades coal and freight-related contracts. The Company's other commercial activities include managing its coal reserves and resources and real estate holdings and supporting the development of clean coal technologies.

***Newly Adopted Accounting Standards***

***Convertible Debt.*** In August 2020, the Financial Accounting Standards Board issued Accounting Standards Update (ASU) 2020-06, which simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. Among other changes, ASU 2020-06 removes from accounting principles generally accepted in the U.S. (U.S. GAAP) the liability and equity separation model for convertible instruments with a cash conversion feature, and as a result, after adoption, entities will no longer separately present in equity an embedded conversion feature for such debt. Similarly, the embedded conversion feature will no longer be amortized into income as interest expense over the life of the instrument. Instead, entities will account for a convertible debt instrument wholly as debt unless (1) a convertible instrument contains features that require bifurcation as a derivative under Accounting Standards Codification Topic 815, Derivatives and Hedging or (2) a convertible debt instrument was issued at a substantial premium. Additionally, ASU 2020-06 requires the application of the if-converted method to calculate the impact of convertible instruments on diluted earnings per share. ASU 2020-06 is effective for fiscal years beginning after December 15, 2021, and can be adopted on either a fully retrospective or modified retrospective basis. The Company adopted ASU 2020-06, effective January 1, 2022. In the Company's accompanying consolidated balance sheets, the adoption of the new standard impacted the accounting for the Company's \$320.0 million of convertible debt issued in March 2022, as further described in Note 10. "Long-term Debt." In particular, because the related senior notes have cash conversion features, bifurcation of the principal balance between debt and equity is no longer applicable. Additionally, this guidance requires the application of the "if-converted" method to calculate the impact of convertible instruments on diluted earnings per share, as reflected in the Company's calculations within Note 18. "Earnings per Share (EPS)."

***Accounting Standards Not Yet Implemented***

The Company does not expect any accounting standards not yet implemented to have a material impact on its consolidated financial statements or disclosures.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Revenue**

The majority of the Company's revenue is derived from the sale of coal under long-term coal supply agreements (those with initial terms of one year or longer and which often include price reopener and/or extension provisions) and contracts with terms of less than one year, including sales made on a spot basis. The Company's revenue from coal sales is realized and earned when control passes to the customer. Under the typical terms of the Company's coal supply agreements, title and risk of loss transfer to the customer at the mine or port, where coal is loaded to the transportation sources that serve the Company's mines. The Company incurs certain "add-on" taxes and fees on coal sales. Reported coal sales include taxes and fees charged by various federal and state governmental bodies and the freight charged on destination customer contracts.

The Company's seaborne operating platform is primarily export focused with customers spread across several countries, with a portion of the thermal and metallurgical coal sold within Australia. Generally, revenue from individual countries vary year by year based on electricity and steel demand, the strength of the global economy, governmental policies and several other factors, including those specific to each country. A majority of these sales are executed through annual and multi-year international coal supply agreements that contain provisions requiring both parties to renegotiate pricing periodically. Industry commercial practice, and the Company's typical practice, is to negotiate pricing for seaborne thermal coal contracts on an annual, spot or index basis and seaborne metallurgical coal contracts on a quarterly, spot or index basis. The portion of sales volume under contracts with a duration of less than one year has increased in recent years. In the case of periodically negotiated pricing, the Company may deliver coal under provisional pricing until a final agreed-upon price is determined. Variable consideration resulting from provisional pricing arrangements is recognized based on the Company's best estimate of the amount expected to be received at the time control is transferred to the customer.

The Company's U.S. thermal operating platform primarily sells thermal coal to electric utilities in the U.S. under long-term contracts, with a portion sold into the seaborne markets as conditions warrant. A significant portion of the coal production from the U.S. thermal operating segments is sold under existing long-term supply agreements. Certain customers of those segments utilize long-term sales agreements in recognition of the importance of reliability, service and predictable coal prices to their operations. The terms of coal supply agreements result from competitive bidding and extensive negotiations with customers. Consequently, the terms of those agreements may vary in many respects, including price adjustment features, price reopener terms, coal quality requirements, quantity parameters, permitted sources of supply, treatment of environmental constraints, extension options, force majeure and termination and assignment provisions.

Contract pricing is set forth on a per ton basis, and revenue is generally recorded as the product of price and volume delivered. Many of the Company's coal supply agreements contain provisions that permit the parties to adjust the contract price upward or downward at specified times. These contract prices may be adjusted based on inflation or deflation and/or changes in the factors affecting the cost of producing coal, such as taxes, fees, royalties and changes in the laws regulating the mining, production, sale or use of coal. In a limited number of contracts, failure of the parties to agree on a price under those provisions may allow either party to terminate the contract. The Company sometimes experiences a reduction in coal prices in new long-term coal supply agreements replacing some of its expiring contracts. Coal supply agreements also typically contain force majeure provisions allowing temporary suspension of performance by the Company or the customer during the duration of specified events beyond the control of the affected party. Most of the coal supply agreements contain provisions requiring the Company to deliver coal meeting quality thresholds for certain characteristics such as Btu, sulfur content, ash content, grindability and ash fusion temperature. Failure to meet these specifications could result in economic penalties, including price adjustments, the rejection of deliveries or termination of the contracts. Moreover, some of these agreements allow the Company's customers to terminate their contracts in the event of changes in regulations affecting the industry that restrict the use or type of coal permissible at the customer's plant or increase the price of coal beyond specified limits.

Additional revenue may include gains and losses related to mark-to-market adjustments from economic hedge activities intended to hedge future coal sales, revenue from customer contract-related payments and other insignificant items including royalties related to coal lease agreements, sales agency commissions, farm income and property and facility rentals. Royalty income generally results from the lease or sublease of mineral rights to third parties, with payments based upon a percentage of the selling price or an amount per ton of coal produced.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Discontinued Operations**

The Company classifies items within discontinued operations in the consolidated financial statements when the operations and cash flows of a particular component of the Company have been (or will be) eliminated from the ongoing operations of the Company as a result of a disposal (by sale or otherwise) and represents a strategic shift that has (or will have) a major effect on the entity's operations and financial results.

Discontinued operations include certain former Seaborne Thermal Mining and Other U.S. Thermal Mining segment assets that have ceased production and other previously divested legacy operations, including Patriot Coal Corporation and certain of its wholly-owned subsidiaries (Patriot). In the third quarter of 2021, the Company executed the sale of the closed Wilkie Creek Mine, which reduced its closed mine reclamation liabilities and associated costs. Refer to Note 17. "Other Events" for additional information associated with the Company's sale of the Wilkie Creek Mine.

**Assets and Liabilities Held for Sale**

The Company classifies assets and liabilities (disposal groups) to be sold as held for sale in the period in which all of the following criteria are met: management, having the authority to approve the action, commits to a plan to sell the disposal group; the disposal group is available for immediate sale in its present condition subject only to terms that are usual and customary for sales of such disposal groups; an active program to locate a buyer and other actions required to complete the plan to sell the disposal group have been initiated; the sale of the disposal group is probable, and transfer of the disposal group is expected to qualify for recognition as a completed sale within one year, except if events or circumstances beyond the Company's control extend the period of time required to sell the disposal group beyond one year; the disposal group is being actively marketed for sale at a price that is reasonable in relation to its current fair value; and actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn.

The Company initially measures a disposal group that is classified as held for sale at the lower of its carrying value or fair value less any costs to sell. Any loss resulting from this measurement is recognized in the period in which the held for sale criteria are met. Conversely, gains are not recognized on the sale of a disposal group until the date of sale. The Company assesses the fair value of a disposal group, less any costs to sell, each reporting period it remains classified as held for sale and reports any subsequent changes as an adjustment to the carrying value of the disposal group, as long as the new carrying value does not exceed the carrying value of the disposal group at the time it was initially classified as held for sale.

Upon determining that a disposal group meets the criteria to be classified as held for sale, the Company reports the assets and liabilities of the disposal group, if material, in the line items assets held for sale and liabilities held for sale in the consolidated balance sheets.

**Cash and Cash Equivalents**

Cash and cash equivalents are stated at cost, which approximates fair value. Cash equivalents consist of highly liquid investments with original maturities of three months or less.

**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 at periodic intervals in accordance with contractual terms. Invoices typically include customary adjustments for the resolution of price variability related to prior shipments, such as coal quality thresholds. Payments are generally received within thirty days of invoicing.

**Inventories**

Coal is reported as inventory at the point in time the coal is extracted from the mine. Raw coal represents coal stockpiles that may be sold in current condition or may be further processed prior to shipment to a customer. Saleable coal represents coal stockpiles which require no further processing prior to shipment to a customer.

Coal inventory is valued at the lower of average cost or net realizable value. Coal inventory costs include labor, supplies, equipment (including depreciation thereto) and operating overhead and other related costs incurred at or on behalf of the mining location. Net realizable value considers the projected future sales price of the particular coal product, less applicable selling costs and, in the case of raw coal, estimated remaining processing costs. The valuation of coal inventory is subject to several additional estimates, including those related to ground and aerial surveys used to measure quantities and processing recovery rates.



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Materials and supplies inventory is valued at the lower of average cost or net realizable value, less a reserve for obsolete or surplus items. This reserve incorporates several factors, such as anticipated usage, inventory turnover and inventory levels.

***Property, Plant, Equipment and Mine Development***

Property, plant, equipment and mine development are recorded at cost. Interest costs applicable to major asset additions are capitalized during the construction period. There was no capitalized interest in any of the periods presented. Expenditures which extend the useful lives of existing plant and equipment assets are capitalized. Maintenance and repairs are charged to operating costs as incurred. Costs incurred to develop coal mines or to expand the capacity of operating mines are capitalized. Maintenance and repair costs incurred to maintain current production capacity at a mine are charged to operating costs as incurred. Costs to acquire computer hardware and the development and/or purchase of software for internal use are capitalized and depreciated over the estimated useful lives.

Coal reserves and resources are recorded at cost, or at fair value in the case of nonmonetary exchanges of reserves and resources or business acquisitions.

Depletion of coal reserves and resources and amortization of advance royalties are computed using the units-of-production method utilizing expected recoverable tons (as adjusted for recoverability factors) in the depletion base. Mine development costs are principally amortized over the estimated lives of the mine using the straight-line method. Depreciation of plant and equipment is computed using the straight-line method over the shorter of the asset's estimated useful life or the life of the mine. At December 31, 2022, the maximum estimated remaining life for any of the Company's mines was 30 years. As such, the estimated useful lives of the building and improvements and machinery and equipment asset categories range from 1 to 30 years. The estimated life of leasehold improvements is the shorter of useful life or remaining life of the lease.

The Company leases coal reserves under agreements that require royalties to be paid as the coal is mined. Certain agreements also require minimum annual royalties to be paid regardless of the amount of coal mined during the year. Total royalty expense was \$450.0 million, \$263.0 million and \$214.7 million for the years ended December 31, 2022, 2021 and 2020, respectively.

A substantial amount of the coal mined by the Company is produced from mineral reserves leased from the owner. One of the major lessors is the U.S. government, from which the Company leases substantially all of the coal it mines in Wyoming under terms set by Congress and administered by the U.S. Bureau of Land Management. These leases are generally for an initial term of ten years but may be extended by diligent development and mining of the reserves until all economically recoverable reserves are depleted. The Company has met the diligent development requirements for substantially all of these federal leases either directly through production, by including the lease as a part of a logical mining unit with other leases upon which development has occurred or by paying an advance royalty in lieu of continued operations. Annual production on these federal leases must total at least 1.0% of the leased reserve or the original amount of coal in the entire logical mining unit in which the leased reserve resides. In addition, royalties are payable monthly at a rate of 12.5% of the gross realization from the sale of the coal mined using surface mining methods and at a rate of 8.0% of the gross realization for coal produced using underground mining methods.

The remainder of the leased coal is generally leased from state governments, land holding companies and various individuals. The duration of these leases varies greatly. Typically, the lease terms are automatically extended as long as active mining continues. Royalty payments are generally based upon a specified rate per ton or a percentage of the gross realization from the sale of the coal.

Mining and exploration in Australia is generally conducted under leases, licenses or permits granted by the relevant state government. Mining and exploration licenses and their associated environmental protection approvals (granted by the state government, and in some cases also the federal government) contain conditions relating to such matters as minimum annual expenditures, environmental compliance, protection of flora and fauna, restoration and rehabilitation. Royalties are paid to the state government as a percentage of the sales price (less certain allowable deductions in some cases). Generally, landowners do not own the mineral rights or have the ability to grant rights to mine those minerals. These rights are retained by the state government. Compensation is often payable to landowners, occupiers and Aboriginal traditional owners with residual native title rights and interests for the loss of access to the land from the proposed mining activities. The amount and type of compensation and the ability to proceed to grant of a mining tenement may be determined by agreement or court determination, as provided by law.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Leases**

The Company determines if an arrangement is a lease at inception. Right-of-use (ROU) assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent its obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. For the purpose of calculating such present values, lease payments include components that vary based upon an index or rate, using the prevailing index or rate at the commencement date, and exclude components that vary based upon other factors. As most of its leases do not contain a readily determinable implicit rate, the Company uses its incremental borrowing rate at commencement to determine the present value of lease payments. The Company does not separate lease components (i.e., fixed payments including rent, real estate taxes and insurance costs) from non-lease components (i.e., common-area maintenance) and recognizes them as a single lease component for the majority of asset classes. Variable lease payments not included within lease contracts are expensed as incurred. The Company's leases may include options to extend or terminate the lease, and such options are reflected in the term when their exercise is reasonably certain. Lease expense is recognized on a straight-line basis over the lease term. For certain equipment leases, the Company applies a portfolio approach to effectively account for the operating lease ROU assets and liabilities.

**Equity Investments**

The Company applies the equity method to investments in joint ventures when it has the ability to exercise significant influence over the operating and financial policies of the joint venture. Investments accounted for under the equity method are initially recorded at cost and any difference between the cost of the Company's investment and the underlying equity in the net assets of the joint venture at the investment date is amortized over the lives of the related assets that gave rise to the difference. The Company's pro-rata share of the operating results of joint ventures and basis difference amortization is reported in the consolidated statements of operations in "(Income) loss from equity affiliates." Similarly, the Company's pro-rata share of the cumulative foreign currency translation adjustment of its equity method investments whose functional currency is not the U.S. dollar is reported in the consolidated balance sheets as a component of "Accumulated other comprehensive income," with periodic changes thereto reflected in the consolidated statements of comprehensive income. With respect to cash flows attributable to its equity investments, the Company applies the cumulative earnings approach, in which distributions received are considered returns *on* investment and are classified as cash inflows from operating activities unless the Company's cumulative distributions received less distributions received in prior periods that were determined to be returns *of* investment exceed the cumulative equity in earnings recognized by the Company (as adjusted for amortization of basis differences). When such an excess occurs, current-period distributions up to this excess are considered returns *of* investment and are classified as cash inflows from investing activities.

The Company monitors its equity method investments for indicators that a decrease in investment value has occurred that is other than temporary. Examples of such indicators include a sustained history of operating losses and adverse changes in earnings and cash flow outlook. In the absence of quoted market prices for an investment, discounted cash flow projections are used to assess fair value, the underlying assumptions to which are generally considered unobservable Level 3 inputs under the fair value hierarchy. If the fair value of an investment is determined to be below its carrying value and that loss in fair value is deemed other than temporary, an impairment loss is recognized. No such impairment losses were recorded in any period presented.

For the remaining investments, the Company will adjust the carrying value of its investments to fair value based on observable market transactions. The Company also monitors such investments for indicators of impairment should no observable market transactions exist. Refer to Note 3. "Asset Impairment" for details regarding an impairment loss of \$1.7 million recorded during the year ended December 31, 2022 related to an investment in an equity security. No such impairment losses were recorded during the years ended December 31, 2021 or 2020.

**Asset Retirement Obligations**

The Company's asset retirement obligation (ARO) liabilities primarily consist of spending estimates for surface land reclamation and support facilities at both surface and underground mines in accordance with applicable reclamation laws and regulations in the U.S. and Australia as defined by each mining permit. Asset retirement obligations are determined for each mine using various estimates and assumptions including, among other items, estimates of disturbed acreage as determined from engineering data and estimates of future costs to reclaim the disturbed acreage.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company estimates its ARO liabilities for final reclamation and mine closure based upon detailed engineering calculations of the amount and timing of the future cash spending for a third party to perform the required work. Spending estimates are escalated for inflation and then discounted at the credit-adjusted, risk-free rate. The Company records an ARO asset associated with the discounted liability for final reclamation and mine closure. The obligation and corresponding asset are recognized in the period in which the liability is incurred. The ARO asset is amortized on the units-of-production method over its expected life and the ARO liability is accreted to the projected spending date. As changes in estimates occur (such as mine plan revisions, changes in estimated costs or changes in timing of the performance of reclamation activities), the revisions to the obligation and asset are recognized at the appropriate credit-adjusted, risk-free rate.

***Contingent Liabilities***

From time to time, the Company is subject to legal and environmental matters related to its continuing and discontinued operations and certain historical, non-coal producing operations. In connection with such matters, the Company is required to assess the likelihood of any adverse judgments or outcomes, as well as potential ranges of probable losses.

A determination of the amount of reserves required for these matters is made after considerable analysis of each individual issue. The Company accrues for legal and environmental matters within "Operating costs and expenses" when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. If a range of possible loss exists and no anticipated loss within the range is more likely than any other anticipated loss, the Company records the accrual at the low end of the range, in accordance with Accounting Standards Codification 450, "Contingencies." The Company provides disclosure surrounding loss contingencies when it believes that it is at least reasonably possible that a material loss may be incurred or an exposure to loss in excess of amounts already accrued may exist. Adjustments to contingent liabilities are made when additional information becomes available that affects the amount of estimated loss, which information may include changes in facts and circumstances, changes in interpretations of law in the relevant courts, the results of new or updated environmental remediation cost studies and the ongoing consideration of trends in environmental remediation costs.

Accrued contingent liabilities exclude claims against third parties and are not discounted. The current portion of these accruals is included in "Accounts payable and accrued expenses" and the long-term portion is included in "Other noncurrent liabilities" in the consolidated balance sheets. In general, legal fees related to environmental remediation and litigation are charged to expense. The Company includes the interest component of any litigation-related penalties within "Interest expense" in the consolidated statements of operations.

***Income Taxes***

Income taxes are accounted for using a balance sheet approach. The Company accounts for deferred income taxes by applying statutory tax rates in effect at the reporting date of the balance sheet to differences between the book and tax basis of assets and liabilities. A valuation allowance is established if it is "more likely than not" that the related tax benefits will not be realized. Significant weight is given to evidence that can be objectively verified including history of tax attribute expiration and cumulative income or loss. In determining the appropriate valuation allowance, the Company considers the projected realization of tax benefits based on expected levels of future taxable income, available tax planning strategies, reversals of existing taxable temporary differences and taxable income in carryback years.

The Company recognizes the tax benefit from uncertain tax positions only if it is "more likely than not" the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement. To the extent the Company's assessment of such tax positions changes, the change in estimate will be recorded in the period in which the determination is made. Tax-related interest and penalties are classified as a component of income tax expense.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Postretirement Health Care and Life Insurance Benefits**

The Company accounts for postretirement benefits other than pensions by accruing the costs of benefits to be provided over the employees' period of active service. These costs are determined on an actuarial basis. The Company's consolidated balance sheets reflect the accumulated postretirement benefit obligations of its postretirement benefit plans. The Company accounts for changes in its postretirement benefit obligations as a settlement when an irrevocable action has been effected that relieves the Company of its actuarially-determined liability to individual plan participants and removes substantial risk surrounding the nature, amount and timing of the obligation's funding and the assets used to effect the settlement. The Company records amounts attributable to actuarial valuation changes currently in earnings rather than recording such amounts within accumulated other comprehensive income and amortizing to expense over applicable time periods. See Note 13. "Postretirement Health Care and Life Insurance Benefits" for information related to postretirement benefits.

**Pension Plans**

The Company sponsors non-contributory defined benefit pension plans accounted for by accruing the cost to provide the benefits over the employees' period of active service. These costs are determined on an actuarial basis. The Company's consolidated balance sheets reflect the funded status of the defined benefit pension plans. The Company records amounts attributable to actuarial valuation changes currently in earnings rather than recording such amounts within accumulated other comprehensive income and amortizing to expense over applicable time periods. See Note 14. "Pension and Savings Plans" for information related to pension plans.

**Restructuring Activities**

From time to time, the Company initiates restructuring activities in connection with its repositioning efforts to appropriately align its cost structure or optimize its coal production relative to prevailing market conditions. Costs associated with restructuring actions can include the impact of early mine closures, voluntary and involuntary workforce reductions, office closures and other related activities. Costs associated with restructuring activities are recognized in the period incurred.

Included as a component of "Restructuring charges" in the Company's consolidated statements of operations for the years ended December 31, 2022, 2021 and 2020 were aggregate restructuring charges of \$2.9 million, \$8.3 million and \$37.9 million, respectively, primarily associated with voluntary and involuntary workforce reductions. As of December 31, 2022, a \$0.8 million accrual for restructuring charges remained in "Accounts payable and accrued expenses," which is expected to be paid in the first quarter of 2023.

**Derivatives**

The Company recognizes at fair value all contracts meeting the definition of a derivative as assets or liabilities in the consolidated balance sheets, with the exception of certain sales contracts for which the Company has elected to apply a normal purchases and normal sales exception.

With respect to derivatives used in hedging activities, the Company assesses at hedge inception whether such derivatives are highly effective at offsetting the changes in the anticipated exposure of the hedged item. The change in the fair value of derivatives designated as a cash flow hedge is recorded in "Accumulated other comprehensive income" in the consolidated balance sheets until the hedged transaction impacts reported earnings, at which time any gain or loss is reclassified to earnings. If the hedge ceases to qualify for hedge accounting, the Company prospectively recognizes changes in the fair value of the instrument in earnings in the period of the change. Gains or losses from derivative financial instruments designated as fair value hedges are recognized immediately in earnings, along with the offsetting gain or loss related to the underlying hedged item.

The Company's asset and liability derivative positions are offset on a counterparty-by-counterparty basis if the contractual agreement provides for the net settlement of contracts with the counterparty in the event of default or termination of any one contract.

Non-derivative contracts and derivative contracts for which the Company has elected to apply the normal purchases and normal sales exception are accounted for on an accrual basis.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Business Combinations**

The Company accounts for business combinations using the purchase method of accounting. The purchase method requires the Company to determine the fair value of all acquired assets, including identifiable intangible assets and all assumed liabilities. The total cost of acquisitions is allocated to the underlying identifiable net assets, based on their respective estimated fair values. Determining the fair value of assets acquired and liabilities assumed requires management's judgment and the utilization of independent valuation experts, and often involves the use of significant estimates and assumptions, including assumptions with respect to future cash inflows and outflows, discount rates and asset lives, among other items.

**Impairment of Long-Lived Assets**

The Company evaluates its long-lived assets held and used in operations for impairment as events and changes in circumstances indicate that the carrying amount of such assets might not be recoverable. Factors that would indicate potential impairment to be present include, but are not limited to, a sustained history of operating or cash flow losses, an unfavorable change in earnings and cash flow outlook, prolonged adverse industry or economic trends and a significant adverse change in the extent or manner in which a long-lived asset is being used or in its physical condition. The Company generally does not view short-term declines in thermal and metallurgical coal prices as a triggering event for conducting impairment tests because of historic price volatility. However, the Company generally does view a sustained trend of depressed coal pricing (for example, over periods exceeding one year) as an indicator of potential impairment. Because of the volatile and cyclical nature of coal prices and demand, it is reasonably possible that coal prices may decrease and/or fail to improve in the near term, which, absent sufficient mitigation such as an offsetting reduction in the Company's operating costs, may result in the need for future adjustments to the carrying value of the Company's long-lived mining assets and mining-related investments.

Assets are grouped at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other groups of assets. For its active mining operations, the Company generally groups such assets at the mine level, or the mining complex level for mines that share infrastructure, with the exception of impairment evaluations triggered by mine closures. In those cases involving mine closures, the related assets are evaluated at the individual asset level for remaining economic life based on transferability to ongoing operating sites or for expected salvage. For its development and exploration properties and portfolio of surface land and coal reserve and resource holdings, the Company considers several factors to determine whether to evaluate those assets individually or on a grouped basis for purposes of impairment testing. Such factors include geographic proximity to one another, the expectation of shared infrastructure upon development based on future mining plans and whether it would be most advantageous to bundle such assets in the event of sale to a third party.

When indicators of impairment are present, the Company evaluates its long-lived assets for recoverability by comparing the estimated undiscounted cash flows expected to be generated by those assets under various assumptions to their carrying amounts. If such undiscounted cash flows indicate that the carrying value of the asset group is not recoverable, impairment losses are measured by comparing the estimated fair value of the asset group to its carrying amount. As quoted market prices are unavailable for the Company's individual mining operations, fair value is determined through the use of an expected present value technique based on the income approach, except for non-strategic coal reserves, resources, surface lands and undeveloped coal properties excluded from the Company's long-range mine planning. In those cases, a market approach is utilized based on the most comparable market multiples available. The estimated future cash flows and underlying assumptions used to assess recoverability and, if necessary, measure the fair value of the Company's long-lived mining assets are derived from those developed in connection with the Company's planning and budgeting process. The Company believes its assumptions to be consistent with those a market participant would use for valuation purposes. The most critical assumptions underlying the Company's projections and fair value estimates include those surrounding future tons sold, coal prices for unpriced coal, production costs (including costs for labor, commodity supplies and contractors), transportation costs, foreign currency exchange rates and a risk-adjusted, cost of capital (all of which generally constitute unobservable Level 3 inputs under the fair value hierarchy), in addition to market multiples for non-strategic coal reserves, resources, surface lands and undeveloped coal properties excluded from the Company's long-range mine planning (which generally constitute Level 2 inputs under the fair value hierarchy).

Refer to Note 3. "Asset Impairment" for details regarding impairment charges related to long-lived assets of \$9.5 million and \$1,487.4 million recognized during the years ended December 31, 2022 and 2020. There were no impairment charges related to long-lived assets during the year ended December 31, 2021.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Fair Value**

For assets and liabilities that are recognized or disclosed at fair value in the consolidated financial statements, the Company defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

**Foreign Currency**

Functional currency is determined by the primary economic environment in which an entity operates, which for the Company's foreign operations is generally the U.S. dollar because sales prices in international coal markets and the Company's sources of financing those operations are denominated in that currency. Accordingly, substantially all of the Company's consolidated foreign subsidiaries utilize the U.S. dollar as their functional currency. Monetary assets and liabilities are remeasured at year-end exchange rates while non-monetary items are remeasured at historical rates. Income and expense accounts are remeasured at the average rates in effect during the year, except for those expenses related to balance sheet amounts that are remeasured at historical exchange rates. Gains and losses from foreign currency remeasurement related to tax balances are included as a component of "Income tax (benefit) provision," while all other remeasurement gains and losses are included in "Operating costs and expenses" in the consolidated statements of operations. The total impact of foreign currency remeasurement on the consolidated statements of operations was a net gain of \$2.7 million, \$3.1 million, and \$4.0 million for the years ended December 31, 2022, 2021 and 2020, respectively.

The Company owns a 50% equity interest in Middlemount Coal Pty Ltd. (Middlemount), which owns the Middlemount Mine in Queensland, Australia. Middlemount utilizes the Australian dollar as its functional currency. Accordingly, the assets and liabilities of that equity investee are translated to U.S. dollars at the year-end exchange rate and income and expense accounts are translated at the average rate in effect during the year. The Company's pro-rata share of the translation gains and losses of the equity investee are recorded as a component of "Accumulated other comprehensive income" in the consolidated balance sheets. Australian dollar denominated stockholder loans to the Middlemount Mine, which are long term in nature, are considered part of the Company's net investment in that operation. Accordingly, foreign currency gains or losses on those loans are recorded as a component of foreign currency translation adjustment. The Company recorded foreign currency translation losses of \$1.6 million and \$1.0 million for the years ended December 31, 2022 and 2021, respectively, and a net gain of \$6.1 million for the year ended December 31, 2020.

**Share-Based Compensation**

The Company accounts for share-based compensation at the grant date fair value of awards and recognizes the related expense over the service period of the awards. See Note 16. "Share-Based Compensation" for information related to share-based compensation.

**Exploration and Drilling Costs**

Exploration expenditures are charged to operating costs as incurred, including costs related to drilling and study costs incurred to convert or upgrade mineral resources to reserves.

**Advance Stripping Costs**

*Pre-production.* At existing surface operations, additional pits may be added to increase production capacity in order to meet customer requirements. These expansions may require significant capital to purchase additional equipment, expand the workforce, build or improve existing haul roads and create the initial pre-production box cut to remove overburden (that is, advance stripping costs) for new pits at existing operations. If these pits operate in a separate and distinct area of the mine, the costs associated with initially uncovering coal (that is, advance stripping costs incurred for the initial box cuts) for production are capitalized and amortized over the life of the developed pit consistent with coal industry practices.

*Post-production.* Advance stripping costs related to post-production are expensed as incurred. Where new pits are routinely developed as part of a contiguous mining sequence, the Company expenses such costs as incurred. The development of a contiguous pit typically reflects the planned progression of an existing pit, thus maintaining production levels from the same mining area utilizing the same employee group and equipment.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Use of Estimates in the Preparation of the Consolidated Financial Statements**

These consolidated financial statements have been prepared in conformity with U.S. GAAP. In doing so, estimates and assumptions are made that affect the amounts reported in the consolidated financial statements and accompanying notes. These estimates are based on historical experience and on various other assumptions deemed reasonable under the circumstances, the results of which form the basis for making judgments about the carrying amounts of assets and liabilities that are not readily apparent from other sources. The Company's actual results may differ materially from these estimates. Significant estimates inherent in the preparation of these consolidated financial statements include, but are not limited to, accounting for sales and cost recognition, postretirement benefit plans, environmental receivables and liabilities, asset retirement obligations, evaluation of long-lived assets for impairment, income taxes including deferred tax assets, fair value measurements and contingencies.

**(2) Revenue Recognition**

**Disaggregation of Revenue**

Revenue by product type and market is set forth in the following tables. With respect to its seaborne reporting segments, the Company classifies as "Export" certain revenue from domestically-delivered coal under contracts in which the price is derived on a basis similar to export contracts.

Year Ended December 31, 2022						
	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)					
Thermal coal						
Domestic	\$ 167.6	\$ —	\$ 1,066.0	\$ 943.9	\$ —	\$ 2,177.5
Export	1,177.3	—	—	3.5	—	1,180.8
Total thermal	1,344.9	—	1,066.0	947.4	—	3,358.3
Metallurgical coal						
Export	—	1,610.8	—	—	—	1,610.8
Total metallurgical	—	1,610.8	—	—	—	1,610.8
Other <sup>(2)</sup>	0.7	6.1	(0.5)	4.8	1.7	12.8
Revenue	\$ 1,345.6	\$ 1,616.9	\$ 1,065.5	\$ 952.2	\$ 1.7	\$ 4,981.9

Year Ended December 31, 2021						
	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)					
Thermal coal						
Domestic	\$ 173.5	\$ —	\$ 970.7	\$ 669.9	\$ —	\$ 1,814.1
Export	759.0	—	—	10.0	—	769.0
Total thermal	932.5	—	970.7	679.9	—	2,583.1
Metallurgical coal						
Export	—	719.8	—	—	—	719.8
Total metallurgical	—	719.8	—	—	—	719.8
Other <sup>(2)</sup>	1.5	7.9	0.5	9.2	(3.7)	15.4
Revenue	\$ 934.0	\$ 727.7	\$ 971.2	\$ 689.1	\$ (3.7)	\$ 3,318.3

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Year Ended December 31, 2020					Consolidated
	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining	Corporate and Other	
	(Dollars in millions)					
Thermal coal						
Domestic	\$ 145.5	\$ —	\$ 993.9	\$ 675.2	\$ —	\$ 1,814.6
Export	564.8	—	—	—	—	564.8
Total thermal	710.3	—	993.9	675.2	—	2,379.4
Metallurgical coal						
Export	—	484.3	—	—	—	484.3
Total metallurgical	—	484.3	—	—	—	484.3
Other <sup>(2)</sup>	1.5	2.2	(2.8)	32.1	(15.6)	17.4
Revenue	\$ 711.8	\$ 486.5	\$ 991.1	\$ 707.3	\$ (15.6)	\$ 2,881.1

<sup>(1)</sup> Corporate and Other includes the following:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Unrealized losses on derivative contracts related to forecasted sales	\$ (35.8)	\$ (115.1)	\$ (29.6)
Realized (losses) gains on derivative contracts related to forecasted sales	(455.1)	(45.6)	34.3
Revenue from physical sale of coal <sup>(3)</sup>	470.7	140.3	(28.6)
Trading revenue	10.7	6.1	(0.7)
Other <sup>(2)</sup>	11.2	10.6	9.0
Total Corporate and Other	\$ 1.7	\$ (3.7)	\$ (15.6)

<sup>(2)</sup> Includes revenue from arrangements such as customer contract-related payments associated with volume shortfalls, royalties related to coal lease agreements, sales agency commissions, farm income and property and facility rentals.

<sup>(3)</sup> Includes revenue recognized upon the physical sale of coal purchased from the Company's operating segments and sold to customers through the Company's coal trading business as part of settling certain derivative contracts. Primarily represents the difference between the price contracted with the customer and the price allocated to the operating segment.

**Committed Revenue from Contracts with Customers**

The Company expects to recognize revenue subsequent to December 31, 2022 of approximately \$6.3 billion related to contracts with customers in which volumes and prices per ton were fixed or reasonably estimable at December 31, 2022. Approximately 40% of such amount is expected to be recognized over the next twelve months and the remainder thereafter. Actual revenue related to such contracts may differ materially for various reasons, including price adjustment features for coal quality and cost escalations, volume optionality provisions and potential force majeure events. This estimate of future revenue does not include any revenue related to contracts with variable prices per ton that cannot be reasonably estimated, such as the majority of seaborne metallurgical and seaborne thermal coal contracts where pricing is negotiated or settled quarterly or annually.

**Accounts Receivable**

"Accounts receivable, net" at December 31, 2022 and 2021 consisted of the following:

	December 31,	
	2022	2021
	(Dollars in millions)	
Trade receivables, net	\$ 416.3	\$ 307.0
Miscellaneous receivables, net	49.2	43.5
Accounts receivable, net	\$ 465.5	\$ 350.5

None of the above receivables included allowances for credit losses at December 31, 2022 or 2021. No charges for credit losses were recognized during the years ended December 31, 2022, 2021 or 2020.



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**(3) Asset Impairment**

During the year ended December 31, 2022, the Company recognized impairment charges of \$9.5 million related to the sale of certain land interests in Australia and \$1.7 million related to the fair value of an investment in equity securities. No asset impairment charges were recognized during the year ended December 31, 2021.

During the year ended December 31, 2020, the Company recognized impairment charges of \$1,418.1 million related to its North Antelope Rochelle Mine of the Powder River Basin Mining segment. Of this amount, \$1,393.7 million related to the property, plant, equipment and mine development assets; \$19.9 million related to operating lease right-of-use assets; and \$4.5 million related to contract-based intangible assets. The outlook for the North Antelope Rochelle Mine was negatively impacted by the accelerated decline of coal-fired electricity generation in the U.S., driven by the reduced utilization of plants and plant retirements, sustained low natural gas pricing and the increased use of renewable energy sources. These factors led to the expectation of reduced future sales volumes. The impairment charge was based upon the remaining estimated discounted cash flows of the mine. Such cash flows were based upon estimates which generally constitute unobservable Level 3 inputs under the fair value hierarchy, including, but not limited to, future tons sold, coal prices for unpriced coal, production costs (including costs for labor, commodity supplies and contractors), transportation costs and a risk-adjusted cost of capital. During the year ended December 31, 2020, the Company also recognized impairment charges of \$69.3 million related to certain unassigned coal reserves and resources in the Midwest due to their low probability of development.

**(4) Inventories**

Inventories as of December 31, 2022 and 2021 consisted of the following:

	December 31,	
	2022	2021
	(Dollars in millions)	
Materials and supplies, net	\$ 130.8	\$ 102.1
Raw coal	98.3	54.6
Saleable coal	67.0	70.0
Inventories, net	<u>\$ 296.1</u>	<u>\$ 226.7</u>

Materials and supplies inventories presented above have been shown net of reserves of \$9.5 million and \$9.0 million as of December 31, 2022 and 2021, respectively.

**(5) Equity Method Investments**

The Company's equity method investments include its joint venture interest in Middlemount and certain other equity method investments.

The table below summarizes the book value of those investments, which are reported in "Investments and other assets" in the consolidated balance sheets, and the related "(Income) loss from equity affiliates":

	Book Value at		(Income) Loss from Equity Affiliates		
	December 31,		Year Ended December 31,		
	2022	2021	2022	2021	2020
	(Dollars in millions)				
Equity method investment related to Middlemount	\$ 27.1	\$ 62.2	\$ (135.1)	\$ (82.1)	\$ 60.1
Other equity method investments	7.0	—	3.9	—	—
Total equity method investments	<u>\$ 34.1</u>	<u>\$ 62.2</u>	<u>\$ (131.2)</u>	<u>\$ (82.1)</u>	<u>\$ 60.1</u>

The Company received cash payments from Middlemount of \$168.4 million and \$43.5 million during the years ended December 31, 2022 and 2021, respectively. No payments were received from Middlemount during the year ended December 31, 2020.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

One of the Company's Australian subsidiaries is party to an agreement to provide a revolving loan to Middlemount. The Company's participation in the revolving loan will not, at any time, exceed its 50% equity interest of the revolving loan limit, which was \$50 million Australian dollars at December 31, 2022. The revolving loan bears interest at 10% per annum and expires on December 31, 2023. There was no outstanding revolving loan at December 31, 2022 or 2021.

During the year ended December 31, 2020, the Company established a valuation allowance on Middlemount's net deferred tax position of approximately \$33 million primarily based upon recent cumulative losses. During the year ended December 31, 2021, the Company determined that the valuation allowance was no longer necessary based on recent cumulative earnings and expectation of future earnings. The determination resulted in approximately \$33 million of income related to the release of the previously established valuation allowance.

During the year ended December 31, 2021, Middlemount entered into an insurance claim settlement agreement attributable to a business interruption and property damage claim from 2019, which resulted in \$12.5 million of income for the Company (on a 50% basis).

During the years ended December 31, 2022, 2021 and 2020, respectively, Middlemount generated revenue of approximately \$441 million, \$265 million and \$123 million (on a 50% basis).

Middlemount had current assets, noncurrent assets, current liabilities and noncurrent liabilities of \$75.2 million, \$256.3 million, \$135.7 million and \$97.7 million, respectively, as of December 31, 2022 and \$83.1 million, \$269.9 million, \$254.9 million and \$79.5 million, respectively, as of December 31, 2021 (on a 50% basis).

## **(6) Derivatives and Fair Value Measurements**

### ***Derivatives***

From time to time, the Company may utilize various types of derivative instruments to manage its exposure to risks in the normal course of business, including (1) foreign currency exchange rate risk and the variability of cash flows associated with forecasted Australian dollar expenditures made in its Australian mining platform, (2) price risk of fluctuating coal prices related to forecasted sales or purchases of coal, or changes in the fair value of a fixed price physical sales contract, (3) price risk and the variability of cash flows related to forecasted diesel fuel purchased for use in its operations and (4) interest rate risk on long-term debt. These risk management activities are actively monitored for compliance with the Company's risk management policies.

On a limited basis, the Company engages in the direct and brokered trading of coal and freight-related contracts. Except those contracts for which the Company has elected to apply a normal purchases and normal sales exception, all derivative coal trading contracts are accounted for at fair value. The Company had no diesel fuel or interest rate derivatives in place as of December 31, 2022.

#### ***Foreign Currency Option Contracts***

The Company has historically utilized currency forwards and options to hedge currency risk associated with anticipated Australian dollar expenditures. As of December 31, 2022, the Company had currency options outstanding with an aggregate notional amount of \$745.0 million Australian dollars to hedge currency risk associated with anticipated Australian dollar expenditures over the nine-month period ending September 30, 2023. The instruments are quarterly average rate options which entitle the Company to receive payment on the notional amount should the quarterly average Australian dollar-to-U.S. dollar exchange rate exceed amounts ranging from \$0.70 to \$0.77 over the nine-month period ending September 30, 2023. Subsequent to December 31, 2022, the Company entered into additional average rate options with an aggregate notional amount of \$135.0 million Australian dollars related to the second and third quarters of 2023 and purchased collars with an aggregate notional amount of \$150.0 million Australian dollars related to the second half of 2023. The additional average rate options have a strike price of \$0.75. The purchased collars have a floor and ceiling of \$0.63 and \$0.75, respectively, whereby the Company would incur a loss on the instruments for rates below the floor and gain for rates above the ceiling.

#### ***Derivative Contracts Related to Forecasted Sales***

As of December 31, 2022, the Company held coal derivative contracts related to a portion of its forecasted sales with an aggregate notional volume of 0.6 million tonnes. Such financial contracts may include futures, forwards and options. The notional volume is related predominantly to financial derivatives entered to support the profitability of the Wambo Underground Mine as part of a strategy to extend the mine's life. All such tonnes will settle in 2023. Additionally, the Company classifies certain physical forward sales contracts as derivatives for which the normal purchase, normal sales exception does not apply.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

During the year ended December 31, 2022, the Company recorded a net unrealized mark-to-market loss of \$35.8 million on these coal derivative contracts, which included approximately \$65 million of unrealized mark-to-market losses on financial derivatives and approximately \$29 million of unrealized mark-to-market gains on physical forward sales contracts. During the year ended December 31, 2021, the Company recorded a net unrealized mark-to-market loss of \$115.1 million, which included approximately \$86 million of unrealized mark-to-market losses on financial derivatives and approximately \$29 million of unrealized mark-to-market losses on physical forward sales contracts. During the year ended December 31, 2020, the Company recorded a net unrealized mark-to-market loss of \$29.6 million, which included approximately \$28 million of unrealized mark-to-market losses on financial derivatives and approximately \$1 million of unrealized mark-to-market losses on physical forward sales contracts.

*Financial Trading Contracts*

On a limited basis, the Company may enter coal or freight derivative contracts for trading purposes. Such financial contracts may include futures, forwards and options. The Company held nominal financial trading contracts as of December 31, 2022.

*Tabular Derivatives Disclosures*

The Company has master netting agreements with certain of its counterparties which allow for the settlement of contracts in an asset position with contracts in a liability position in the event of default or termination. Such netting arrangements reduce the Company's credit exposure related to these counterparties. For classification purposes, the Company records the net fair value of all the positions with a given counterparty as a net asset or liability in the consolidated balance sheets. The fair value of derivatives reflected in the accompanying consolidated balance sheets are set forth in the table below.

	December 31, 2022		December 31, 2021	
	Asset Derivative	Liability Derivative	Asset Derivative	Liability Derivative
	(Dollars in millions)			
Foreign currency option contracts	\$ 3.0	\$ —	\$ 1.4	\$ —
Derivative contracts related to forecasted sales	100.6	(310.3)	59.5	(184.2)
Financial trading contracts	11.7	—	3.4	—
Total derivatives	115.3	(310.3)	64.3	(184.2)
Effect of counterparty netting	(100.6)	100.6	(59.5)	59.5
Variation margin (received) posted	(11.7)	209.7	(3.4)	95.2
Net derivatives and variation margin as classified in the balance sheets	<u>\$ 3.0</u>	<u>\$ —</u>	<u>\$ 1.4</u>	<u>\$ (29.5)</u>

The Company generally posts or receives variation margin cash with its clearing broker on the majority of its financial derivatives as market values of the financial derivatives fluctuate. As of December 31, 2022, the Company had posted \$255.5 million aggregate margin cash, consisting of \$198.0 million variation margin cash and \$57.5 million initial margin. As of December 31, 2021, the Company had posted \$130.1 million aggregate margin cash, consisting of \$91.8 million variation margin cash and \$38.3 million initial margin.

The net amount of asset derivatives, net of variation margin, is included in "Other current assets" and the net amount of liability derivatives, net of variation margin, is included in "Accounts payable and accrued expenses" in the accompanying consolidated balance sheets. The amounts of initial margin are not included with the derivatives presented in the tabular disclosures above and are included in "Other current assets" in the accompanying consolidated balance sheets.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Currently, the Company does not seek cash flow hedge accounting treatment for its derivative financial instruments and thus changes in fair value are reflected in current earnings. The tables below show the amounts of pretax gains and losses related to the Company's derivatives and their classification within the accompanying consolidated statements of operations.

Year Ended December 31, 2022				
Derivative Instrument	Classification	Total (loss) gain recognized in income	(Loss) gain realized in income on derivatives	Unrealized (loss) gain recognized in income on derivatives
(Dollars in millions)				
Foreign currency option contracts	Operating costs and expenses	\$ (8.4)	\$ (6.1)	\$ (2.3)
Derivative contracts related to forecasted sales	Revenue	(490.9)	(455.1)	(35.8)
Financial trading contracts	Revenue	10.7	1.1	9.6
Total		<u>\$ (488.6)</u>	<u>\$ (460.1)</u>	<u>\$ (28.5)</u>
Year Ended December 31, 2021				
Derivative Instrument	Classification	Total (loss) gain recognized in income	Gain (loss) realized in income on derivatives	Unrealized (loss) gain recognized in income on derivatives
(Dollars in millions)				
Foreign currency option contracts	Operating costs and expenses	\$ (5.7)	\$ 1.8	\$ (7.5)
Derivative contracts related to forecasted sales	Revenue	(160.7)	(45.6)	(115.1)
Financial trading contracts	Revenue	6.1	4.6	1.5
Total		<u>\$ (160.3)</u>	<u>\$ (39.2)</u>	<u>\$ (121.1)</u>
Year Ended December 31, 2020				
Derivative Instrument	Classification	Total gain (loss) recognized in income	Gain realized in income on derivatives	Unrealized gain (loss) recognized in income on derivatives
(Dollars in millions)				
Foreign currency option contracts	Operating costs and expenses	\$ 12.9	\$ 5.8	\$ 7.1
Derivative contracts related to forecasted sales	Revenue	4.7	34.3	(29.6)
Financial trading contracts	Revenue	(0.7)	4.2	(4.9)
Total		<u>\$ 16.9</u>	<u>\$ 44.3</u>	<u>\$ (27.4)</u>

The Company classifies the cash effects of its derivatives within the "Cash Flows From Operating Activities" section of the consolidated statements of cash flows.

**Fair Value Measurements**

The Company uses a three-level fair value hierarchy that categorizes assets and liabilities measured at fair value based on the observability of the inputs utilized in the valuation. These levels include: Level 1 - inputs are quoted prices in active markets for the identical assets or liabilities; Level 2 - inputs are other than quoted prices included in Level 1 that are directly or indirectly observable through market-corroborated inputs; and Level 3 - inputs are unobservable, or observable but cannot be market-corroborated, requiring the Company to make assumptions about pricing by market participants.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following tables set forth the hierarchy of the Company's net asset (liability) positions for which fair value is measured on a recurring basis. Variation margin cash associated with the derivative balances is excluded from this table.

December 31, 2022				
	Level 1	Level 2	Level 3	Total
(Dollars in millions)				
Foreign currency option contracts	\$ —	\$ 3.0	\$ —	\$ 3.0
Derivative contracts related to forecasted sales	—	(209.7)	—	(209.7)
Financial trading contracts	—	11.7	—	11.7
Equity securities	—	—	2.5	2.5
Total net (liabilities) assets	\$ —	\$ (195.0)	\$ 2.5	\$ (192.5)

December 31, 2021				
	Level 1	Level 2	Level 3	Total
(Dollars in millions)				
Foreign currency option contracts	\$ —	\$ 1.4	\$ —	\$ 1.4
Derivative contracts related to forecasted sales	—	(124.7)	—	(124.7)
Financial trading contracts	—	3.4	—	3.4
Equity securities	—	—	4.0	4.0
Total net (liabilities) assets	\$ —	\$ (119.9)	\$ 4.0	\$ (115.9)

For Level 1 and 2 financial assets and liabilities, the Company utilizes both direct and indirect observable price quotes, including interest rate yield curves, exchange indices, broker/dealer quotes, published indices, issuer spreads, benchmark securities and other market quotes. In the case of certain debt securities, fair value is provided by a third-party pricing service. Below is a summary of the Company's valuation techniques for Level 1 and 2 financial assets and liabilities:

- Foreign currency option contracts are valued utilizing inputs obtained in quoted public markets (Level 2) except when credit and non-performance risk is considered to be a significant input, then the Company classifies such contracts as Level 3.
- Derivative contracts related to forecasted sales and financial trading contracts are generally valued based on unadjusted quoted prices in active markets (Level 1) or a valuation that is corroborated by the use of market-based pricing (Level 2) except when credit and non-performance risk is considered to be a significant input (greater than 10% of fair value), then the Company classifies as Level 3.
- Investments in equity securities are based on observed prices in an inactive market (Level 3).

*Other Financial Instruments.* The following methods and assumptions were used by the Company in estimating fair values for other financial instruments as of December 31, 2022 and 2021:

- Cash and cash equivalents, restricted cash, accounts receivable, including those within the Company's accounts receivable securitization program, margining cash, notes receivable and accounts payable have carrying values which approximate fair value due to the short maturity or the liquid nature of these instruments.
- Long-term debt fair value estimates are based on observed prices for securities when available (Level 2), and otherwise on estimated borrowing rates to discount the cash flows to their present value (Level 3).

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Market risk associated with the Company's fixed- and variable-rate long-term debt relates to the potential reduction in the fair value and negative impact to future earnings, respectively, from an increase in interest rates. The fair value of debt, shown below, is principally based on reported market values and estimates based on interest rates, maturities, credit risk, underlying collateral and completed market transactions.

	December 31,	
	2022	2021
	(Dollars in millions)	
Total debt at par value	\$ 343.6	\$ 1,173.2
Less: Unamortized debt issuance costs and original issue discount	(9.8)	(35.4)
Net carrying amount	\$ 333.8	\$ 1,137.8
Estimated fair value	\$ 560.0	\$ 1,136.5

The Company's risk management function, which is independent of the Company's coal trading function, is responsible for valuation policies and procedures, with oversight from executive management. The fair value of the Company's coal derivative assets and liabilities reflects adjustments for credit risk. The Company's exposure is substantially with electric utilities, energy marketers, steel producers and nonfinancial trading houses.

Generally, the Company's Level 3 instruments or contracts are valued using bid/ask price quotations and other market assessments obtained from multiple, independent third-party brokers or other transactional data incorporated into internally-generated discounted cash flow models. Decreases in the number of third-party brokers or market liquidity could erode the quality of market information and therefore the valuation of the Company's market positions. The Company's valuation techniques include basis adjustments to the foregoing price inputs for quality, such as sulfur and ash content, location differentials, expressed as port and freight costs, and credit risk. The Company's risk management function independently validates the Company's valuation inputs, including unobservable inputs, with third-party information and settlement prices from other sources where available. A daily process is performed to analyze market price changes and changes to the portfolio. Further periodic validation occurs at the time contracts are settled with the counterparty. These valuation techniques have been consistently applied in all periods presented, and the Company believes it has obtained the most accurate information available for the types of derivative contracts held.

Significant increases or decreases in the inputs in isolation could result in a significantly higher or lower fair value measurement. The unobservable inputs do not have a direct interrelationship; therefore, a change in one unobservable input would not necessarily correspond with a change in another unobservable input.

The following table summarizes the changes in the Company's recurring Level 3 net financial assets:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Beginning of period	\$ 4.0	\$ 4.0	\$ 4.0
Impairment loss included in earnings	(1.7)	—	—
Purchases	0.2	—	—
End of period	\$ 2.5	\$ 4.0	\$ 4.0

The Company had no transfers between Levels 1, 2 and 3 during any of the periods presented in the table above. The Company's policy is to value all transfers between levels using the beginning of period valuation.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**(7) Property, Plant, Equipment and Mine Development**

Property, plant, equipment and mine development, net, as of December 31, 2022 and December 31, 2021 consisted of the following:

	December 31,	
	2022	2021
	(Dollars in millions)	
Land and coal interests	\$ 2,514.7	\$ 2,494.1
Buildings and improvements	594.2	550.8
Machinery and equipment	1,543.1	1,386.2
Less: Accumulated depreciation, depletion and amortization	(1,787.0)	(1,480.5)
Property, plant, equipment and mine development, net	<u>\$ 2,865.0</u>	<u>\$ 2,950.6</u>

Land and coal interests included coal reserves and resources with a net book value of \$1.3 billion as of December 31, 2022 and \$1.4 billion as of December 31, 2021. Such coal reserves and resources were comprised of mineral rights for leased coal interests and advance royalties that had a net book value of \$0.7 billion as of both December 31, 2022 and 2021, and coal reserves and resources held by fee ownership of \$0.6 billion as of both December 31, 2022 and 2021, respectively. The amount of coal reserves and resources unassigned to active mining operations, and thus not subject to current depletion, including certain exploratory properties, was \$0.1 billion as of both December 31, 2022 and 2021.

**(8) Income Taxes**

Income (loss) from continuing operations before income taxes for the periods presented below consisted of the following:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
U.S.	\$ 59.7	\$ (55.0)	\$ (1,771.5)
Non-U.S.	1,218.9	425.2	(80.3)
Total	<u>\$ 1,278.6</u>	<u>\$ 370.2</u>	<u>\$ (1,851.8)</u>

Total income tax (benefit) provision for the periods presented below consisted of the following:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Current:			
U.S. federal	\$ (0.2)	\$ (0.5)	\$ (23.9)
Non-U.S.	42.9	30.8	2.4
State	0.1	—	1.7
Total current	<u>42.8</u>	<u>30.3</u>	<u>(19.8)</u>
Deferred:			
U.S. federal	—	—	23.4
Non-U.S.	(81.6)	(7.5)	4.4
Total deferred	<u>(81.6)</u>	<u>(7.5)</u>	<u>27.8</u>
Total income tax (benefit) provision	<u>\$ (38.8)</u>	<u>\$ 22.8</u>	<u>\$ 8.0</u>

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following is a reconciliation of the expected statutory federal income tax expense (benefit) to the Company's income tax (benefit) provision for the periods presented below:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Expected income tax expense (benefit) at U.S. federal statutory rate	\$ 268.5	\$ 77.7	\$ (388.9)
Changes in valuation allowance, income tax	(595.6)	(101.3)	410.1
Changes in tax reserves	(1.5)	1.9	(7.7)
Excess depletion	(17.2)	(13.7)	(14.5)
Foreign earnings repatriation	42.3	—	—
Foreign earnings provision differential	80.7	17.3	16.4
Global intangible low-taxed income	197.2	67.0	—
Tax credits	—	(26.5)	—
Remeasurement of foreign income tax accounts	(2.6)	(1.8)	2.9
State income taxes, net of federal tax benefit	1.1	(1.1)	(6.8)
Other, net	(11.7)	3.3	(3.5)
Total income tax (benefit) provision	<u>\$ (38.8)</u>	<u>\$ 22.8</u>	<u>\$ 8.0</u>

Certain reconciliation items included in the above table exclude the remeasurement of foreign income tax accounts as these foreign currency effects are separately presented. The Company recognizes the tax on global intangible low-taxed income (GILTI) as a period expense and recorded a provision of \$197.2 million and \$67.0 million for the years ended December 31, 2022 and 2021, respectively, which was fully offset by the release of valuation allowance associated with the net operating losses (NOLs) that absorbed the GILTI inclusion. The Company did not record a provision for the year ended December 31, 2020 due to tested foreign losses.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act was signed into law and contained numerous tax provisions including the acceleration of refunds of previously generated alternative minimum tax (AMT) credits. During the years ended December 31, 2021 and 2020, the Company received AMT credit refunds of \$1.2 million and \$46.9 million, respectively. The Company does not expect any further AMT refund.

The Taxpayer Certainty and Disaster Relief Act of 2020 and the American Rescue Plan Act were enacted on December 27, 2020 and March 1, 2021, respectively. On August 16, 2022, the Inflation Reduction Act of 2022 was signed into law and contained numerous tax provisions including a 15% minimum tax on book income of certain large corporations and a 1% excise tax on net stock repurchases. These acts did not have a material impact on the Company's tax provision.



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The tax effects of temporary differences that gave rise to significant portions of the deferred tax assets and liabilities as of December 31, 2022 and 2021 consisted of the following:

	December 31,	
	2022	2021
	(Dollars in millions)	
Deferred tax assets:		
Tax loss carryforwards and credits	\$ 740.1	\$ 1,267.6
Property, plant, equipment and mine development, principally due to differences in depreciation, depletion and asset impairments	550.8	571.9
Accrued postretirement benefit obligations	41.4	48.9
Asset retirement obligations	95.1	91.4
Employee benefits	22.1	19.9
Take-or-pay obligations	8.2	9.5
Hedge activities	49.1	36.8
Interest limitation	—	7.9
Investments and other assets	37.0	81.8
Workers' compensation obligations	7.1	7.2
Operating lease liabilities	7.8	11.3
Other	28.3	22.7
Total gross deferred tax assets	1,587.0	2,176.9
Valuation allowance, income tax	(1,451.0)	(2,120.8)
Total deferred tax assets	136.0	56.1
Deferred tax liabilities:		
Property, plant, equipment and mine development, principally due to differences in depreciation, depletion and asset impairments	67.5	66.4
Operating lease right-of-use assets	7.6	9.4
Investments and other assets	6.6	7.6
Total deferred tax liabilities	81.7	83.4
Net deferred tax asset (liability)	\$ 54.3	\$ (27.3)
Deferred taxes are classified as follows:		
Noncurrent deferred income tax asset	\$ 74.7	\$ —
Noncurrent deferred income tax liability	(20.4)	(27.3)
Net deferred tax asset (liability)	\$ 54.3	\$ (27.3)

As of December 31, 2022, the Company had gross Australia NOLs of \$53.0 million in Australian dollars and gross U.S. federal NOLs of \$1.7 billion. The Company's tax loss carryforwards and credits of \$740.1 million as of December 31, 2022 were comprised primarily of net Australia NOLs and capital tax loss carryforwards of \$153.4 million, net federal NOLs of \$345.3 million, state NOLs of \$82.3 million, tax general business credits (GBCs) of \$139.1 million and other foreign NOLs of \$18.4 million. The foreign tax loss carryforwards have no expiration date. The federal NOLs begin to expire in 2036. The state NOLs begin to expire in 2023 and the GBCs begin to expire in 2027.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In assessing the near-term use of NOLs and tax credits and corresponding valuation allowance adjustments, the Company evaluated the expected level of future taxable income, available tax planning strategies, reversals of existing taxable temporary differences and taxable income in carryback years. For the year ended December 31, 2022, the Company released the valuation allowances of \$74.7 million recorded against the Australia NOLs and net deferred tax asset position due to the significant current year utilization of NOLs and expected future realization of the deferred tax assets. The Company maintained valuation allowances of \$1.5 billion against the U.S. net deferred tax asset position of \$976.8 million and against certain foreign deferred tax assets, primarily in Australia, of \$474.2 million. Recognition of the U.S. valuation allowances was driven by recent cumulative book losses, as determined by considering all sources of available income (including items classified as discontinued operations or recorded directly to "Accumulated other comprehensive income"), which limited the Company's ability to look to future taxable income in assessing the realizability of the related assets. The valuation allowance against certain foreign deferred tax assets continues to be recorded due to unlikely realization.

**Unrecognized Tax Benefits**

Net unrecognized tax benefits (excluding interest and penalties) were recorded as follows in the consolidated balance sheets as of December 31, 2022 and 2021:

	December 31,	
	2022	2021
	(Dollars in millions)	
Deferred income taxes	\$ 8.2	\$ 9.7
Other noncurrent liabilities	1.3	1.3
Net unrecognized tax benefits	<u>\$ 9.5</u>	<u>\$ 11.0</u>
Gross unrecognized tax benefits	<u>\$ 9.5</u>	<u>\$ 11.0</u>

The amount of the Company's gross unrecognized tax benefits decreased by \$1.5 million since December 31, 2021 due primarily to adjustments for prior year positions partially offset by additions for current positions. The amount of the net unrecognized tax benefits that, if recognized, would directly affect the effective tax rate was \$9.5 million and \$11.0 million at December 31, 2022 and 2021, respectively. A reconciliation of the beginning and ending amount of gross unrecognized tax benefits for the periods presented below is as follows:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Balance at beginning of period	\$ 11.0	\$ 9.1	\$ 16.5
Additions for current year tax positions	0.8	3.0	1.9
Reductions for prior year tax positions	(2.3)	(1.1)	(9.3)
Balance at end of period	<u>\$ 9.5</u>	<u>\$ 11.0</u>	<u>\$ 9.1</u>

The Company recognizes interest and penalties related to unrecognized tax benefits in its income tax provision. The Company recorded \$0.2 million of gross interest and penalties for both the years ended December 31, 2022 and 2021, and reversed gross interest and penalties of \$0.4 million for the year ended December 31, 2020. The Company had \$5.9 million, \$5.7 million and \$5.4 million of accrued gross interest and penalties related to unrecognized tax benefits at December 31, 2022, 2021 and 2020, respectively.

The Company does not expect a decrease in its net unrecognized tax benefits during the next twelve months.

**Tax Returns Subject to Examination**

The Company's federal income tax returns for the 2019, 2020 and 2021 tax years are subject to potential examinations by the Internal Revenue Service. The Company's state income tax returns for the tax years 2014 and thereafter remain potentially subject to examination by various state taxing authorities due to NOL carryforwards. Australian income tax returns for tax years 2013 through 2020 continue to be subject to potential examinations by the Australian Taxation Office.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Foreign Earnings**

As of December 31, 2022, the Company has unremitted earnings relating to certain wholly owned subsidiaries that are not permanently reinvested, but there are no residual cash taxes on the unremitted earnings. The Company has an earnings deficit for remaining investments outside the U.S. and continues to be permanently reinvested with respect to its historical earnings. However, when appropriate, the Company has the ability to access foreign cash without incurring residual cash taxes due to the existence of NOLs.

**Tax Payments and Refunds**

The following table summarizes the Company's income tax payments (refunds), net for the periods presented below:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
U.S. — federal	\$ (0.3)	\$ (1.3)	\$ (44.6)
U.S. — state and local	—	—	1.6
Non-U.S.	36.9	12.9	3.1
Total income tax payments (refunds), net	<u>\$ 36.6</u>	<u>\$ 11.6</u>	<u>\$ (39.9)</u>

**(9) Accounts Payable and Accrued Expenses**

Accounts payable and accrued expenses consisted of the following:

	December 31,	
	2022	2021
	(Dollars in millions)	
Trade accounts payable	\$ 240.7	\$ 201.7
Accrued payroll and related benefits	199.4	170.5
Other accrued expenses	148.0	161.3
Accrued royalties	88.4	51.4
Asset retirement obligations	84.2	65.0
Liabilities associated with discontinued operations	41.9	45.0
Income taxes payable	25.9	20.2
Accrued insurance	22.7	17.8
Accrued taxes other than income	20.0	78.8
Operating lease liabilities	16.8	16.4
Workers' compensation obligations	9.3	8.5
Accrued interest	8.2	6.0
Liabilities from coal trading activities	—	29.5
Accounts payable and accrued expenses	<u>\$ 905.5</u>	<u>\$ 872.1</u>

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**(10) Long-term Debt**

The Company's total indebtedness as of December 31, 2022 and 2021 consisted of the following:

Debt Instrument (defined below, as applicable)	December 31,	
	2022	2021
	(Dollars in millions)	
6.000% Senior Secured Notes due March 2022 (2022 Notes)	\$ —	\$ 23.1
8.500% Senior Secured Notes due December 2024 (2024 Peabody Notes)	—	62.6
10.000% Senior Secured Notes due December 2024 (2024 Co-Issuer Notes)	—	193.9
Senior Secured Term Loan due 2024 (Co-Issuer Term Loans)	—	206.0
6.375% Senior Secured Notes due March 2025 (2025 Notes)	—	334.9
Senior Secured Term Loan due 2025, net of original issue discount (Senior Secured Term Loan)	—	322.8
3.250% Convertible Senior Notes due March 2028 (2028 Convertible Notes)	320.0	—
Finance lease obligations	23.6	29.3
Less: Debt issuance costs	(9.8)	(34.8)
	333.8	1,137.8
Less: Current portion of long-term debt	13.2	59.6
Long-term debt	\$ 320.6	\$ 1,078.2

As further described below, during 2021, the Company completed a significant debt restructuring to extend maturities on its existing debt and obtain covenant relief. Subsequent to these restructuring activities, the Company utilized various methods allowable or required under its relevant debt agreements to retire all of its senior secured long-term debt by December 31, 2022, as only the 2028 Convertible Notes, which are further described below, and finance lease obligations remain outstanding.

**2021 Debt Restructuring**

During the first quarter of 2021, the Company completed a series of financing transactions to provide the Company with maturity extensions and covenant relief, while allowing it to maintain near-term operating liquidity. These transactions included a senior notes exchange, a revolving credit facility exchange, various amendments to the Company's existing debt agreements and a support agreement with the Company's surety bond providers. These transactions were preceded by an organizational realignment in which the Company formed certain wholly-owned subsidiaries (the Co-Issuers) to indirectly own and conduct the operations of the Company's Wilpinjong Mine in Australia and the designation of such entities as unrestricted subsidiaries under the Company's then-existing credit agreement (Credit Agreement) and senior notes' indenture.

The senior notes exchange involved the tender of \$398.7 million aggregate principal amount of the Company's 2022 Notes for aggregate consideration consisting of (a) \$193.9 million aggregate principal amount of new 2024 Co-Issuer Notes, (b) \$195.1 million aggregate principal amount of new 2024 Peabody Notes issued by the Company and (c) a cash payment of approximately \$9.4 million. The exchange was accounted for as a debt modification and as such, no gain or loss was recorded.

Concurrently with the senior notes exchange, the Company solicited consents from holders of the 2022 Notes to certain proposed amendments to its existing senior notes' indenture to (i) eliminate substantially all of the restrictive covenants, certain events of default applicable to the 2022 Notes and certain other provisions contained in their indenture and (ii) release the collateral securing the 2022 Notes and eliminate certain other related provisions. The Company received the requisite consents from holders of the 2022 Notes and entered into a supplemental indenture to reflect such amendments.

The Company also restructured \$216.0 million of existing revolving loans under the Credit Agreement by (i) paying down \$10.0 million aggregate principal amount of such loans, (ii) compelling the Co-Issuers to incur \$206.0 million of Co-Issuer Term Loans under a separate credit agreement, (iii) entering into a letter of credit facility (the Company LC Agreement) and (iv) amending the Credit Agreement.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Under the Company LC Agreement, the Company obtained a \$324.0 million letter of credit facility under which its existing letters of credit under the Credit Agreement were deemed to be issued. Undrawn letters of credit under the Company LC Agreement bear interest at 6.00% per annum and unused commitments are subject to a 0.50% per annum commitment fee. The Company LC Agreement was subsequently amended during 2022 to mandatorily reduce its capacity by approximately \$22 million to make allowable certain previously restricted payments for joint venture investments. The amendment creates an investment basket which allows payments of \$30.0 million per year specifically limited to investment in renewable energy-related projects. The Company has no contractual commitment for such project investment. Unused portions of the basket carryover from year-to-year, and the total amount of investment will further reduce the credit facility capacity by a like amount, or a minimum of \$10.0 million per year, through the maturity of the credit facility. In February 2023, the Company LC Agreement was further amended to reduce its capacity by an additional \$65.0 million, accelerate its expiration date to December 31, 2023 from December 31, 2024, and eliminate the prepayment premium due upon any reduction of commitments thereunder prior to July 29, 2023.

Under the amended Credit Agreement, there remain no revolving commitments or revolving loans and the first lien net leverage ratio covenant was eliminated. The Company LC Agreement requires that the Company's restricted subsidiaries maintain minimum aggregate liquidity of \$125.0 million at the end of each quarter through December 31, 2024. As such, liquidity attributable to the Co-Issuers, its subsidiaries and other unrestricted subsidiaries is excluded from the calculation.

Commitments under the Company LC Agreement are jointly and severally and fully and unconditionally guaranteed on a senior secured basis by substantially all of the Company's domestic restricted subsidiaries and secured by (a) first priority liens over (1) substantially all of the assets of the Company, except for certain excluded assets, (2) 100% of the capital stock of each domestic restricted subsidiary of the Company, (3) 100% of the capital stock of each first tier foreign subsidiary of the Company or a foreign subsidiary holding company and (4) all intercompany debt owed to the Company, in each case, subject to certain exceptions. The Company LC Agreement contains customary covenants that, among other things, limit the Company's and its restricted subsidiaries' ability to incur additional indebtedness, pay dividends on or make distributions in respect of capital stock or make certain other restricted payments or investments, enter into agreements that restrict distributions from restricted subsidiaries, sell or otherwise dispose of assets, enter into transactions with affiliates, create or incur liens, and merge, consolidate or sell all or substantially all of its assets, and place restrictions on the ability of subsidiaries to pay dividends or make other payments to the Company.

Completion of the 2021 debt restructuring transactions allowed the Company to finalize the surety transaction support agreement described at Note 20. "Financial Instruments, Guarantees With Off-Balance-Sheet Risk and Other Guarantees."

#### **2021 Debt Retirements**

In March 2021, as a requirement of the senior notes exchange, the Company purchased \$22.4 million of the 2024 Peabody Notes at 80% of their accreted value, plus accrued and unpaid interest.

In June 2021, the Company announced an at-the-market equity offering program pursuant to which, as amended, the Company could offer and sell up to 32.5 million shares of its common stock. The shares are offered and sold pursuant to the Company's Registration Statement on Form S-3, which was declared effective by the Securities and Exchange Commission on April 23, 2021, as supplemented by prospectus supplements dated June 4, 2021, September 17, 2021, and December 17, 2021, relating to the offer and sale of the shares. During the year ended December 31, 2021, the Company sold approximately 24.8 million shares for net cash proceeds of \$269.8 million. Such proceeds were utilized, in part, for the retirement of debt as described below.

During the year ended December 31, 2021, the Company retired \$91.4 million of 2024 Peabody Notes, \$117.8 million of 2025 Notes and \$61.7 million of its Senior Secured Term Loan primarily through various open market purchases at an aggregate cost of \$232.4 million.

Also during the year ended December 31, 2021, the Company completed multiple bilateral transactions with note holders in which the Company issued an aggregate 10.0 million shares of its common stock in exchange for \$37.3 million aggregate principal amount of the 2022 Notes, \$47.2 million aggregate principal amount of the 2025 Notes and \$21.6 million aggregate principal amount of the 2024 Peabody Notes. The issuance of shares of common stock in exchange for the 2022 Notes, the 2025 Notes and the 2024 Peabody Notes was made in reliance on the exemption from registration provided in Section 3(a)(9) under the Securities Act of 1933, based in part on representations of holders of the 2022 Notes, the 2025 Notes and the 2024 Peabody Notes, and on the basis that the exchange was completed with existing holders of the Company's securities and no commission or other remuneration was paid or given for soliciting the exchange.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company's various debt retirements during 2021 resulted in the realization of net gains from early debt extinguishment of \$33.2 million.

**2022 Debt Retirements**

On March 31, 2022, the Company retired the remaining principal balance of 2022 Notes upon maturity for \$23.1 million.

During the three months ended March 31, 2022, \$62.5 million principal amount of the 2024 Peabody Notes was retired using proceeds from the offering of 2028 Convertible Notes, as further described below, and the remaining \$0.1 million principal amount was retired through a mandatory repurchase offer required under the terms of their indenture and the Company LC Agreement. Such mandatory repurchase offers were required when the Company made open market repurchases of its debt. In general, the repurchase offers equated to 25% of the principal amount of priority lien debt repurchased in the preceding quarter at a price equal to the weighted average repurchase price paid over that quarter. In addition to the \$0.1 million principal amount of 2024 Peabody Notes repurchased through such offers, the Company repurchased \$42.2 million of aggregate priority lien obligations under the Company LC Agreement during 2022 at approximately 95%. The repurchases of Company LC Agreement commitments were effected by the posting of \$40.1 million of collateral with the administrative agent and did not reduce the availability under the facility.

In March 2022, \$257.4 million principal amount of the 2025 Notes was retired using proceeds from the offering of 2028 Convertible Notes, as further described below. The remaining 2025 Notes were retired through an open market repurchase of \$11.4 million principal amount at 98.00% in September 2022 and, in accordance with the notes' indenture, a voluntary prepayment of \$66.1 million principal amount at 101.59% in December 2022.

The Senior Secured Term Loan was retired through various open market purchases of \$44.1 million principal amount throughout 2022 at an aggregate cost of \$42.1 million, scheduled quarterly principal amortization payments of \$3.0 million, and, in accordance with the terms of the Credit Agreement, a voluntary prepayment of \$276.2 million principal amount at par in December 2022.

The 2024 Co-Issuer Notes and the Co-Issuer Term Loans were subject to mandatory prepayment offers at the end of each six-month period, beginning with June 30, 2021, whereby the Excess Cash Flow (as defined in the 2024 Co-Issuer Notes indenture) generated by the Wilpinjong Mine during each such period could be applied to the principal of such notes and loans on a pro rata basis, provided that the liquidity attributable to the Wilpinjong Mine would not fall below \$60.0 million. Such prepayments could be accepted or declined at the option of the debt holders. Based upon the Wilpinjong Mine's results for the six-month periods ended December 31, 2021 and June 30, 2022 and the resultant mandatory prepayment offers, during 2022, the Company prepaid \$18.5 million principal amount of 2024 Co-Issuer Notes at an aggregate cost of \$19.2 million and \$17.2 million principal amount of Co-Issuer Term Loans at par.

Voluntary repurchases of Co-Issuer Term Loans were permissible through various methods, including a modified Dutch auction process in which the Company could solicit acceptable prices from holders. During the year ended December 31, 2022, the Company solicited bids from all holders of Co-Issuer Term Loans at various dates for the repurchase of the remaining outstanding principal amount, resulting in the valid tender and purchase of \$185.9 million principal amount at an aggregate cost of \$195.8 million.

The underlying terms of the 2024 Co-Issuer Notes and Co-Issuer Term Loans required parity between the holders of Co-Issuer Term Loans and holders of the 2024 Co-Issuer Notes with respect to repurchase offers such as those undertaken through the auction processes described above. As such, the Company solicited commensurate bids from all holders of 2024 Co-Issuer Notes at various dates during the year ended December 31, 2022 for the repurchase of the remaining outstanding principal amount, resulting in the valid tender and purchase of \$147.3 million principal amount at an aggregate cost of \$154.1 million.

Subsequent to the modified Dutch auction processes and related transactions, the Company voluntarily prepaid the remaining \$28.1 million principal amount of 2024 Co-Issuer Notes and \$2.9 million principal amount of Co-Issuer Term Loans at an aggregate cost of \$32.8 million, including certain make whole premium amounts.

The Company's various debt retirements during 2022 resulted in the realization of net losses from early debt extinguishment of \$34.9 million, excluding the loss recorded in connection with the issuance of 2028 Convertible Notes described below.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**3.250% Convertible Senior Notes due 2028**

On March 1, 2022, the Company issued \$320.0 million in aggregate principal amount of 3.250% Convertible Senior Notes due 2028 (the 2028 Convertible Notes) through a private offering. The 2028 Convertible Notes are senior unsecured obligations of the Company and are governed under an indenture.

The Company used the proceeds of the offering of the 2028 Convertible Notes to redeem the remaining \$62.5 million of its outstanding 2024 Peabody Notes and, together with available cash, approximately \$257.4 million of its outstanding 2025 Notes, and to pay related premiums, fees and expenses relating to the offering of the 2028 Convertible Notes and the redemptions. The Company capitalized \$11.2 million of debt issuance costs related to the offering and recognized a loss on early debt extinguishment of \$23.0 million during the three months ended March 31, 2022.

The 2028 Convertible Notes will mature on March 1, 2028, unless earlier converted, redeemed or repurchased in accordance with their terms. The 2028 Convertible Notes bear interest at a rate of 3.250% per year, payable semi-annually in arrears on March 1 and September 1 of each year.

The 2028 Convertible Notes are convertible at the option of the holders only in the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ended June 30, 2022, if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price for each of at least 20 trading days during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter; (2) during the five consecutive business days immediately after any five consecutive trading day period (such five consecutive trading day period, the Measurement Period) in which the trading price per \$1,000 principal amount of 2028 Convertible Notes for each trading day of the Measurement Period was less than 98% of the product of the last reported sale price per share of the Company's common stock on such trading day and the conversion rate on such trading day; (3) upon the occurrence of certain corporate events or distributions on the Company's common stock; (4) if the Company calls any 2028 Convertible Notes for redemption; and (5) at any time from, and including, September 1, 2027 until the close of business on the second scheduled trading day immediately before the maturity date.

Upon conversion, the Company may satisfy its conversion obligation by paying or delivering, as applicable, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election, in the manner and subject to the terms and conditions provided in the indenture. The initial conversion rate for the 2028 Convertible Notes will be 50.3816 shares of the Company's common stock per \$1,000 principal amount of 2028 Convertible Notes, which represents an initial conversion price of approximately \$19.85 per share of the Company's common stock. The initial conversion price represents a premium of approximately 32.5% to the \$14.98 per share closing price of the Company's common stock on February 24, 2022. The conversion rate is subject to adjustment under certain circumstances in accordance with the terms of the indenture. If certain corporate events described in the indenture occur prior to the maturity date, or the Company delivers a notice of redemption (as described below), the conversion rate will be increased for a holder who elects to convert its 2028 Convertible Notes in connection with such corporate event or notice of redemption, as the case may be, in certain circumstances.

The Company may not redeem the 2028 Convertible Notes prior to March 1, 2025. The Company may redeem for cash all or any portion of the 2028 Convertible Notes, at its option, on or after March 1, 2025 and on or before the 40th scheduled trading day immediately before the maturity date, at a cash redemption price equal to 100% of the principal amount of the 2028 Convertible Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price on (1) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice; and (2) the trading day immediately before the date the Company sends such notice. However, the Company may not redeem less than all of the outstanding 2028 Convertible Notes unless at least \$75 million aggregate principal amount of 2028 Convertible Notes are outstanding and not called for redemption as of the time the Company sends the related redemption notice. No sinking fund is provided for the 2028 Convertible Notes.

If the Company undergoes a fundamental change (as defined in the indenture), noteholders may require the Company to repurchase their 2028 Convertible Notes at a cash repurchase price equal to 100% of the principal amount of the 2028 Convertible Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date.

During the fourth quarter of 2022, the Company's reported common stock prices prompted the conversion feature of the 2028 Convertible Notes. As a result, the 2028 Convertible Notes are convertible at the option of the holders during the first quarter of 2023. The Company cannot currently satisfy the conversion obligation in cash because the terms of the Credit Agreement generally prohibit the Company from retiring unsecured debt with cash. It is the Company's current intent and policy to settle any conversions of 2028 Convertible Notes through shares of its common stock. As such, the 2028 Convertible Notes are not classified as a current obligation in the accompanying consolidated balance sheets. Through February 17, 2023, the Company has not received any conversion requests and does not anticipate receiving any conversion requests in the near term as the market value of the 2028 Convertible Notes exceeds their conversion value. As of December 31, 2022, the if-converted value of the 2028 Convertible Notes exceeded the principal amount by \$105.8 million.

#### Margin Financing Arrangement

In March 2022, the Company entered into a discrete credit agreement which provided for a \$150 million unsecured revolving credit facility. The revolving facility was scheduled to mature in April 2025 and bore interest at a rate of 10.0% per annum on drawn amounts. The revolving facility was intended to support the Company's near-term liquidity requirements, particularly with respect to the cash margin requirements associated with the Company's coal derivative contracts, which fluctuate depending upon underlying market coal prices. Concurrently with the Credit Agreement, the Company entered into a related agreement for an at-the-market equity offering program for up to \$225.0 million of the Company's common stock.

During the three months ended March 31, 2022, the Company borrowed and repaid \$225.0 million under the revolving facility using net proceeds of \$222.0 million from at-the-market issuances of 10.1 million shares of common stock and available cash. The Company made no additional borrowings and terminated the facility in August 2022.

#### Interest Charges

The following table presents the components of the Company's interest expense related to its indebtedness and financial assurance instruments such as surety bonds and letters of credit. Additionally, the table sets forth the amount of cash paid for interest and the amount of non-cash interest expense primarily related to the amortization of debt issuance costs.

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Indebtedness	\$ 87.0	\$ 132.3	\$ 104.4
Financial assurance instruments	53.3	51.1	35.4
Interest expense	<u>\$ 140.3</u>	<u>\$ 183.4</u>	<u>\$ 139.8</u>
Cash paid for interest	<u>\$ 118.5</u>	<u>\$ 174.9</u>	<u>\$ 126.9</u>
Non-cash interest expense	<u>\$ 17.7</u>	<u>\$ 21.3</u>	<u>\$ 16.2</u>

#### Covenant Compliance

The Company was compliant with all relevant covenants under its debt agreements at December 31, 2022, including the minimum aggregate liquidity requirement under the Company LC Agreement which requires the Company's restricted subsidiaries to maintain minimum aggregate liquidity of \$125.0 million at the end of each quarter through December 31, 2023.

#### Finance Lease Obligations

Refer to Note 11. "Leases" for additional information associated with the Company's finance leases, which pertain to the financing of mining equipment used in operations.

#### (11) Leases

The Company has operating and finance leases for mining and non-mining equipment, office space and certain other facilities under various non-cancellable agreements. Historically, the majority of the Company's leases have been accounted for as operating leases. Refer to Note 1. "Summary of Significant Accounting Policies" for the Company's policies regarding "Leases."



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company and certain of its subsidiaries have guaranteed other subsidiaries' performance under various lease obligations. Certain lease agreements are subject to the restrictive covenants of the Company's credit facilities and include cross-acceleration provisions, under which the lessor could require remedies including, but not limited to, immediate recovery of the present value of any remaining lease payments. The Company typically agrees to indemnify lessors for the value of the property or equipment leased, should the property be damaged or lost during the course of the Company's operations. The Company expects that losses with respect to leased property, if any, may be covered by insurance (subject to deductibles). Aside from indemnification of the lessor for the value of the property leased, the Company's maximum potential obligations under its leases are equal to the respective future minimum lease payments, and the Company assumes that no amounts could be recovered from third parties.

The components of lease expense for the periods presented below were as follows:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Operating lease cost:			
Operating leases	\$ 18.9	\$ 19.8	\$ 28.8
Short-term leases	30.6	15.5	39.1
Variable leases	7.6	2.7	4.6
Sublease income	(1.3)	(1.9)	(2.3)
Total operating lease cost	\$ 55.8	\$ 36.1	\$ 70.2
Finance lease cost:			
Amortization of right-of-use assets	\$ 6.3	\$ 5.9	\$ 3.5
Interest on lease liabilities	2.1	2.7	0.8
Total finance lease cost	\$ 8.4	\$ 8.6	\$ 4.3

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Supplemental balance sheet information related to leases at December 31, 2022 and 2021 was as follows:

	December 31,	
	2022	2021
	(Dollars in millions)	
Operating leases:		
Operating lease right-of-use assets	\$ 26.9	\$ 35.5
Accounts payable and accrued expenses	\$ 16.8	\$ 16.4
Operating lease liabilities, less current portion	11.0	27.2
Total operating lease liabilities	\$ 27.8	\$ 43.6
Finance leases:		
Property, plant, equipment and mine development	\$ 36.1	\$ 32.2
Accumulated depreciation	(12.6)	(7.4)
Property, plant, equipment and mine development, net	\$ 23.5	\$ 24.8
Current portion of long-term debt	\$ 13.2	\$ 15.3
Long-term debt, less current portion	10.4	14.0
Total finance lease liabilities	\$ 23.6	\$ 29.3
Weighted average remaining lease term (years)		
Operating leases	2.0	
Finance leases	6.7	
Weighted average discount rate		
Operating leases	5.7 %	
Finance leases	7.2 %	

Supplemental cash flow information related to leases for the periods presented below was as follows:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows for operating leases	\$ 20.5	\$ 24.3	\$ 35.1
Operating cash flows for finance leases	2.1	3.8	0.8
Financing cash flows for finance leases	9.3	8.2	8.9
Right-of-use assets obtained in exchange for lease obligations:			
Operating leases	13.5	7.1	16.5
Finance leases	6.4	24.4	1.6

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company's leases have remaining lease terms ranging from 1 year to 8.3 years, and may include options to extend the terms, as applicable. The contractual maturities of lease liabilities were as follows:

Period Ending December 31,	Operating Leases	Finance Leases
	(Dollars in millions)	
2023	\$ 18.6	\$ 14.4
2024	7.4	5.7
2025	1.6	4.0
2026	1.4	2.2
2027	0.3	1.0
2028 and thereafter	0.4	—
Total lease payments	29.7	27.3
Less imputed interest	(1.9)	(3.7)
Total lease liabilities	\$ 27.8	\$ 23.6

**(12) Asset Retirement Obligations**

Reconciliations of the Company's asset retirement obligations are as follows:

	December 31,	
	2022	2021
	(Dollars in millions)	
Balance at beginning of period	\$ 719.8	\$ 728.2
Liabilities settled or disposed	(51.7)	(72.4)
Accretion expense	56.2	54.9
Revisions to estimates	25.7	9.1
Balance at end of period	\$ 750.0	\$ 719.8
Less: Current portion (included in "Accounts payable and accrued expenses")	84.2	65.0
Noncurrent obligation (included in "Asset retirement obligations")	\$ 665.8	\$ 654.8
Balance at end of period — active locations	\$ 557.9	\$ 511.8
Balance at end of period — closed or inactive locations	\$ 192.1	\$ 208.0

As of December 31, 2022 and 2021, the Company had \$1,250.1 million and \$1,294.7 million, respectively, in surety bonds outstanding to secure reclamation obligations. Additionally, the Company had \$437.8 million and \$323.0 million, respectively, of letters of credit in support of reclamation obligations as of December 31, 2022 and 2021. See Note 20. "Financial Instruments, Guarantees With Off-Balance-Sheet Risk and Other Guarantees" for a discussion of cash collateral supporting these reclamation bonding requirements.

**(13) Postretirement Health Care and Life Insurance Benefits**

The Company currently provides health care and life insurance benefits to qualifying salaried and hourly retirees of its current and certain former subsidiaries and their dependents from benefit plans established by the Company. Plan coverage for health benefits is provided to future hourly and salaried retirees in accordance with the applicable plan document. Life insurance benefits are provided to future hourly retirees in accordance with the applicable labor agreement.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Net periodic postretirement benefit (credit) cost included the following components:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Service cost for benefits earned	\$ 0.8	\$ 1.0	\$ 3.8
Interest cost on accumulated postretirement benefit obligation	7.0	10.5	20.2
Expected return on plan assets	(0.8)	(1.0)	(1.5)
Amortization of prior service credit	(53.8)	(46.4)	(17.3)
Net actuarial (gain) loss	(51.2)	(54.5)	16.5
Net periodic postretirement benefit (credit) cost	<u>\$ (98.0)</u>	<u>\$ (90.4)</u>	<u>\$ 21.7</u>

The actuarial gain for all benefit plans in 2022 was primarily due to the increase in the discount rate used to measure the benefit obligation and favorable impact of claims experience for the year offset by increase in medical trend rate due to inflation as well as expected impact of recently passed Inflation Reduction Act. The actuarial gain for all benefit plans in 2021 was primarily due to the increase in the discount rate used to measure the benefit obligation, favorable impact of claims experience for the year, and updating the mortality base table and improvement scale to those published by the Society of Actuaries considering the plan's experience for participants receiving medical benefits under the United Mine Workers of America (UMWA) Coal Act design. The actuarial loss for all benefit plans in 2020 was primarily due to the decrease in the discount rate used to measure the benefit obligation offset by the favorable impact of claims experience for the year and updating the mortality base tables and improvement scales to those published by the Society of Actuaries for all participants except those receiving medical benefits under the UMWA Coal Act design.

The following includes pretax amounts recorded in "Accumulated other comprehensive income":

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Prior service credit arising during year	\$ —	\$ (139.5)	\$ (185.4)
Amortization:			
Prior service credit	53.8	46.4	17.3
Total recorded in "Accumulated other comprehensive income"	<u>\$ 53.8</u>	<u>\$ (93.1)</u>	<u>\$ (168.1)</u>

The Company amortizes prior service credit over an amortization period of the average remaining service period to full eligibility for participating employees at the time of the plan change or the expected lifetime of participants in the plan. Prior service credits established during 2021 and 2020 are described below. The estimated prior service credit that will be amortized from accumulated other comprehensive income into net periodic postretirement benefit cost during the year ending December 31, 2023 is \$53.8 million.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table sets forth the plans' funded status reconciled with the amounts shown in the consolidated balance sheets:

	December 31,	
	2022	2021
	(Dollars in millions)	
<b>Change in benefit obligation:</b>		
Accumulated postretirement benefit obligation at beginning of period	\$ 258.7	\$ 476.6
Service cost	0.8	1.0
Interest cost	7.0	10.5
Participant contributions	—	0.1
Plan amendments	—	(139.5)
Benefits paid and administrative fees (net of Medicare Part D reimbursements)	(21.2)	(34.5)
Actuarial gain	(55.4)	(55.5)
Accumulated postretirement benefit obligation at end of period	189.9	258.7
<b>Change in plan assets:</b>		
Fair value of plan assets at beginning of period	26.1	33.7
Actual return on plan assets	(3.4)	—
Employer contributions	15.9	26.8
Participant contributions	—	0.1
Benefits paid and administrative fees (net of Medicare Part D reimbursements)	(21.2)	(34.5)
Fair value of plan assets at end of period	17.4	26.1
<b>Funded status at end of period</b>	<b>(172.5)</b>	<b>(232.6)</b>
Less: Current portion (included in "Accounts payable and accrued expenses")	16.0	20.5
<b>Noncurrent obligation (included in "Accrued postretirement benefit costs")</b>	<b>\$ (156.5)</b>	<b>\$ (212.1)</b>

In October 2021, the Company announced changes to its postretirement health care benefit plan for certain represented retirees. Effective January 1, 2022, the Company no longer provides medical coverage to certain existing retirees but continues to offer a life insurance benefit to eligible retirees. The impact of the changes on future benefits reduced the Company's accumulated postretirement benefit obligation by \$139.5 million. The reduction was attributable to the elimination of health care benefits for certain represented retirees. The reduction in liability was recorded with an offsetting balance in "Accumulated other comprehensive income" and is being amortized to earnings based upon the estimated remaining life expectancies of certain plan participants (13.0 years and 14.0 years were the remaining amortization periods at January 1, 2023 and 2022, respectively).

In September 2020, the Company announced changes to its postretirement health care benefit plans for non-represented employees and retirees. Effective January 1, 2021, the Company no longer subsidizes medical costs for Medicare eligible individuals or provides life insurance to salaried and hourly non-union retirees. The Company provides non-Medicare eligible salaried and hourly non-union retirees and eligible dependents a health reimbursement arrangement. There were no changes to benefits for represented participants. The impact of the changes on future benefits reduced the Company's accumulated postretirement benefit obligation by \$185.4 million. The reduction was attributable to the elimination of health care benefits upon covered individuals' attainment of Medicare eligibility and the elimination of life insurance benefits for certain non-represented participants. The reduction in liability was recorded with an offsetting balance in "Accumulated other comprehensive income." The \$174.5 million reduction for elimination of health care benefits upon attainment of Medicare eligibility for salaried and non-union hourly retirees and eligible dependents is being amortized to earnings over an average remaining service period to full eligibility for participating employees (2.9 years and 3.9 years were the remaining amortization periods at January 1, 2023 and 2022, respectively). The remaining \$10.9 million for the elimination of life insurance benefits and elimination of health care benefits upon attainment of Medicare eligibility for select non-union retirees is being amortized to earnings over the average remaining life expectancy of the affected plan (8.5 years and 9.5 years were the remaining amortization periods at January 1, 2023 and 2022, respectively).

A prior service credit established in December 2018 is being amortized to earnings over an average remaining service period to full eligibility for participating employees (1.9 years and 2.9 years were the remaining amortization periods at January 1, 2023 and 2022, respectively).

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The weighted-average assumptions used to determine the benefit obligations for the plans as of the end of each year were as follows:

	December 31,	
	2022	2021
Discount rate	5.70 %	2.84 %
Measurement date	December 31, 2022	December 31, 2021

The weighted-average assumptions used to determine net periodic postretirement benefit (credit) cost for the plans during each period were as follows:

	Year Ended December 31,		
	2022	2021	2020
Discount rate	2.84 %	2.55 %	3.40 %
Expected long-term return on plan assets (pretax)	5.75 %	5.75 %	7.00 %
Measurement date	December 31, 2021	December 31, 2020	December 31, 2019

The expected rate of return on plan assets is determined by taking into consideration expected long-term returns associated with each major asset class based on long-term historical ranges, inflation assumptions and the expected net value from active management of the assets based on actual results. The asset allocation of plan assets and long-term capital market expectations remain unchanged from December 31, 2021, therefore the Company's expected pretax rate of return on plan assets will remain at 5.75% for 2023.

The accumulated postretirement benefit obligation exceeded plan assets for all plans as of December 31, 2022 and 2021. The accumulated postretirement benefit obligation for all plans was \$189.9 million and \$258.7 million as of December 31, 2022 and 2021, respectively.

The following presents information about the assumed health care cost trend rate:

	Year Ended December 31,	
	2022	2021
<b>Pre-Medicare:</b>		
Health care cost trend rate assumed for next year	7.00 %	6.00 %
Rate to which the cost trend is assumed to decline (the ultimate trend rate)	4.75 %	4.75 %
Year that the rate reaches the ultimate trend rate	2032	2027
<b>Post-Medicare:</b>		
Health care cost trend rate assumed for next year	6.75 %	5.75 %
Rate to which the cost trend is assumed to decline (the ultimate trend rate)	4.75 %	4.75 %
Year that the rate reaches the ultimate trend rate	2032	2027

#### **Plan Assets**

The Company maintains a Voluntary Employees' Beneficiary Association (VEBA) trust to pre-fund a portion of benefits for non-represented retirees. Assets of the Peabody Investments Corp. Non-Represented Retiree VEBA Trust (the Non-Represented Trust) are invested in accordance with the investment policy established by the Peabody VEBA Retirement Committee after consultation with outside investment advisors and actuaries. As of December 31, 2022 and 2021, the asset allocation strategy for the Non-Represented Trust is 30% in equity and 70% in fixed income assets. The asset strategy may vary over time based on changes in the status of the Non-Represented Plan, the Company's risk posture and other factors.

A financial instrument's level within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Following is a description of the valuation techniques and inputs used for investments measured at fair value, including the general classification of such investments pursuant to the valuation hierarchy.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*U.S. equity securities.* The Non-Represented Trust invests in U.S. equity securities for growth and diversification. Investment vehicles include various domestic large-cap publicly traded common stocks. All common stocks are traded on a national securities exchange and are valued at quoted market prices in active markets and accordingly classified within Level 1 of the valuation hierarchy.

*International equity securities.* The Non-Represented Trust invests in international equity securities for growth and diversification. Investment vehicles include mutual funds. The mutual funds are traded on a national securities exchange in an active market, are valued using daily publicly quoted net asset value (NAV) prices and accordingly classified within Level 1 of the valuation hierarchy.

*Corporate bonds.* The Non-Represented Trust invests in corporate bonds for diversification, volatility reduction of equity securities and to provide a hedge to interest rate movements affecting liabilities. Investment types are predominantly investment-grade corporate bonds. Fair value for these securities is provided by a third-party pricing service that utilizes various inputs such as benchmark yields, reported trades, broker/dealer quotes, issuer spreads and benchmark securities as well as other relevant economic measures. Corporate bonds are classified within the Level 2 valuation hierarchy since fair value inputs are derived prices in active markets and the bonds are not traded on a national securities exchange.

*U.S. government securities.* The Non-Represented Trust invests in U.S. government securities for diversification, volatility reduction of equity securities and to provide a hedge to interest rate movements affecting liabilities. Investment types are predominantly U.S. government bonds, notes, agency securities and municipal bonds. Fair value for these securities is provided by a third-party pricing service that utilizes various inputs such as benchmark yields, reported trades, broker/dealer quotes, issuer spreads and benchmark securities as well as other relevant economic measures. If fair value is based on quoted prices in active markets and traded on a national securities exchange, U.S. government securities are classified within the Level 1 valuation hierarchy; otherwise, U.S. government securities are classified within the Level 2 valuation hierarchy.

*Cash funds.* The Non-Represented Trust invests in cash funds to manage liquidity resulting from payment of participant benefits and certain administrative fees. The investment consists of non-interest bearing cash funds and U.S. government money market fund which are classified within the Level 1 valuation hierarchy.

The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Company believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date. The inputs or methodologies used for valuing investments are not necessarily an indication of the risk associated with investing in those investments.

The following tables present the fair value of assets in the Non-Represented Trust by asset category and by fair value hierarchy:

	December 31, 2022			
	Level 1	Level 2	Level 3	Total
	(Dollars in millions)			
U.S. equity securities	\$ 3.7	\$ —	\$ —	\$ 3.7
International equity securities	1.1	—	—	1.1
Corporate bonds	—	7.1	—	7.1
U.S. government securities	2.0	3.0	—	5.0
Cash funds	0.5	—	—	0.5
Total assets at fair value	<u>\$ 7.3</u>	<u>\$ 10.1</u>	<u>\$ —</u>	<u>\$ 17.4</u>

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	December 31, 2021			
	Level 1	Level 2	Level 3	Total
	(Dollars in millions)			
U.S. equity securities	\$ 5.7	\$ —	\$ —	\$ 5.7
International equity securities	2.0	—	—	2.0
Corporate bonds	—	10.1	—	10.1
U.S. government securities	3.1	3.8	—	6.9
Cash funds	1.4	—	—	1.4
Total assets at fair value	<u>\$ 12.2</u>	<u>\$ 13.9</u>	<u>\$ —</u>	<u>\$ 26.1</u>

### Contributions

Annual contributions to the Non-Represented Trust are discretionary. During the year ended December 31, 2022, the Company made no contributions to the trust.

### Estimated Future Benefit Payments

The following benefit payments (net of retiree contributions and Medicare Part D reimbursements), which reflect expected future service, as appropriate, are expected to be paid by the Company or satisfied from Non-Represented Trust assets:

	Postretirement Benefits
	(Dollars in millions)
2023	\$ 23.1
2024	22.3
2025	21.1
2026	20.1
2027	18.9
Years 2028-2032	75.7

### (14) Pension and Savings Plans

One of the Company's subsidiaries, Peabody Investments Corp. (PIC), sponsors a defined benefit pension plan covering certain U.S. salaried employees and eligible hourly employees at certain PIC subsidiaries (the Peabody Plan). A subsidiary of PIC also has a defined benefit pension plan covering eligible employees who are represented by the UMWA under the Western Surface Agreement (the Western Plan and together with the Peabody Plan, the Pension Plans).

Effective May 31, 2008, the Peabody Plan was frozen in its entirety for both participation and benefit accrual purposes. In 2020, the Company announced a program to offer a voluntary lump-sum pension payout to eligible active salaried employees and former salaried employees in the Peabody Plan which would settle the Company's obligation to them. The program provided participants with a limited time opportunity to elect to receive a lump-sum settlement of their pension benefit or begin to receive their benefit in the form of a monthly annuity in December 2020. As part of this voluntary lump-sum program, the Company settled \$51.6 million of its pension obligations for active salaried employees and former salaried employees in the Peabody Plan with an equal amount paid from plan assets. As a result, the Company recorded a settlement gain of \$2.7 million during the year ended December 31, 2020, which was reflected in "Net periodic benefit credit, excluding service cost" on the consolidated statement of operations.



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In March 2022, PIC entered into a commitment agreement relating to the Peabody Plan with The Prudential Insurance Company of America (Prudential) and Fiduciary Counselors Inc., as independent fiduciary to the Peabody Plan. Under the commitment agreement, the Peabody Plan purchased a buy-in group annuity contract (GAC) from Prudential for approximately \$500 million and Prudential will reimburse the Peabody Plan for benefit payments to be made to the Peabody Plan's participants. The benefit obligation was not transferred to Prudential and the Peabody Plan continues to administer and pay the retirement benefits of Peabody Plan participants and is reimbursed by Prudential for the payment of all benefits covered by the GAC. The purchase of the GAC was funded directly by the Peabody Plan's assets. There was no impact on the monthly retirement benefits paid to Peabody Plan participants and no material impact on contributions for the Peabody Plan in 2022 as a result of this transaction. As of December 31, 2022 the benefit obligation attributed to the Peabody Plan's participants covered by the GAC is equal to the GAC value.

In May 2022, the Board of Directors of PIC approved the termination of the Peabody Plan effective July 31, 2022. In June 2022, the Peabody Plan's participants were notified of the Peabody Plan termination and the Peabody Plan filed an application with the Internal Revenue Service to request a determination as to the qualified status under §401(a) of the Internal Revenue Code of 1986 with respect to the amendment and termination of the Peabody Plan. As part of the plan termination process, benefits will be distributed to participants or transferred to an insurance company. Anticipated asset distribution, via voluntary lump sum payouts for active and deferred participants, is expected in the first half of 2023, following which participants not electing a lump sum and all participants in payment status will be transferred to a highly qualified insurance company.

Net periodic pension cost (credit) included the following components:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Service cost for benefits earned	\$ 0.1	\$ 0.2	\$ 0.3
Interest cost on projected benefit obligation	21.4	20.4	28.0
Expected return on plan assets	(23.8)	(22.9)	(29.7)
Settlement	—	—	(2.7)
Net actuarial loss (gain)	20.6	12.7	(25.6)
Net periodic pension cost (credit)	\$ 18.3	\$ 10.4	\$ (29.7)

The actuarial loss for all pension plans in 2022 was primarily due to actual returns on plan assets lower than expected returns for the year and the premium paid to Prudential to purchase the GAC, offset by the increase in the discount rate used to measure the benefit obligation. The actuarial loss for all pension plans in 2021 was primarily due to actual returns on plan assets lower than expected returns for the year, offset by the increase in the discount rate used to measure the benefit obligation. The actuarial gain for all pension plans in 2020 was primarily due to actual returns on plan assets exceeding the expected returns for the year and the favorable impact of updating the mortality base tables and improvement scales to those published by the Society of Actuaries, offset by the decline in the discount rate used to measure the benefit obligation.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following summarizes the change in benefit obligation, change in plan assets and funded status of the Pension Plans:

	December 31,	
	2022	2021
	(Dollars in millions)	
Change in benefit obligation:		
Projected benefit obligation at beginning of period	\$ 751.7	\$ 816.4
Service cost	0.1	0.2
Interest cost	21.4	20.4
Benefits paid	(55.1)	(55.9)
Actuarial gain	(137.2)	(29.4)
Projected benefit obligation at end of period	580.9	751.7
Change in plan assets:		
Fair value of plan assets at beginning of period	772.4	847.5
Actual return on plan assets	(134.0)	(19.2)
Benefits paid	(55.1)	(55.9)
Fair value of plan assets at end of period	583.3	772.4
Funded status at end of period	\$ 2.4	\$ 20.7
Amounts recognized in the consolidated balance sheets:		
Noncurrent asset (included in "Investments and other assets")	\$ 9.9	\$ 28.5
Noncurrent obligation (included in "Other noncurrent liabilities")	(7.5)	(7.8)
Net amount recognized	\$ 2.4	\$ 20.7

The weighted-average assumptions used to determine the benefit obligations as of the end of each year were as follows:

	December 31,	
	2022	2021
Discount rate	5.44 %	2.95 %
Measurement date	December 31, 2022	December 31, 2021

The weighted-average assumptions used to determine net periodic pension cost (credit) during each period were as follows:

	Year Ended December 31,		
	2022	2021	2020
Discount rate	2.95 %	2.60 %	3.40 %
Expected long-term return on plan assets	3.20 %	2.80 %	3.60 %
Measurement date	December 31, 2021	December 31, 2020	December 31, 2019

The expected rate of return on plan assets is determined by taking into consideration expected long-term returns associated with each major asset class based on long-term historical ranges, inflation assumptions and the expected net value from active management of the assets based on actual results. Effective January 1, 2023, the Company raised its expected rate of return on plan assets from 3.20% to 4.90% and 4.65% for the Peabody Plan and Western Plan; respectively, reflecting the impact of the Plans' asset allocations and capital market expectations.

As of December 31, 2022 and 2021, the accumulated benefit obligation for all plans was \$580.9 million and \$751.7 million, respectively, which was equal to the projected benefit obligation for those periods. As of December 31, 2022 and 2021, the plan assets for the Peabody Plan of \$464.7 million and \$611.6 million, respectively, exceeded the projected benefit obligation and accumulated benefit obligation for those periods of \$454.8 million and \$583.1 million, respectively. The projected benefit obligation and accumulated benefit obligation for the Western Plan as of December 31, 2022 and 2021, was \$126.1 million and \$168.6 million, respectively, which exceeded the plan assets of \$118.6 million and \$160.8 million, respectively, for those periods.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Assets of the Pension Plans**

Assets of the PIC Master Trust (the Master Trust) are invested in accordance with investment guidelines established by the Peabody Plan Retirement Committee and the Peabody Western Plan Retirement Committee (collectively, the Retirement Committees) after consultation with outside investment advisors and actuaries.

The asset allocation targets have been set with the expectation that the assets of the Master Trust will be managed with an appropriate level of risk to fund each Pension Plan's expected liabilities. To determine the appropriate target asset allocations, the Retirement Committees consider the demographics of each Pension Plan's participants, the funded status of each Pension Plan, the business and financial profile of the Company and other associated risk preferences. These allocation targets are reviewed by the Retirement Committees on a regular basis and revised as necessary. As a result of discretionary contributions made in recent years, the Pension Plans have become nearly fully funded and therefore, as of December 31, 2022 and 2021, the Master Trust investment portfolio reflected the Company's target asset mix of 100% fixed income investments. Master Trust assets also include investments in various real estate holdings through limited partnerships representing approximately less than 1% of total Master Trust assets as of both December 31, 2022 and 2021. The Retirement Committees' intention is to liquidate these real estate holdings when allowable per the terms of the limited partnership agreements. Generally, dissolution and liquidation of the limited partnerships is required before the Master Trust's real estate holdings can be liquidated.

Assets of the Master Trust are under management by third-party investment managers, which are selected and monitored by the Retirement Committees. Specific investment guidelines have been established by the Retirement Committees for each major asset class including performance benchmarks, allowable and prohibited investment types and concentration limits. In general, investment guidelines do not permit leveraging the assets held in the Master Trust. However, investment managers may employ various strategies and derivative instruments in establishing overall portfolio characteristics consistent with the guidelines and investment objectives established by the Retirement Committees for their portfolios. Fixed income investment guidelines only allow for exchange-traded derivatives if the investment manager deems the derivative vehicle to be more attractive than a similar direct investment in an underlying cash market or to manage the duration of the fixed income portfolio.

A financial instrument's level within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Following is a description of the valuation techniques and inputs used for investments measured at fair value, including the general classification of such investments pursuant to the valuation hierarchy.

**Corporate bonds.** The Master Trust invests in corporate bonds for diversification and to provide a hedge to interest rate movements affecting liabilities. Investment types are predominantly investment-grade corporate bonds. Fair value for these securities is provided by a third-party pricing service that utilizes various inputs such as benchmark yields, reported trades, broker/dealer quotes, issuer spreads and benchmark securities as well as other relevant economic measures. Corporate bonds are classified within the Level 2 valuation hierarchy since fair value inputs are derived prices in active markets and the bonds are not traded on a national securities exchange.

**U.S. government securities.** The Master Trust invests in U.S. government securities for diversification and to provide a hedge to interest rate movements affecting liabilities. Investment types are predominantly U.S. government bonds, agency securities and municipal bonds. Fair value for these securities is provided by a third-party pricing service that utilizes various inputs such as benchmark yields, reported trades, broker/dealer quotes, issuer spreads and benchmark securities as well as other relevant economic measures. If fair value is based on quoted prices in active markets and traded on a national securities exchange, U.S. government securities are classified within the Level 1 valuation hierarchy; otherwise, U.S. government securities are classified within the Level 2 valuation hierarchy.

**International government securities.** The Master Trust invests in international government securities for diversification and to provide a hedge to interest rate movements affecting liabilities. Investment types are predominantly non-U.S. government bonds. Fair value for these securities is provided by a third-party pricing service that utilizes various inputs such as benchmark yields, reported trades, broker/dealer quotes, issuer spreads and benchmark securities as well as other relevant economic measures. International government securities are classified within the Level 2 valuation hierarchy since fair value inputs are derived prices in active markets and the bonds are not traded on a national securities exchange.

**Asset-backed securities.** The Master Trust invests in asset-backed securities for diversification and to provide a hedge to interest rate movements affecting liabilities. Investment types are predominately mortgage-backed securities. Asset-backed securities are classified within the Level 2 valuation hierarchy since fair value inputs are derived prices in active markets and the investments are not traded on a national securities exchange.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Cash funds.** The Master Trust invests in cash funds to manage liquidity resulting from payment of participant benefits and certain administrative fees. Investment vehicles primarily include a non-interest bearing cash fund with an earnings credit allowance feature, various exchange-traded derivative instruments consisting of futures and interest rate swap agreements used to manage the duration of certain liability-hedging investments. The non-interest bearing cash fund is classified within the Level 1 valuation hierarchy. Exchange traded derivatives, such as options and futures, for which market quotations are readily available, are valued at the last reported sale price or official closing price on the primary market or exchange on which they are traded and are classified within the Level 1 valuation hierarchy.

**Group annuity contract.** The Master Trust invests in a buy-in GAC to provide a hedge to interest rate movements affecting liabilities. The GAC consists of a nonparticipating single premium group annuity contract. The initial value of the GAC was equal to the premium paid to secure the contract and is adjusted each reporting period to reflect the estimated fair value of the premium that would be paid for such a contract at that time. Since there are no observable inputs associated with the valuation, the GAC is classified within the Level 3 valuation hierarchy.

**Real estate interests.** The Master Trust invests in real estate interests for diversification. Investments in real estate represent interests in several limited partnerships, which invest in various real estate properties. Interests in real estate are valued using various methodologies, including independent third party appraisals; fair value measurements are not developed by the Company. For some investments, little market activity may exist and determination of fair value is then based on the best information available in the circumstances. This involves a significant degree of judgment by taking into consideration a combination of internal and external factors. Accordingly, interests in real estate are classified within the Level 3 valuation hierarchy. Some limited partnerships issue dividends to their investors in the form of cash distributions that the Pension Plans invest elsewhere within the Master Trust.

**Private mutual funds.** The Master Trust invests in mutual funds for growth and diversification. Investment vehicles include an institutional fund that holds a diversified portfolio of long-duration corporate fixed income investments (Corporate Bond Fund). The Corporate Bond Fund is not traded on a national securities exchange and is valued at NAV, the practical expedient to estimate fair value.

The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Company believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date. The inputs or methodologies used for valuing investments are not necessarily an indication of the risk associated with investing in those investments.

The following tables present the fair value of assets in the Master Trust by asset category and by fair value hierarchy:

	December 31, 2022			
	Level 1	Level 2	Level 3	Total
	(Dollars in millions)			
Corporate bonds	\$ —	\$ 67.2	\$ —	\$ 67.2
U.S. government securities	23.3	2.8	—	26.1
International government securities	—	2.0	—	2.0
Asset-backed securities	—	0.7	—	0.7
Cash funds	9.8	—	—	9.8
Group annuity contract	—	—	430.1	430.1
Real estate interests	—	—	0.3	0.3
Total assets at fair value	<u>\$ 33.1</u>	<u>\$ 72.7</u>	<u>\$ 430.4</u>	<u>536.2</u>
Assets measured at net asset value practical expedient <sup>(1)</sup>				
Private mutual funds				47.1
Total plan assets				<u>\$ 583.3</u>

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	December 31, 2021			
	Level 1	Level 2	Level 3	Total
	(Dollars in millions)			
Corporate bonds	\$ —	\$ 537.5	\$ —	\$ 537.5
U.S. government securities	125.2	22.5	—	147.7
International government securities	—	15.5	—	15.5
Asset-backed securities	—	3.3	—	3.3
Cash funds	30.7	—	—	30.7
Real estate interests	—	—	0.3	0.3
Total assets at fair value	\$ 155.9	\$ 578.8	\$ 0.3	735.0
Assets measured at net asset value practical expedient <sup>(1)</sup>				
Private mutual funds				37.4
Total plan assets				\$ 772.4

<sup>(1)</sup> In accordance with Accounting Standards Update 2015-07, investments that are measured at fair value using the net asset value per share practical expedient have not been classified in the fair value hierarchy. The fair value amounts presented in the tables are intended to permit reconciliation of the fair value hierarchy to the total value of assets of the plans.

The table below sets forth a summary of changes in the fair value of the Master Trust's Level 3 investments:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Balance, beginning of period	\$ 0.3	\$ 1.2	\$ 4.1
Realized gains	0.1	0.9	1.6
Unrealized losses relating to investments still held at the reporting date	(68.8)	(0.6)	(2.1)
Purchases, sales and settlements, net	498.8	(1.2)	(2.4)
Balance, end of period	\$ 430.4	\$ 0.3	\$ 1.2

### Contributions

Annual contributions to the qualified plans are made in accordance with minimum funding standards and the Company's agreement with the Pension Benefit Guaranty Corporation. Funding decisions also consider certain funded status thresholds defined by the Pension Protection Act of 2006 (generally 80%). As of December 31, 2022, the Company's qualified plans are expected to be at or above the Pension Protection Act thresholds. The Company was not required to make any payments to its qualified pension plans in 2022 based on minimum funding requirements and did not make any discretionary contributions in 2022.

### Estimated Future Benefit Payments

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid in connection with the Company's benefit obligation:

	Pension Benefits (Dollars in millions)
2023	\$ 76.1
2024*	11.1
2025*	11.0
2026*	10.8
2027*	10.6
Years 2028-2032*	49.6

\*Estimated future benefit payments reflect Western Plan only as a result of Peabody Plan termination.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Defined Contribution Plans**

The Company sponsors employee retirement accounts under three 401(k) plans for eligible U.S. employees. The Company matches voluntary contributions to each plan up to specified levels. In May 2020 the Company amended one of its plans to eliminate the formula for calculating matching contributions and provide the Company sole discretion in making any matching contributions. During the period May 2020 to December 2020 the Company suspended matching contributions due to challenging business conditions of COVID-19. In January 2021 the Company reinstated matching contributions. The expense for these plans was \$20.1 million, \$9.7 million and \$9.6 million for the years ended December 31, 2022, 2021 and 2020, respectively. Discretionary contribution features in the plans allow for additional contributions from the Company. The Company granted discretionary contributions of \$9.2 million during the year ended December 31, 2022. There were no discretionary contributions granted during the years ended December 31, 2021 and 2020. Discretionary contributions paid during the year ended December 31, 2022 were \$4.0 million. There were no discretionary contributions paid during the years ended December 31, 2021 and 2020.

**Superannuation**

The Company makes superannuation contributions for eligible Australia employees in accordance with the employer contribution rate set by the Government of Australia. The expense related to these contributions was \$18.8 million, \$17.4 million and \$20.5 million for the years ended December 31, 2022, 2021 and 2020, respectively. A performance contribution feature allows for additional discretionary contributions from the Company. The Company granted discretionary performance contributions of \$1.6 million during the year ended December 31, 2022. There were no discretionary performance contribution granted for the years ended December 31, 2021 and 2020. There were no discretionary performance contributions paid during the years ended December 31, 2022, 2021 and 2020.

**(15) Stockholders' Equity**

**Common Stock**

In accordance with the Company's Fourth Amended and Restated Certificate of Incorporation, the Company has 450.0 million authorized shares of Common Stock, par value \$0.01 per share. Holders of Common Stock are entitled to one vote per share on all matters to be voted upon by the stockholders. The holders of Common Stock do not have cumulative voting rights in the election of directors. Holders of Common Stock are entitled to receive ratably dividends if, as and when dividends are declared from time to time by the Board of Directors (the Board) out of funds legally available for that purpose, after payment of dividends required to be paid on any outstanding preferred stock or series common stock. Upon dissolution, liquidation or winding up of the Company, the holders of Common Stock are entitled to receive ratably the assets available for distribution to the stockholders after payment of liabilities and subject to the right of holders of any outstanding preferred stock or series common stock. The Common Stock has no preemptive or conversion rights and is not subject to further calls or assessment by the Company. There are no redemption or sinking fund provisions applicable to the Common Stock.

The following table summarizes Common Stock activity during the periods presented below:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
Shares outstanding at the beginning of the period	133.3	97.8	96.9
Shares issued for vested restricted stock units	0.7	1.0	1.3
Shares issued in exchange for debt retirement	—	10.0	—
Shares issued under at-the-market equity offering program	10.1	24.8	—
Shares repurchased	(0.2)	(0.3)	(0.4)
Shares outstanding at the end of the period	143.9	133.3	97.8

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Preferred Stock**

The Board is authorized to issue up to 100.0 million shares of preferred stock, par value \$0.01 per share. The Board can determine the terms and rights of each series, including whether dividends (if any) will be cumulative or non-cumulative and the dividend rate of the series, redemption or sinking fund provisions, conversion terms, prices and rates and amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and whether the shares of the series will be convertible into shares of any other class or series, or any other security, of the Company or any other corporation. The Board may also determine restrictions on the issuance of shares of the same series or of any other class or series, and the voting rights (if any) of the holders of the series. There were no outstanding shares of preferred stock as of December 31, 2022.

**Series Common Stock**

The Board is authorized to issue up to 50.0 million shares of series common stock, par value \$0.01 per share. The Board can determine the terms and rights of each series, whether dividends (if any) will be cumulative or non-cumulative and the dividend rate of the series, redemption or sinking fund provisions, conversion terms, prices and rates and amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and whether the shares of the series will be convertible into shares of any other class or series, or any other security, of the Company or any other corporation. The Board may also determine restrictions on the issuance of shares of the same series or of any other class or series, and the voting rights (if any) of the holders of the series. There were no outstanding shares of series common stock as of December 31, 2022.

**Treasury Stock**

*Share repurchases.* On August 1, 2017, the Board authorized a \$500.0 million share repurchase program of the outstanding shares of the Company's common stock and/or preferred stock (Repurchase Program), which was eventually expanded to \$1.5 billion during 2018. The Repurchase Program does not have an expiration date and may be discontinued at any time. Through December 31, 2022, the Company repurchased 41.5 million shares of its Common Stock for \$1,340.3 million, which included commissions paid of \$0.8 million. As of December 31, 2022, there was \$160.5 million available for repurchase under the Repurchase Program.

Share repurchases were suspended by the Company during 2019, and as further described in Note 20. "Financial Instruments, Guarantees With Off-Balance-Sheet Risk and Other Guarantees," during the fourth quarter of 2020, the Company entered into a transaction support agreement with its surety bond providers which prohibits the repurchase of shares through the earlier of December 31, 2025, or the maturity of the Credit Agreement (currently March 31, 2025), unless otherwise agreed to by the parties to the agreements. Additionally, restrictive covenants in the Company's credit facility also limit the Company's ability to repurchase shares. Prior to the suspension, repurchases were made at the Company's discretion. The specific timing, price and size of purchases depended upon the share price, general market and economic conditions and other considerations, including compliance with various debt agreements in effect at the time repurchases were made.

*Shares relinquished.* The Company routinely allows employees to relinquish Common Stock to pay estimated taxes upon the vesting of restricted stock units and the payout of performance units that are settled in Common Stock under its equity incentive plans. The number of shares of Common Stock relinquished was 0.2 million, 0.3 million and 0.4 million for the years ended December 31, 2022, 2021 and 2020, respectively. The value of the Common Stock tendered by employees was based upon the closing price on the dates of the respective transactions.

**(16) Share-Based Compensation**

The Company has established the Peabody Energy Corporation 2017 Incentive Plan (the 2017 Incentive Plan) for employees, non-employee directors and consultants that allows for the issuance of share-based compensation in various forms including options (including non-qualified stock options and incentive stock options), stock appreciation rights, restricted stock, restricted stock units, deferred stock, performance units, dividend equivalents and cash incentive awards. Under the 2017 Incentive Plan, approximately 14 million shares of the Company's Common Stock were reserved for issuance. As of December 31, 2022, there are approximately 6.9 million shares of the Company's Common Stock available for grant.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Share-Based Compensation Expense and Cash Flows**

The Company's share-based compensation expense is recorded in "Operating costs and expenses" and "Selling and administrative expenses" in the consolidated statements of operations. Cash received by the Company upon the exercise of stock options is reflected as a financing activity in the consolidated statements of cash flows. Share-based compensation expense and cash flow amounts were as follows:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Share-based compensation expense	\$ 8.4	\$ 10.0	\$ 13.5
Tax benefit	—	—	—
Share-based compensation expense, net of tax benefit	\$ 8.4	\$ 10.0	\$ 13.5
Cash received upon the exercise of stock options	—	—	—
Write-off tax benefits related to share-based compensation	—	—	—

As of December 31, 2022, the total unrecognized compensation cost related to nonvested awards was \$4.2 million, net of taxes, which is expected to be recognized over 2.5 years with a weighted-average period of 0.5 years.

**Deferred Stock Units**

During the years ended December 31, 2022, 2021 and 2020, the Company granted deferred stock units to each of the non-employee members of the Board. The fair value of these units is equal to the market price of the Company's Common Stock at the date of grant. These deferred stock units generally vest on a monthly basis over 12 months and are settled in Common Stock three years after the date of grant.

**Restricted Stock Units**

The Company grants restricted stock units to certain senior management and non-senior management employees. For units granted to both senior and non-senior management employees containing only service conditions, the fair value of the award is equal to the market price of the Company's Common Stock at the date of grant. Units granted to senior and non-senior management employees vest at various times (none of which exceed three years) in accordance with the underlying award agreement. Compensation cost for both senior and non-senior management employees is recognized on a straight-line basis over the requisite service period. The payouts for active grants awarded during the years ended December 31, 2022, 2021 and 2020 will be settled in the Company's Common Stock.

Awards granted to certain senior management employees during the year ended December 31, 2022 contain a performance feature in which the award can be increased by up to 100% based on Adjusted EBITDA results over a two-year period. The incremental shares, which can be increased by up to 245,371 shares as of December 31, 2022 if the performance condition is satisfied, are not included in the table below.

A summary of restricted stock unit activity is as follows:

	Year Ended December 31, 2022	Weighted Average Grant-Date Fair Value
Nonvested at December 31, 2021	1,103,828	\$ 8.99
Granted	325,040	11.87
Vested	(550,468)	10.60
Forfeited	(100,087)	8.38
Nonvested at December 31, 2022	778,313	\$ 9.13

The total fair value at grant date of restricted stock units granted during the years ended December 31, 2022, 2021 and 2020 was \$3.9 million, \$3.1 million and \$16.6 million, respectively.



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The restricted stock units receive dividend equivalent units (DEUs) upon payment of cash dividends to holders of Common Stock. DEUs vest subject to the same vesting requirements as the underlying restricted stock unit award. As of December 31, 2022, there were no nonvested DEUs. The total fair value of restricted stock units and DEUs vested was \$6.8 million, \$3.3 million and \$5.6 million during the years ended December 31, 2022, 2021 and 2020, respectively.

In March 2021 the Company entered into a transition agreement with its former chief executive officer which resulted in a modification to restricted stock units granted. Under terms of the agreement, any restricted stock units held by the former chief executive officer that would have vested under their original terms during the twelve months following the specified termination vested upon such date. As a result of this modification, the Company avoided additional compensation expense of approximately \$1.3 million for the year ended December 31, 2021.

**Performance Units**

Performance units are typically granted annually in January and vest over a three-year measurement period and are primarily limited to senior management personnel. The performance units are usually subject to the achievement of goals based on the following conditions: three-year return on invested capital and environmental reclamation (performance condition). In addition, the payout of the performance units can be increased or decreased by up to 25% of the award based on three-year stock price performance compared to a custom peer group (market condition). The performance units can be increased by up to a maximum of 100% of the award granted. There were no performance units granted during the years ended December 31, 2022 or 2021. Awards granted during the year ended December 31, 2020 will be settled in the Company's Common Stock.

A summary of performance unit activity is as follows:

	Year Ended December 31, 2022	Weighted Average Remaining Contractual Life
Nonvested at December 31, 2021	650,906	0.7
Granted	—	
Vested	(109,709)	
Forfeited	(91,176)	
Nonvested at December 31, 2022	<u>450,021</u>	<u>—</u>

As of December 31, 2022, there were 120,289 performance units and DEU's vested that had an aggregate intrinsic value of \$2.1 million and a conversion price per share of \$17.43.

The performance units receive DEUs upon payment of cash dividends to holders of Common Stock. DEUs vest subject to the same vesting requirements as the underlying performance unit award. As of December 31, 2022, there were no nonvested DEUs.

In March 2021 the Company entered into a transition agreement with its former chief executive officer which resulted in a modification to performance units granted. Under terms of the agreement, a portion of the performance units held by the former chief executive officer as of the specified termination date remain eligible to vest based on actual performance through the original performance period. As a result of this modification, the Company avoided additional compensation expense of approximately \$2.5 million for the year ended December 31, 2021.

**(17) Other Events**

**Divestitures and Other Transactions**

During July 2021, the Company executed transactions to sell its closed Millennium and Wilkie Creek Mines, which reduced its closed mine reclamation liabilities and associated costs. The Millennium Mine was sold for minimal cash consideration and the assumption of the majority of the mine's reclamation liabilities. At December 31, 2022, the Company remains responsible for \$5.7 million of reclamation liabilities. The Company recorded a gain of \$26.1 million in connection with the sale, which is included within "Net gain on disposals" in the accompanying consolidated statements of operations for the year ended December 31, 2021.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Wilkie Creek Mine was sold for minimal cash consideration and full assumption of the mine's reclamation liabilities. The Company recorded a gain of \$24.6 million in connection with the sale, which is included within "Income (loss) from discontinued operations, net of income taxes" in the accompanying consolidated statements of operations for the year ended December 31, 2021.

***United Wambo Joint Venture with Glencore***

In December 2019 the Company formed an unincorporated joint venture with Glencore plc (Glencore), in which the Company holds a 50% interest, to combine the existing operations of the Company's Wambo Open-Cut Mine in Australia with the adjacent coal reserves of Glencore's United Mine. The Company proportionally consolidates the entity based upon its economic interest.

Both parties contributed mining tenements upon formation of the joint venture (United Wambo Joint Venture), and combined operations commenced in December 2020. At that date, the parties contributed mining equipment and other assets, and certain additional construction and development activities are ongoing. During the years ended December 31, 2022, 2021 and 2020, the Company contributed approximately \$17 million, \$59 million and \$72 million, respectively, towards construction and development, which is reflected as "Additions to property, plant, equipment and mine development" in the accompanying consolidated statements of cash flows. Glencore is responsible for managing the mining operations of the joint venture.

**(18) Earnings per Share (EPS)**

Basic EPS is computed based on the weighted average number of shares of common stock outstanding during the period. Diluted EPS is computed based on the weighted average number of shares of common stock plus the effect of dilutive potential common shares outstanding. As such, the Company includes the 2028 Convertible Notes and share-based compensation awards in its potentially dilutive securities. Generally, dilutive securities are not included in the computation of loss per share when a company reports a net loss from continuing operations as the impact would be anti-dilutive.

For all but performance units, the potentially dilutive impact of the Company's share-based compensation awards is determined using the treasury stock method. Under the treasury stock method, awards are treated as if they had been exercised with any proceeds used to repurchase common stock at the average market price during the period. Any incremental difference between the assumed number of shares issued and purchased is included in the diluted share computation. For performance units, their contingent features result in an assessment for any potentially dilutive common stock by using the end of the reporting period as if it were the end of the contingency period for all units granted. For further discussion of the Company's share-based compensation awards, see Note 16. "Share-Based Compensation."

A conversion of the 2028 Convertible Notes may result in payment in the Company's common stock. For diluted EPS purposes, the potentially dilutive common stock is assumed to have been converted at the beginning of the period (or at the time of issuance, if later). In periods where the potentially dilutive common stock is included in the computation of diluted EPS, the numerator will be adjusted to add back tax adjusted interest expense related to the convertible debt.

The computation of diluted EPS excluded aggregate share-based compensation awards of less than 0.1 million for both the years ended December 31, 2022 and 2021, and approximately 2.2 million for the year ended December 31, 2020, because to do so would have been anti-dilutive for those periods. Because the potential dilutive impact of such share-based compensation awards is calculated under the treasury stock method, anti-dilution generally occurs when the exercise prices or unrecognized compensation cost per share of such awards are higher than the Company's average stock price during the applicable period. Anti-dilution also occurs when a company reports a net loss from continuing operations, and the dilutive impact of all share-based compensation awards are excluded accordingly.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following illustrates the earnings allocation method utilized in the calculation of basic and diluted EPS:

	Year Ended December 31,		
	2022	2021	2020
	(In millions, except per share data)		
Basic EPS numerator:			
Income (loss) from continuing operations, net of income taxes	\$ 1,317.4	\$ 347.4	\$ (1,859.8)
Less: Net income (loss) attributable to noncontrolling interests	22.0	11.3	(3.5)
Income (loss) from continuing operations attributable to common stockholders	1,295.4	336.1	(1,856.3)
Income (loss) from discontinued operations, net of income taxes	1.7	24.0	(14.0)
Net income (loss) attributable to common stockholders	<u>\$ 1,297.1</u>	<u>\$ 360.1</u>	<u>\$ (1,870.3)</u>
Diluted EPS numerator:			
Income (loss) from continuing operations, net of income taxes	\$ 1,317.4	\$ 347.4	\$ (1,859.8)
Add: Tax adjusted interest expense related to 2028 Convertible Notes	8.7	—	—
Less: Net income (loss) attributable to noncontrolling interests	22.0	11.3	(3.5)
Income (loss) from continuing operations attributable to common stockholders	1,304.1	336.1	(1,856.3)
Income (loss) from discontinued operations, net of income taxes	1.7	24.0	(14.0)
Net income (loss) attributable to common stockholders	<u>\$ 1,305.8</u>	<u>\$ 360.1</u>	<u>\$ (1,870.3)</u>
EPS denominator:			
Weighted average shares outstanding — basic	142.1	111.1	97.7
Dilutive impact of share-based compensation awards	1.6	0.9	—
Dilutive impact of 2028 Convertible Notes	13.5	—	—
Weighted average shares outstanding — diluted	<u>157.2</u>	<u>112.0</u>	<u>97.7</u>
Basic EPS attributable to common stockholders:			
Income (loss) from continuing operations	\$ 9.12	\$ 3.03	\$ (18.99)
Income (loss) from discontinued operations	0.01	0.21	(0.15)
Net income (loss) attributable to common stockholders	<u>\$ 9.13</u>	<u>\$ 3.24</u>	<u>\$ (19.14)</u>
Diluted EPS attributable to common stockholders:			
Income (loss) from continuing operations	\$ 8.29	\$ 3.00	\$ (18.99)
Income (loss) from discontinued operations	0.02	0.22	(0.15)
Net income (loss) attributable to common stockholders	<u>\$ 8.31</u>	<u>\$ 3.22</u>	<u>\$ (19.14)</u>

**(19) Management — Labor Relations**

On December 31, 2022, the Company had approximately 5,500 employees worldwide, including approximately 4,300 hourly employees; the employee amounts exclude employees that were employed at operations classified as discontinued operations. Approximately 34% of those hourly employees were represented by organized labor unions and were employed by mines that generated 16% of the Company's 2022 coal production from continuing operations. In the U.S., the hourly employees of one active mine and one inactive mine are represented by an organized labor union. In Australia, the coal mining industry is unionized and the majority of hourly workers employed at the Company's Australian mining operations are members of trade unions. The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) generally represents the Company's Australian subsidiaries' hourly production and engineering employees, including those employed through contract mining relationships.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table presents the Company's active and inactive mining operations as of December 31, 2022 in which the employees are represented by organized labor unions:

Mine	Approximate Number of Active Employees Represented	Union	Current Agreement Expiration Date or Date Amendable
<b>U.S.</b>			
Kayenta	20	UMWA	November 2024
Shoal Creek	330	UMWA	December 2024
<b>Australia</b>			
Wilpinjong	465	CFMMEU	June 2024
Coppabella	330	CFMMEU	February 2026
Moorvale <sup>(1)</sup>	225	N/A	June 2023
Metropolitan			
Underground employees	150	CFMMEU	May 2025
Handling and preparation plant employees <sup>(2)</sup>	20	CFMMEU	May 2021
Wambo Underground			
Underground employees	120	CFMMEU	November 2025
Handling and preparation plant employees	20	CFMMEU	August 2025

<sup>(1)</sup> Employees of the Moorvale Mine operate on individual contracts under a direct engagement model. Such contracts are modeled after the Company's former labor agreement with CFMMEU which ended in 2017. According to a memorandum of understanding between the Company and employees, individual contracts may be renegotiated in June 2023.

<sup>(2)</sup> The Company, employees and the CFMMEU are currently negotiating a new labor agreement.

**(20) Financial Instruments, Guarantees With Off-Balance-Sheet Risk and Other Guarantees**

In the normal course of business, the Company is a party to various guarantees and financial instruments that carry off-balance-sheet risk and are not reflected in the accompanying consolidated balance sheets. At December 31, 2022, such instruments included \$1,376.8 million of surety bonds and \$569.6 million of letters of credit. Such financial instruments provide support for the Company's reclamation bonding requirements, lease obligations, insurance policies and various other performance guarantees. The Company periodically evaluates the instruments for on-balance-sheet treatment based on the amount of exposure under the instrument and the likelihood of required performance. The Company does not expect any material losses to result from these guarantees or off-balance-sheet instruments in excess of liabilities provided for in the accompanying consolidated balance sheets.

In November 2020, the Company entered into an agreement with the providers of its surety bond portfolio to resolve previous collateral demands. In accordance with the agreement, the Company initially provided \$75.0 million of collateral, in the form of letters of credit. Upon completion of the 2021 debt restructuring transactions described in Note 10. "Long-term Debt", other provisions of the agreement became effective. In particular, the Company granted second liens on \$200.0 million of certain mining equipment and is further required to post an additional \$25.0 million of collateral per year from 2021 through 2024 for the benefit of the surety providers. The collateral postings further increase to the extent the Company generates more than \$100.0 million of free cash flow (as defined in the surety agreement) in any twelve-month period or has cumulative asset sales in excess of \$10.0 million, as of the last quarter end during the term of the agreement. Based upon the Company's free cash flow since entering into the surety agreement, additional collateral of \$102.4 million was posted during the year ended December 31, 2022 and \$74.4 million was posted in January 2023, in the form of cash-collateralized letters of credit.

Under the agreement, the relevant surety providers agreed to a standstill through December 31, 2025, during which time, the surety providers will not demand collateral incremental to that described above, draw on letters of credit posted for the benefit of themselves or cancel any existing surety bond. The Company will not pay dividends or make share repurchases during the standstill period, unless otherwise agreed between parties.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Reclamation Bonding**

The Company is required to provide various forms of financial assurance in support of its mining reclamation obligations in the jurisdictions in which it operates. Such requirements are typically established by statute or under mining permits.

At December 31, 2022, the Company's asset retirement obligations of \$750.0 million were supported by surety bonds of \$1,250.1 million, as well as letters of credit issued under the Company's receivables securitization program and Revolver. Letters of credit issued at December 31, 2022, which served as collateral for surety bonds in support of asset retirement obligations, amounted to \$431.7 million.

**Accounts Receivable Securitization**

The Company entered into the Sixth Amended and Restated Receivables Purchase Agreement, as amended, dated as of April 3, 2017 (the Receivables Purchase Agreement) to extend the Company's receivables securitization facility previously in place and expand that facility to include certain receivables from the Company's Australian operations. The receivables securitization program (Securitization Program) is subject to customary events of default set forth in the Receivables Purchase Agreement. The Receivables Purchase Agreement was amended in January 2022 to extend the Securitization Program to January 2025 and reduce the available funding capacity from \$250.0 million to \$175.0 million. Such funding is accounted for as a secured borrowing, limited to the availability of eligible receivables, and may be secured by a combination of collateral and the trade receivables underlying the program, from time to time. Funding capacity under the Securitization Program may also be utilized for letters of credit in support of other obligations. Borrowings under the Securitization Program bear interest at BSBY plus 2.1% per annum and remain outstanding throughout the term of the agreement, subject to the Company maintaining sufficient eligible receivables. The Receivables Purchase Agreement was amended again in February 2023 to increase the available funding capacity to \$225.0 million and adjust the relevant interest rate for borrowings to a secured overnight financing rate (SOFR).

At December 31, 2022, the Company had no outstanding borrowings and \$168.0 million of letters of credit issued under the Securitization Program. The letters of credit were primarily in support of reclamation obligations. Availability under the Securitization Program, which is adjusted for certain ineligible receivables, was \$7.0 million at December 31, 2022. The Company was not required to post cash collateral under the Securitization Program at either December 31, 2022 or 2021.

The Company incurred interest and fees associated with the Securitization Program of \$3.8 million, \$2.9 million and \$2.6 million during the years ended December 31, 2022, 2021 and 2020, respectively, which have been recorded as "Interest expense" in the accompanying statements of operations.

**Collateralized Letter of Credit Agreement**

In February 2022, the Company entered into a new agreement, which provides up to \$250.0 million of capacity for irrevocable standby letters of credit, expected to primarily support reclamation bonding requirements. The agreement requires the Company to provide cash collateral at a level of 103% of the aggregate amount of letters of credit outstanding under the arrangement (limited to \$5.0 million total excess collateralization.) Outstanding letters of credit bear a fixed fee in the amount of 0.75% per annum. The Company receives a variable deposit rate on the amount of cash collateral posted in support of letters of credit. The agreement has an initial expiration date of December 31, 2025. At December 31, 2022, letters of credit of \$103.3 million were outstanding under the agreement, which were collateralized by cash of \$111.0 million, which includes interest earned on deposits.

**Cash Collateral Arrangements**

As of December 31, 2022, the Company had other collateral balances of \$77.0 million posted, including \$43.9 million related to reclamation, which are included with "Restricted cash and collateral arrangements" in the accompanying consolidated balance sheets. Such collateral balances amounted to \$23.8 million at December 31, 2021, including \$15.0 million related to reclamation.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Other**

The Company is the lessee under numerous equipment and property leases. It is common in such commercial lease transactions for the Company, as the lessee, to agree to indemnify the lessor for the value of the property or equipment leased, should the property be damaged or lost during the course of the Company's operations. The Company expects that losses with respect to leased property, if any, may be covered by insurance (subject to deductibles). The Company and certain of its subsidiaries have guaranteed other subsidiaries' performance under various lease obligations. Aside from indemnification of the lessor for the value of the property leased, the Company's maximum potential obligations under its leases are equal to the respective future minimum lease payments, and the Company assumes that no amounts could be recovered from third parties.

Substantially all of the Company's U.S. subsidiaries provide financial guarantees under long-term debt agreements entered into by the Company. The maximum amounts payable under the Company's debt agreements are equal to the respective principal and interest payments.

**(21) Commitments and Contingencies****Commitments***Unconditional Purchase Obligations*

As of December 31, 2022, purchase commitments for capital expenditures were \$102.1 million, all of which is obligated within the next three years, with \$94.1 million obligated within the next 12 months.

In Australia, the Company has generally secured the ability to transport coal through rail contracts and ownership interests in five east coast coal export terminals that are primarily funded through take-or-pay arrangements with terms ranging up to 20 years. In the U.S., the Company has entered into certain long-term coal export terminal agreements to secure export capacity through the Gulf Coast. As of December 31, 2022, these Australian and U.S. commitments under take-or-pay arrangements totaled \$1.4 billion, of which approximately \$103 million is obligated within the next year.

**Contingencies**

From time to time, the Company or its subsidiaries are involved in legal proceedings arising in the ordinary course of business or related to indemnities or historical operations. The Company believes it has recorded adequate reserves for these liabilities. The Company discusses its significant legal proceedings below, including ongoing proceedings and those that impacted the Company's results of operations for the periods presented.

*Litigation and Matters Relating to Continuing Operations*

**Securities Class Action.** On September 28, 2020, the Oklahoma Firefighters Pension and Retirement System brought a lawsuit, styled *In Re Peabody Energy Corporation Securities Litigation* No. 1:20-cv-08024 (PKC), against the Company and certain of its officers in the U.S. District Court for the Southern District of New York (the Court) on behalf of a putative class of shareholders (Plaintiffs) who held Company stock between April 3, 2017 and October 28, 2019, for alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder (Securities Class Action). Plaintiffs alleged that the defendants made false or misleading statements and/or failed to disclose certain adverse facts pertaining to safety practices at the Company's North Goonyella Mine and the events leading up to a fire at the mine, and that, after a September 28, 2018 fire at the mine, made false or misleading statements and/or failed to disclose certain adverse facts pertaining to the feasibility of the Company's plan to restart the mine after the fire. On January 12, 2021, the Court appointed the Oregon Public Employees Retirement Fund as lead plaintiff. On January 25, 2021, the Court entered a scheduling order for this matter. Plaintiffs filed their amended complaint on March 19, 2021. The defendants filed a pre-motion letter on April 30, 2021, while the Plaintiffs' response letter was filed on May 6, 2021. The defendants filed their motion to dismiss on June 7, 2021. The Plaintiffs' opposition brief to the motion to dismiss was filed on July 22, 2021. The defendants filed their reply to Plaintiffs' opposition on August 23, 2021, which completed briefing. On March 7, 2022, the Court granted in part and denied in part the defendants' motion to dismiss. As a result of this decision, only Plaintiffs' allegations relating to the Company's September 25, 2018 statements remained in the case. On May 13, 2022, the Court entered a Case Management and Scheduling Order.

On August 2, 2022, Peabody and Plaintiffs agreed to settle all claims brought on behalf of all persons who purchased or otherwise acquired the Company's shares between April 3, 2017 and October 28, 2019 in exchange for \$4.6 million, to be paid by Peabody's insurers. The parties further negotiated a definitive stipulation of settlement and related documents which do not contain any admission of liability, wrongdoing or responsibility by any of the parties and provide that the case be dismissed with prejudice, with mutual releases by all parties.

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

On October 13, 2022, the Court entered an Order of Preliminary Approval of the settlement agreement. On February 7, 2023, the Court entered an order of final approval of the settlement agreement thereby fully resolving the litigation.

**Derivative Actions.** On December 22, 2020, a plaintiff (Phelps), putatively on behalf of the Company, brought a shareholder derivative lawsuit, styled *Phelps v. Samantha Algaze, et al.*, Case No. 1:20-cv-01747-UNA (D. Del. filed Dec. 22, 2020), in the U.S. District Court for the District of Delaware against certain directors and former officers of the Company, as defendants. The Company was also named as a nominal defendant. The plaintiff did not make a demand on the Company's board before instituting the lawsuit and alleges such demand would have been futile. In the complaint, the plaintiff alleges that the defendants failed to disclose adverse facts relating to the safety practices at the Company's North Goonyella Mine, thereby leading to a September 28, 2018 fire, and allegedly failed to disclose adverse facts pertaining to the feasibility of reopening the mine. The derivative complaint alleges (i) contribution against certain current and former officers for securities fraud based on the Securities Class Action, and against all defendants, (ii) breach of fiduciary duties, (iii) waste of corporate assets for causing the Company to incur legal liability and (iv) unjust enrichment.

On February 10, 2021, a second plaintiff (Di Fusco), putatively on behalf of the Company, filed a similar shareholder derivative lawsuit, styled *Di Fusco v. Glenn Kellow, et al.*, Case No. 1:21-cv-00183-UNA (D. Del. filed Feb. 10, 2021), in the U.S. District Court for the District of Delaware against the directors and current and former officers of the Company, as defendants. The Company was named as a nominal defendant. This suit makes claims similar to those made in the Phelps matter, but asserts a claim for alleged misstatements in a proxy statement under Section 14(a) of the Securities and Exchange Act of 1934. In late March 2021, the parties filed a stipulation agreeing to consolidate and stay both derivative actions for judicial efficiency and cost until the Court ruled on the motion to dismiss in the Securities Class Action.

In light of the settlement agreement in the Securities Class Action, on September 7, 2022, the Court entered Stipulation and Order of Voluntary Dismissal Without Prejudice Pursuant to Fed. R. Civ. P. 419a)(1)(A)(ii) for the Phelps and Di Fusco matters; effectively closing the shareholder derivative lawsuits.

**Metropolitan Mine Stormwater Discharge.** Over the past two years, there has been significantly high rainfall in New South Wales, including unprecedented rain totals at the Metropolitan Mine site. While stormwater collected at the mine site is managed through two sedimentation dams, at times the heavy rainfall has presented challenges with managing the significant volumes of stormwater, as the surface water management infrastructure has not had sufficient capacity. As a result, on multiple occasions throughout 2021 and 2022 stormwater has been discharged from the mine site. Metropolitan Collieries Pty Ltd (MCPL), a wholly-owned subsidiary of PEC, removed accumulated material from the sedimentation dams to restore full site stormwater capacity by December 31, 2022 and has identified and is implementing additional controls for the management of sediment moving forward. Despite the measures undertaken by MCPL to manage and improve the situation, the Environment Protection Authority is currently undertaking an investigation in relation to the discharges of sediment laden water from the mine site and a review process of the Metropolitan Mine's environmental protection license. The Environment Protection Authority is investigating potential offenses against the environmental protection legislation arising from the discharges.

**Puerto Rico Climate Change Lawsuit.** On November 22, 2022, the Municipalities of Puerto Rico filed a class action complaint for damages against several major energy fuel producers, including Peabody Energy. This lawsuit represents the latest in a series of lawsuits that have been brought in both state and federal court around the United States, generally seeking to impose liability on the energy fuel producers for the effects allegedly caused by climate change. Many of these lawsuits have been brought on behalf of governmental entities (counties, cities, and towns) by plaintiff law firms on a contingent fee arrangement. The causes of action in the Puerto Rico lawsuit include public and private nuisance, liability for failure to warn, consumer fraud, antitrust and claims under the Racketeer Influenced and Corrupt Organizations Act. As of February 17, 2023, the Company has not been properly served with a complaint in the matter styled: *The Municipalities of Puerto Rico v. Exxon Mobil et al.*, Case No. 3:22-cv-01550 (USDC D.P.R.).

**Other**

At times, the Company becomes a party to other disputes, including those related to contract miner performance, claims, lawsuits, arbitration proceedings, regulatory investigations and administrative procedures in the ordinary course of business in the U.S., Australia and other countries where the Company does business. Based on current information, the Company believes that such other pending or threatened proceedings are likely to be resolved without a material adverse effect on its financial condition, results of operations or cash flows. The Company reassesses the probability and estimability of contingent losses as new information becomes available.



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Claims, Litigation and Settlements Relating to Indemnities or Historical Operations*

**Patriot-Related Matters.** In 2012, Patriot filed voluntary petitions for relief under Chapter 11 of Title 11 of the U.S. Code (the Bankruptcy Code). In 2013, the Company entered into a definitive settlement agreement (2013 Agreement) with Patriot and the United Mine Workers of America, on behalf of itself, its represented Patriot employees and its represented Patriot retirees, to resolve all then-disputed issues related to Patriot's bankruptcy. In May 2015, Patriot again filed voluntary petitions for relief under the Bankruptcy Code in the U.S. District Court for the Eastern District of Virginia and subsequently initiated a process to sell substantially all of its assets to qualified bidders. On October 9, 2015, Patriot's bankruptcy court entered an order confirming Patriot's plan of reorganization, which provided, among other things, for the sale of substantially all of Patriot's assets to two different buyers.

Patriot had federal and state black lung occupational disease liabilities related to workers employed in periods prior to Patriot's spin-off from the Company in 2007. Upon spin-off, Patriot indemnified the Company against any claim relating to these liabilities, which amounted to approximately \$150 million at that time. The indemnification included any claim made by the U.S. Department of Labor (DOL) against the Company with respect to these obligations as a potentially liable operator under the Federal Coal Mine Health and Safety Act of 1969. The 2013 Agreement included Patriot's affirmance of indemnities provided in the spin-off agreements, including the indemnity relating to such black lung liabilities; however, Patriot rejected this indemnity in its May 2015 bankruptcy.

By statute, the Company had secondary liability for the black lung liabilities related to Patriot's workers employed by former subsidiaries of the Company. The Company's accounting for the black lung liabilities related to Patriot is based on an interpretation of applicable statutes. Management believes that inconsistencies exist among the applicable statutes, regulations promulgated under those statutes and the DOL's interpretative guidance. The Company has sought clarification from the DOL regarding these inconsistencies. The amount of these liabilities could be reduced in the future. Whether the Company will ultimately be required to fund certain of those obligations in the future as a result of Patriot's May 2015 bankruptcy remains uncertain. The amount of the liability, which was determined on an actuarial basis based on the best information available to the Company, was \$82.3 million and \$87.2 million at December 31, 2022 and 2021, respectively. The liability, which is classified as discontinued operations, is included in the Company's consolidated balance sheets within "Accounts payable and accrued expenses" and "Other noncurrent liabilities." In connection with the actuarial valuation, the Company recorded mark-to-market adjustments of \$2.7 million to decrease the liability during the year ended December 31, 2022, \$2.1 million to decrease the liability during the year ended December 31, 2021 and \$4.2 million to increase the liability during the year ended December 31, 2020. While the Company has recorded a liability, it intends to review each claim on a case-by-case basis and contest liability estimates as appropriate. The amount of the Company's recorded liability reflects only Patriot workers employed by former subsidiaries of the Company that are presently retired, disabled or otherwise not actively employed. The Company cannot reliably estimate the potential liabilities for Patriot's workers employed by former subsidiaries of the Company that are presently active in the workforce because of the potential for such workers to continue to work for another coal operator that is a going concern.

**(22) Segment and Geographic Information**

The Company reports its results of operations primarily through the following reportable segments: Seaborne Thermal Mining, Seaborne Metallurgical Mining, Powder River Basin Mining, Other U.S. Thermal Mining and Corporate and Other.

The business of the Company's seaborne operating platform is primarily export focused with customers spread across several countries, with a portion of its thermal and metallurgical coal sold within Australia. Generally, revenue from individual countries vary year by year based on electricity and steel demand, the strength of the global economy, governmental policies and several other factors, including those specific to each country. The Company classifies its seaborne mines within the Seaborne Thermal Mining or Seaborne Metallurgical Mining segments based on the primary customer base and coal reserve type of each mining operation. A small portion of the coal mined by the Seaborne Thermal Mining segment is of a metallurgical grade. Similarly, a small portion of the coal mined by the Seaborne Metallurgical Mining segment is of a thermal grade. Additionally, the Company may market some of its metallurgical coal products as a thermal coal product from time to time depending on market conditions.

The Company's Seaborne Thermal Mining operations consist of mines in New South Wales, Australia. The mines in that segment utilize both surface and underground extraction processes to mine low-sulfur, high Btu thermal coal.

The Company's Seaborne Metallurgical Mining operations consist of mines in Queensland, Australia, one in New South Wales, Australia and one in Alabama, USA. The mines in that segment utilize both surface and underground extraction processes to mine various qualities of metallurgical coal. The metallurgical coal qualities include hard coking coal, semi-hard coking coal, semi-soft coking coal and pulverized coal injection coal.



**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The principal business of the Company's thermal operating segments in the U.S. is the mining, preparation and sale of thermal coal, sold primarily to electric utilities in the U.S. under long-term contracts, with a relatively small portion sold as international exports as conditions warrant. The Company's Powder River Basin Mining operations consist of its mines in Wyoming. The mines in that segment are characterized by surface mining extraction processes, coal with a lower sulfur content and Btu and higher customer transportation costs (due to longer shipping distances). The Company's Other U.S. Thermal Mining operations reflect the aggregation of its Illinois, Indiana, New Mexico and Colorado mining operations. The mines in that segment are characterized by a mix of surface and underground mining extraction processes, coal with a higher sulfur content and Btu and lower customer transportation costs (due to shorter shipping distances). Geologically, the Company's Powder River Basin Mining operations mine sub-bituminous coal deposits and its Other U.S. Thermal Mining operations mine both bituminous and sub-bituminous coal deposits.

The Company's Corporate and Other segment includes selling and administrative expenses, results from equity affiliates, corporate hedging activities, trading and brokerage activities, minimum charges on certain transportation-related contracts, the closure of inactive mining sites and certain commercial matters.

The Company's chief operating decision maker, defined as its Chief Executive Officer, uses Adjusted EBITDA as the primary metric to measure the segments' operating performance and allocate resources. Adjusted EBITDA is a non-GAAP financial measure defined as income (loss) from continuing operations before deducting net interest expense, income taxes, asset retirement obligation expenses and depreciation, depletion and amortization. Adjusted EBITDA is also adjusted for the discrete items that management excluded in analyzing the segments' operating performance, as displayed in the reconciliation below. Management believes non-GAAP performance measures are used by investors to measure the Company's operating performance. Adjusted EBITDA is not intended to serve as an alternative to U.S. GAAP measures of performance and may not be comparable to similarly-titled measures presented by other companies.

Segment results for the year ended December 31, 2022 were as follows:

	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)					
Revenue	\$ 1,345.6	\$ 1,616.9	\$ 1,065.5	\$ 952.2	\$ 1.7	\$ 4,981.9
Adjusted EBITDA	647.6	781.7	68.2	242.4	104.8	1,844.7
Additions to property, plant, equipment and mine development	38.8	84.8	59.1	35.3	3.5	221.5
Income from equity affiliates	—	—	—	—	(131.2)	(131.2)

Segment results for the year ended December 31, 2021 were as follows:

	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)					
Revenue	\$ 934.0	\$ 727.7	\$ 971.2	\$ 689.1	\$ (3.7)	\$ 3,318.3
Adjusted EBITDA	353.1	178.2	134.9	164.2	86.3	916.7
Additions to property, plant, equipment and mine development	88.6	25.1	41.4	24.2	3.8	183.1
Income from equity affiliates	—	—	—	—	(82.1)	(82.1)

Segment results for the year ended December 31, 2020 were as follows:

	Seaborne Thermal Mining	Seaborne Metallurgical Mining	Powder River Basin Mining	Other U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)					
Revenue	\$ 711.8	\$ 486.5	\$ 991.1	\$ 707.3	\$ (15.6)	\$ 2,881.1
Adjusted EBITDA	163.2	(130.2)	194.8	168.4	(137.4)	258.8
Additions to property, plant, equipment and mine development	100.7	50.8	13.2	23.3	3.4	191.4
Loss from equity affiliates	—	—	—	—	60.1	60.1

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Asset details are reflected at the division level only for the Company's operating segments and are not allocated between each individual segment as such information is not regularly reviewed by the Company's CODM. Further, some assets service more than one segment within the division and an allocation of such assets would not be meaningful or representative on a segment by segment basis. Assets related to closed, suspended or otherwise inactive mines are included within the Corporate and Other category.

Assets as of December 31, 2022 were as follows:

	Seaborne Mining	U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)			
Total assets	\$ 1,632.6	\$ 1,359.4	\$ 2,618.8	\$ 5,610.8
Property, plant, equipment and mine development, net	1,220.7	1,217.5	426.8	2,865.0
Operating lease right-of-use assets	20.5	0.5	5.9	26.9

Assets as of December 31, 2021 were as follows:

	Seaborne Mining	U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)			
Total assets	\$ 1,669.6	\$ 1,318.5	\$ 1,961.7	\$ 4,949.8
Property, plant, equipment and mine development, net	1,298.8	1,209.5	442.3	2,950.6
Operating lease right-of-use assets	19.2	3.3	13.0	35.5

Assets as of December 31, 2020 were as follows:

	Seaborne Mining	U.S. Thermal Mining	Corporate and Other	Consolidated
	(Dollars in millions)			
Total assets	\$ 1,763.0	\$ 1,345.3	\$ 1,558.8	\$ 4,667.1
Property, plant, equipment and mine development, net	1,347.3	1,258.8	445.0	3,051.1
Operating lease right-of-use assets	30.8	3.5	15.6	49.9

**PEABODY ENERGY CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

A reconciliation of consolidated income (loss) from continuing operations, net of income taxes to Adjusted EBITDA follows:

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Income (loss) from continuing operations, net of income taxes	\$ 1,317.4	\$ 347.4	\$ (1,859.8)
Depreciation, depletion and amortization	317.6	308.7	346.0
Asset retirement obligation expenses	49.4	44.7	45.7
Restructuring charges	2.9	8.3	37.9
Transaction costs related to joint ventures	—	—	23.1
Asset impairment	11.2	—	1,487.4
Changes in deferred tax asset valuation allowance and reserves and amortization of basis difference related to equity affiliates	(2.3)	(33.8)	30.9
Interest expense	140.3	183.4	139.8
Net loss (gain) on early debt extinguishment	57.9	(33.2)	—
Interest income	(18.4)	(6.5)	(9.4)
Net mark-to-market adjustment on actuarially determined liabilities	(27.8)	(43.4)	(5.1)
Unrealized losses on derivative contracts related to forecasted sales	35.8	115.1	29.6
Unrealized losses (gains) on foreign currency option contracts	2.3	7.5	(7.1)
Take-or-pay contract-based intangible recognition	(2.8)	(4.3)	(8.2)
Income tax (benefit) provision	(38.8)	22.8	8.0
Total Adjusted EBITDA	<u>\$ 1,844.7</u>	<u>\$ 916.7</u>	<u>\$ 258.8</u>

The following table presents revenue as a percent of total revenue from external customers by geographic region:

	Year Ended December 31,		
	2022	2021	2020
U.S.	36.6 %	45.5 %	56.2 %
Japan	19.4 %	14.2 %	13.3 %
Taiwan	9.3 %	14.4 %	7.7 %
Australia	8.5 %	7.7 %	6.9 %
India	2.9 %	5.4 %	2.6 %
Vietnam	2.8 %	2.0 %	2.4 %
Brazil	2.8 %	0.9 %	0.1 %
South Korea	2.1 %	1.4 %	0.8 %
Indonesia	1.5 %	3.0 %	0.2 %
Belgium	1.3 %	— %	0.3 %
Chile	1.1 %	0.3 %	— %
France	1.1 %	— %	— %
China	— %	— %	3.8 %
Other	10.6 %	5.2 %	5.7 %
Total	<u>100.0 %</u>	<u>100.0 %</u>	<u>100.0 %</u>

The Company attributes revenue to individual countries based on the location of the physical delivery of the coal.

**PEABODY ENERGY CORPORATION**  
**SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS**

Description	Balance at Beginning of Period	Charged to Costs and Expenses	Deductions <sup>(1)</sup>	Other <sup>(2)</sup>	Balance at End of Period
(Dollars in millions)					
<b>Year Ended December 31, 2022</b>					
Reserves deducted from asset accounts:					
Advance royalty recoupment reserve	\$ 0.3	\$ (0.3)	\$ —	\$ —	\$ —
Reserve for materials and supplies	9.0	1.4	(0.9)	—	9.5
Tax valuation allowances	2,120.8	(583.8)	—	(86.0)	1,451.0
<b>Year Ended December 31, 2021</b>					
Reserves deducted from asset accounts:					
Advance royalty recoupment reserve	\$ 0.3	\$ —	\$ —	\$ —	\$ 0.3
Reserve for materials and supplies	10.4	0.6	(2.0)	—	9.0
Tax valuation allowances	2,287.3	(121.7)	—	(44.8)	2,120.8
<b>Year Ended December 31, 2020</b>					
Reserves deducted from asset accounts:					
Advance royalty recoupment reserve	\$ 0.3	\$ —	\$ —	\$ —	\$ 0.3
Reserve for materials and supplies	7.9	3.5	(1.0)	—	10.4
Tax valuation allowances	2,068.4	373.2	—	(154.3) <sup>(3)</sup>	2,287.3

<sup>(1)</sup> Reserves utilized, unless otherwise indicated.

<sup>(2)</sup> Includes the impact of changes in the Australian dollar exchange rates.

<sup>(3)</sup> Includes the impact of a decrease in Australia NOLs due to a cancellation of intercompany debt.

## **AMENDMENT NO. 1 TO CREDIT AGREEMENT**

This AMENDMENT NO. 1 TO CREDIT AGREEMENT, dated as of March 7, 2022 (this “Amendment”), among PEABODY ENERGY CORPORATION, a Delaware corporation (the “Borrower”), the other Reaffirming Parties (as defined below) party hereto, JPMORGAN CHASE BANK, N.A., as administrative agent (the “Administrative Agent”), and each Lender party hereto (each, a “Lender” and collectively, the “Lenders”) (such Lenders, collectively constituting the Required Lenders).

### **PRELIMINARY STATEMENTS**

**WHEREAS**, reference is made to that certain Credit Agreement, dated as of January 29, 2021, among the Borrower, the Administrative Agent and the lenders party thereto from time to time (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to, but not including, the date hereof, the “Existing Credit Agreement”, and the Existing Credit Agreement as amended pursuant hereto, the “Credit Agreement”);

**WHEREAS**, the Borrower has requested that the Administrative Agent and the Required Lenders agree to amend Section 7.03 (*Indebtedness*) to permit the incurrence of certain unsecured Indebtedness of up to \$150,000,000;

**WHEREAS**, subject to the satisfaction of the conditions precedent set forth in Section 3 hereof, each of the Administrative Agent, Required Lenders and the Borrower have agreed to amend certain terms of the Existing Credit Agreement as set forth in Section 2 hereof;

**WHEREAS**, each Loan Party party hereto and Gibraltar Holdings (collectively, the “Reaffirming Parties”, and each, a “Reaffirming Party”) expects to realize substantial direct and indirect benefits as a result of this Amendment becoming effective and the consummation of the transactions contemplated hereby and agrees to reaffirm its obligations under the Credit Agreement, the Security Documents, and the other Loan Documents to which it is a party;

**NOW, THEREFORE**, in consideration of the undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms; Interpretation; Etc. Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Credit Agreement. This Amendment is a “Loan Document” (as defined in the Existing Credit Agreement and the Credit Agreement).

2. Amendments to Credit Agreement. Pursuant to and in accordance with Section 10.01 of the Existing Credit Agreement, effective as of the First Amendment Effective Time (as defined below), each of the parties hereto agree that the Existing Credit Agreement shall be amended as follows:

(a) Section 1.01 (Defined Terms) is hereby amended to add the following definitions in the appropriate alphabetical order:

“**Cash Flow Forecast**” means a cash flow forecast for the Borrower and its Subsidiaries on a consolidated basis, broken down by weeks, covering the 13-week period following delivery thereof, in form and detail reasonably satisfactory to the Administrative Agent, which shall reflect, for the periods covered thereby, projected weekly disbursements (in line item detail), cash receipts (in line item detail), loan balances (in line item detail) and ending cash for each week covered by the Cash Flow Forecast.

“**First Amendment**” means that certain Amendment No. 1 to Credit Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the other Reaffirming Parties (as defined therein), the Lenders party thereto and the Administrative Agent.

“**First Amendment Effective Date**” means March 7, 2022, the date on which the conditions set forth in the First Amendment are satisfied.

(b) Article V (*Representations and Warranties*) shall be amended by inserting the following new Section 5.23:

**Section 5.23 Cash Flow Forecast.** The Cash Flow Forecast has been prepared in good faith based upon assumptions of the Borrower reasonable at the time made.

(c) Article VI (*Affirmative Covenants*) shall be amended by inserting the following new Sections 6.20, 6.21, and 6.22:

**Section 6.20 Hedging Agreements and Cash Margin Postings.** Commencing on March 8, 2022 and thereafter on the 1<sup>st</sup> and 15<sup>th</sup> of each month (or if such day is not a Business Day, the next succeeding Business Day), a report regarding the status of the Borrower and any of its Restricted Subsidiaries’ Hedging Agreements, as well as any outstanding cash margin postings, and any expected cash margin postings over the next two week period (which, for the avoidance of doubt, shall not be viewed as a forecast but rather an approximation).

**Section 6.21 Variance and Cash Flow Reporting.** Commencing on April 1, 2022 and thereafter on the 1<sup>st</sup> and 15<sup>th</sup> of each month (or if such day is not a Business Day, the next succeeding Business Day) (or more frequently, to the extent that the Cash Flow Forecast and such reports are updated or provided to others on a more frequent basis), the Borrower shall deliver updated 13-week Cash Flow Forecasts to the Administrative Agent and variance reports concerning bank and cash balances by legal entity and account; provided that, it is understood and agreed that each initial Cash Flow Forecast delivered pursuant to this Section 6.21 will reflect a forecast (rather than actuals) for the week then ended (which actuals will be included in the subsequent Cash Flow Forecast delivered pursuant to this Section 6.21 in the form of a variance report showing all variances by line-item from the amounts set forth in the Cash Flow Forecast, as most recently updated, with an explanation for each line-item variance of greater than or equal to 10%).

**Section 6.22 Indebtedness Amendments.** The Borrower shall provide the Lenders with (i) 2 Business Days (or such shorter period as is reasonably

acceptable to the Administrative Agent) prior written notice of any amendment, restatement, amendment and restatement, supplement or other modification to any definitive documentation evidencing and governing any Indebtedness incurred under Section 7.03(g) and (ii) 1 Business Day (or such shorter period as is reasonably acceptable to the Administrative Agent), substantially final drafts of any such documents described in clause (i) hereto.

(d) Clause (g) of Section 7.03 (Indebtedness) shall be amended and restated in its entirety as follows:

(g) unsecured Indebtedness of the Loan Parties incurred after the First Amendment Effective Date in an aggregate amount not to exceed \$150,000,000 at any one time outstanding; provided that (i) the use of proceeds of such Indebtedness shall be limited to satisfying margin calls with respect to commodity hedges by funding margin accounts, (ii) at the time of any issuance thereof, no Default or Event of Default shall have occurred and be continuing or may result therefrom, (iii) such Indebtedness shall mature no earlier than 91 days after the final Maturity Date and shall not have any scheduled amortization or payments of principal prior to the maturity date of such unsecured Indebtedness or require any mandatory prepayments, redemptions or sinking fund obligations prior to the maturity date of such unsecured Indebtedness, other than (x) a customary acceleration right after an event of default thereunder and (y) prepayments made out of the proceeds of a substantially concurrent issuance of new shares of common stock or other Qualified Equity Interests of the Borrower, (iv) such Indebtedness shall continue to be unsecured and shall not be guaranteed by any Person other than a Loan Party, (v) at no time shall the documentation governing such unsecured Indebtedness include any event of default in addition to or covenant more restrictive to the Borrower or any Loan Party or their respective subsidiaries than the events of default or covenants as set forth in this Agreement (other than information covenants with respect to Hedge Agreements), (vi) the cash interest rate applicable to such outstanding Indebtedness shall not exceed 10.0% per annum (exclusive of default interest at a rate not to exceed 2.00% per annum) and no cash fee payments may be made with respect thereto (other than fees disclosed to the Administrative Agent and the Lenders prior to the First Amendment Effective Date) and (vii) no interest or fee payment, including default interest, shall be made on such Indebtedness at any time a Default or Event of Default has occurred and is continuing (provided that all such interest and fees, including default interest, may accrue and, if paid in kind, shall not be subject to the \$150,000,000 limitation set forth in this clause (g));

(e) Clause (e) of Section 8.01 (Events of Default) is hereby amended by adding the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth below:

(e) Cross-Default. The Borrower or any Restricted Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder) in each case having an aggregate principal amount of more than the Threshold Amount or any Indebtedness incurred pursuant to Section 7.03(g), beyond the period of grace, if any, provided in the instrument or agreement under which such

Indebtedness or Guarantee was created, (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable, or (C) fails to observe or perform any agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, as a result of which default or other event, the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) shall have caused, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable; or

3. Conditions Precedent. The amendments herein shall become effective on the date (the “First Amendment Effective Date”) and at the time (the “First Amendment Effective Time”) on and at which the following conditions precedents are satisfied or waived in accordance with such section:

(a) The Administrative Agent’s receipt of the following:

(i) executed counterparts of this Amendment from each of the Borrower, the other Reaffirming Parties, the Required Lenders and the Administrative Agent; and

(ii) a certificate signed by a Responsible Officer of the Borrower certifying that the representations and warranties set out in Sections 4(a) and (b) are true and correct; and

(iii) duly executed copies of all definitive documentation evidencing and governing the Indebtedness to be incurred under Section 7.03(g) of the Credit Agreement.

(b) each of the representations and warranties made by the Borrower in Section 4 hereof shall be true and correct; and

(c) the Borrower shall have paid, or cause to be paid, to the Administrative Agent, for the account of each Lender who consented to this Amendment by executing and delivering to the Administrative Agent a signature page hereto prior to the First Amendment Effective Date, an amendment fee equal to 100 basis points (1.0%) of the portion of the L/C Commitments held by such consenting Lender as of the First Amendment Effective Date, which fees shall be earned on the First Amendment Effective Date and shall be payable in immediately available funds upon the First Amendment Effective Date.

For purposes of determining compliance with the conditions specified in this Section 3, each Lender that has signed this Amendment shall be deemed to have consented



to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed First Amendment Effective Date specifying its objection thereto.

4. Representations and Warranties.

In order to induce the Administrative Agent and the Lenders to enter into this Amendment, the Borrower represents and warrants to the Administrative Agent and the Lenders, for itself and for each other Loan Party and Gibraltar Holdings, as follows:

(a) no Default or Event of Default shall exist, or would result immediately, from transactions contemplated hereby on the First Amendment Effective Date;

(b) the representations and warranties of (i) the Borrower contained in Article V of the Credit Agreement and (ii) each Loan Party contained in each Loan Document shall be true and correct in all material respects on and as of the First Amendment Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that the representations and warranties contained in subsection (b) of Section 5.05 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clause (b) of Section 6.01 of the Credit Agreement; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality or by a reference to a Material Adverse Effect in the text thereof; and

(c) the execution, delivery and performance by each Loan Party and Gibraltar Holdings of this Amendment and the consummation of the transactions contemplated hereby (a) have been duly authorized by all necessary corporate or other organizational action, (b) do not and will not (i) contravene the terms of any of such Person's Organizational Documents; (ii) conflict with or result in any breach or contravention of, or the creation of, any Lien (except for any Liens that may arise under the Loan Documents) under, or require any payment to be made under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject or (C) any arbitral award to which such Person or its property is subject; or (iii) violate any Law binding on such Person;

(d) this Amendment has been duly executed and delivered on behalf of each Loan Party and Gibraltar Holdings;

(e) this Amendment constitutes a legal, valid and binding obligation of each Loan Party and Gibraltar Holdings enforceable against each Loan Party and Gibraltar Holdings in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally, general principles of equity, regardless of whether considered

in a proceeding in equity or at law and an implied covenant of good faith and fair dealing; and

(f) as of the date hereof, all Liens, security interests, assignments and pledges encumbering the Collateral, created pursuant to and/or referred to in the Credit Agreement or the other Loan Documents, are valid, enforceable, duly perfected to the extent required by the Loan Documents, non-avoidable, first priority liens, security interests, assignments and pledges (subject to Liens permitted by Section 7.01 of the Credit Agreement), continue unimpaired, are in full force and effect and secure and shall continue to secure all of the obligations purported to be secured in the respective Security Documents pursuant to which such Liens were granted.

5. Reaffirmation.

(a) To induce the Lenders and the Administrative Agent to enter into this Amendment, each of the Loan Parties and Gibraltar Holdings hereby acknowledges and reaffirms its obligations under each Loan Document to which it is a party, including, without limitation, any grant, pledge or collateral assignment of a lien or security interest, as applicable, contained therein, in each case as amended, restated, amended and restated, supplemented or otherwise modified prior to or as of the date hereof. The Borrower acknowledges and agrees that each of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall not be impaired or limited by the execution or effectiveness of this Amendment.

(b) In furtherance of the foregoing clause (a), each Reaffirming Party that is party to any Security Document, in its capacity as a "grantor", "pledgor" or other similar capacity under such Security Document, hereby acknowledges that it has reviewed and consents to the terms and conditions of this Amendment and the transactions contemplated hereby. In addition, each Reaffirming Party reaffirms the security interests granted by such Reaffirming Party under the terms and conditions of the Security Documents (in each case, to the extent a party thereto) to secure the Secured Obligations and agrees that such security interests remain in full force and effect and are hereby ratified, reaffirmed and confirmed. Each Reaffirming Party hereby (i) confirms that each Security Document to which it is a party or is otherwise bound and all Collateral encumbered thereby will continue to secure, to the fullest extent possible in accordance with the Security Documents, the payment and performance of the Secured Obligations, including without limitation the payment and performance of all such applicable Secured Obligations that are joint and several obligations of each Guarantor and each Reaffirming Party now or hereafter existing, in each case pursuant to the terms of the Security Documents such Reaffirming Party is a party to, (ii) confirms its respective grant to the Collateral Trustee for the benefit of the Secured Parties of the security interest in and continuing Lien on all of such Reaffirming Party's right, title and interest in, to and under all Collateral to which such Reaffirming Party granted a security interest in and a continuing Lien on pursuant to the terms of the Security Documents to which such Reaffirming Party is party to, in each case whether now owned or existing or hereafter acquired or arising and wherever located, as collateral security for the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand

or otherwise, of all applicable Secured Obligations, subject to the terms contained in the applicable Loan Documents and (iii) confirms its respective pledges, grants of security interests and other obligations, as applicable, under and subject to the terms of each of the Security Documents to which it is a party.

6. Miscellaneous Provisions.

(a) Governing Law; Submission to Jurisdiction, Consent to Service of Process, Waiver of Jury Trial, Etc. Sections 10.04, 10.14 and 10.15 of the Existing Credit Agreement are incorporated by reference herein as if such Sections appeared herein, mutatis mutandis.

(b) Severability. Section 10.12 of the Existing Credit Agreement is incorporated by reference herein as if such Section appeared herein, mutatis mutandis.

(c) Full Force and Effect. Except as expressly modified hereby, all terms and provisions of the Credit Agreement and all other Loan Documents remain in full force and effect and nothing contained in this Amendment shall in any way impair the validity or enforceability of the Credit Agreement or the Loan Documents, or alter, waive, annul, vary, affect, or impair any provisions, conditions, or covenants contained therein or any rights, powers, or remedies granted therein. The Borrower acknowledges and agrees that this Amendment shall not constitute a modification of the Credit Agreement or any of the other Loan Documents or a course of dealing with Administrative Agent or the Lenders at variance with the Credit Agreement or the other Loan Documents such as to require further notice by Administrative Agent or any Lender to require strict compliance with the terms of the Credit Agreement and the other Loan Documents in the future, except in each case as expressly set forth herein.

(d) Counterparts; Electronic Execution; Headings. This Amendment 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. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Amendment and/or any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), 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. As used herein, "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record. Article and Section headings used herein are included for convenience of reference only, shall not constitute a part hereof, shall not be given any substantive effect and shall not affect the interpretation of this Amendment.

(e) Third Party Beneficiary. The Collateral Trustee shall be an express third-party beneficiary of this Amendment.

(f) Amendment, Modification and Waiver. This Amendment may not be amended, nor may any provision hereof be waived, except pursuant to a writing signed by each of the parties hereto.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed and delivered by their duly authorized officers, all as of the day and year first written above.

**PEABODY ENERGY CORPORATION,**  
as Borrower

A handwritten signature in blue ink, appearing to read "Brian R. Cropper".

By: \_\_\_\_\_ Name: Brian Cropper  
Title: Vice President & Treasurer

*[Signature Page to Amendment No. 1 to Credit Agreement]*

**9 EAST SHIPPING US, LLC (f/k/a COALSALES II, LLC)  
AMERICAN LAND DEVELOPMENT, LLC AMERICAN LAND HOLDINGS OF COLORADO,  
LLC  
AMERICAN LAND HOLDINGS OF ILLINOIS, LLC AMERICAN LAND HOLDINGS OF  
INDIANA, LLC AMERICAN LAND HOLDINGS OF KENTUCKY,  
LLC  
BIG RIDGE, INC.  
BTU WESTERN RESOURCES, INC. CONSERVANCY RESOURCES, LLC EL  
SEGUNDO COAL COMPANY, LLC HAYDEN GULCH TERMINAL, LLC  
HILLSIDE RECREATIONAL LANDS, LLC KAYENTA MOBILE HOME PARK, INC.  
KENTUCKY UNITED COAL, LLC MOFFAT COUNTY MINING, LLC  
NEW MEXICO COAL RESOURCES, LLC PEABODY AMERICA, LLC  
PEABODY ARCLAR MINING, LLC PEABODY ASSET HOLDINGS, LLC PEABODY BEAR  
RUN MINING, LLC PEABODY BEAR RUN SERVICES, LLC PEABODY CABALLO  
MINING, LLC PEABODY CARDINAL GASIFICATION, LLC PEABODY CHINA, LLC  
PEABODY COALSALES, LLC PEABODY COALTRADE, LLC  
PEABODY COLORADO OPERATIONS, LLC PEABODY COLORADO SERVICES, LLC  
PEABODY COULTERVILLE MINING, LLC PEABODY DEVELOPMENT COMPANY, LLC  
PEABODY ELECTRICITY, LLC  
PEABODY EMPLOYMENT SERVICES, LLC PEABODY GATEWAY NORTH MINING, LLC  
PEABODY GATEWAY SERVICES, LLC PEABODY GLOBAL FUNDING, LLC PEABODY  
HOLDING COMPANY, LLC PEABODY IC FUNDING CORP.  
PEABODY ILLINOIS SERVICES, LLC PEABODY INDIANA SERVICES, LLC PEABODY  
INTERNATIONAL HOLDINGS, LLC PEABODY INTERNATIONAL INVESTMENTS,  
INC.  
PEABODY INTERNATIONAL SERVICES, INC. PEABODY MIDWEST MANAGEMENT  
SERVICES, LLC  
PEABODY MIDWEST MINING, LLC PEABODY MIDWEST OPERATIONS, LLC**

*[Signature Page to Amendment No. 1 to Credit Agreement]*

PEABODY MIDWEST SERVICES, LLC PEABODY MONGOLIA, LLC PEABODY  
NATURAL GAS, LLC  
PEABODY NATURAL RESOURCES COMPANY PEABODY NEW MEXICO SERVICES, LLC  
PEABODY OPERATIONS HOLDING, LLC PEABODY POWDER RIVER MINING, LLC  
PEABODY POWDER RIVER OPERATIONS, LLC PEABODY POWDER RIVER SERVICES,  
LLC PEABODY ROCKY MOUNTAIN MANAGEMENT  
SERVICES, LLC  
PEABODY ROCKY MOUNTAIN SERVICES, LLC PEABODY SCHOOL CREEK MINING, LLC  
PEABODY SERVICES HOLDINGS, LLC PEABODY TWENTYMILE MINING, LLC PEABODY  
VENEZUELA COAL CORP. PEABODY VENTURE FUND, LLC  
PEABODY WILD BOAR MINING, LLC PEABODY WILD BOAR SERVICES, LLC PEABODY  
WILLIAMS FORK MINING, LLC PEABODY WYOMING SERVICES, LLC PEABODY-  
WATERSIDE DEVELOPMENT, L.L.C. PEC EQUIPMENT COMPANY, LLC  
SAGE CREEK HOLDINGS, LLC  
SAGE CREEK LAND & RESERVES, LLC SENECA PROPERTY, LLC  
SHOSHONE COAL CORPORATION TWENTYMILE COAL, LLC  
UNITED MINERALS COMPANY, LLC



By: \_\_\_\_\_ Name: Eric R. Waller Title: Secretary


[Signature Page to Amendment No. 1 to Credit Agreement]



**PEABODY INVESTMENTS CORP.**

By: \_\_\_\_\_ Name: Brian Cropper  
Title: Vice President & Treasurer

**BIG SKY COAL COMPANY NGS ACQUISITION CORP., LLC**  
**PEABODY SAGE CREEK MINING, LLC PEABODY SOUTHEAST MINING, LLC**  
**PEABODY WESTERN COAL COMPANY**



By: \_\_\_\_\_ Name: Christopher W. Wittenauer Title: Secretary

**SENECA COAL COMPANY, LLC**

By: Peabody Holding Company, LLC, as its sole member



By: \_\_\_\_\_ Name: Eric R. Waller Title: Secretary

*[Signature Page to Amendment No. 1 to Credit Agreement]*





**PEABODY GLOBAL HOLDINGS, LLC**

By: \_\_\_\_\_ Name: Eric R. Waller Title: Secretary

*[Signature Page to Amendment No. 1 to Credit Agreement]*

**ADMINISTRATIVE AGENT:**

JPMorgan Chase Bank, N.A., as Administrative Agent

A handwritten signature in blue ink, appearing to read 'Lance Buxkemper', with a stylized flourish at the end.

By: \_\_\_\_\_ Name: Lance Buxkemper Title: Executive Director

*[Signature Page to Amendment No. 1 to Credit Agreement]*

**LENDERS:**

Bank of Montreal, Chicago Branch, as a Lender

*Aleen M Hartje*

By:

Name: Aleen Hartje

Title: Managing Director

*[Signature Page to Amendment No. 1 to Credit Agreement]*

**LENDERS:**

JPMorgan Chase Bank, N.A., as a Lender

A handwritten signature in blue ink, appearing to read 'Lance Buxkemper', with a stylized flourish at the end.

By: \_\_\_\_\_ Name: Lance Buxkemper Title: Executive Director

*[Signature Page to Amendment No. 1 to Credit Agreement]*



**LENDERS:**

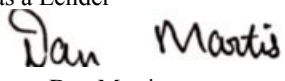
\_\_\_, as a Lender

By: Bank of America, N.A Name: Cameron D. Taylor Title: Senior  
Vice President

*[Signature Page to Amendment No. 1 to Credit Agreement]*

**LENDERS:**

GOLDMAN SACHS BANK USA,  
as a Lender

By:   
Name: Dan Martis  
Title: Authorized Signatory.

*[Signature Page to Amendment No. 1 to Credit Agreement]*

## AMENDMENT NO. 2 TO CREDIT AGREEMENT

This AMENDMENT NO. 2 TO CREDIT AGREEMENT, dated as of April 29, 2022 (this “Amendment”), among PEABODY ENERGY CORPORATION, a Delaware corporation (the “Borrower”), the other Reaffirming Parties (as defined below) party hereto, JPMORGAN CHASE BANK, N.A., as administrative agent (the “Administrative Agent”), and each Lender party hereto (each, a “Lender” and collectively, the “Lenders”) (such Lenders, collectively constituting the Required Lenders).

### PRELIMINARY STATEMENTS

**WHEREAS**, reference is made to that certain Credit Agreement, dated as of January 29, 2021, among the Borrower, the Administrative Agent and the lenders party thereto from time to time (as amended by Amendment No. 1 to Credit Agreement, dated as of March 7, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to, but not including, the date hereof, the “Existing Credit Agreement”, and the Existing Credit Agreement as amended pursuant hereto, the “Credit Agreement”);

**WHEREAS**, the Borrower has requested that the Administrative Agent and the Required Lenders agree to, among other items, amend Section 7.02 (*Investments*) to permit the Borrower to enter into certain Joint Ventures for Renewable Energy projects;

**WHEREAS**, subject to the satisfaction of the conditions precedent set forth in Section 3 hereof, each of the Administrative Agent, Required Lenders and the Borrower have agreed to amend certain terms of the Existing Credit Agreement as set forth in Section 2 hereof, including the reduction of L/C Commitments by \$16,834,413.42 on the Second Amendment Effective Date (as defined below);

**WHEREAS**, each Loan Party party hereto and Gibraltar Holdings (collectively, the “Reaffirming Parties”, and each, a “Reaffirming Party”) expects to realize substantial direct and indirect benefits as a result of this Amendment becoming effective and the consummation of the transactions contemplated hereby and agrees to reaffirm its obligations under the Credit Agreement, the Security Documents, and the other Loan Documents to which it is a party;

**NOW, THEREFORE**, in consideration of the undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms; Interpretation; Etc. Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Credit Agreement. This Amendment is a “Loan Document” (as defined in the Existing Credit Agreement and the Credit Agreement).

2. Amendments to Credit Agreement. Pursuant to and in accordance with Section 10.01 of the Existing Credit Agreement, effective as of the Second Amendment Effective Time (as defined below), each of the parties hereto agree that the Existing Credit Agreement shall be amended as follows:

(a) The Credit Agreement shall be amended by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and by adding the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) in the form set out in Annex A hereto.

(b) Schedule 2.01(a) (L/C Commitments) to the Credit Agreement is hereby amended and restated in its entirety in the form set out on Annex B hereto.

3. Conditions Precedent. The amendments herein shall become effective on the date (the “Second Amendment Effective Date”) and at the time (the “Second Amendment Effective Time”) on and at which the following conditions precedents are satisfied or waived in accordance with such section:

(a) The Administrative Agent’s receipt of the following:

(i) executed counterparts of this Amendment from each of the Borrower, the other Reaffirming Parties, the Required Lenders and the Administrative Agent;

(ii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of duly authorized officers of each Loan Party and each Restricted Subsidiary party to a Loan Document, in each case, as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each officer of each Loan Party or Restricted Subsidiary executing the Loan Documents to which each Loan Party or Restricted Subsidiary is a party;

(iii) the executed opinion (which opinion shall also retroactively cover the First Amendment) of Jones Day, counsel to the Borrower and special New York counsel to the other Loan Parties, addressed to the Administrative Agent and each Lender under the Credit Agreement, and which shall be reasonably satisfactory to the Administrative Agent;

(iv) evidence reasonably satisfactory to the Administrative Agent of compliance with Section 6.16 (*Covenant to Give Security*) of the Credit Agreement with respect to R3 Renewables Holdings, LLC (the “New Subsidiary”), including (I) executed counterparts of (a) an Assumption Agreement to the Security Agreement (x) substantially in the form of Annex

1 to the Security Agreement and (y) reasonably satisfactory to the Administrative Agent from the New Subsidiary as an “Additional Grantor” thereunder, (b) a Joinder Agreement to the Guaranty (x) substantially in the form of Annex 1 to the Guaranty and (y) reasonably satisfactory to the Administrative Agent from the New Subsidiary as an “Additional Guarantor” thereunder and the Administrative Agent, and (c) a Collateral Trust Joinder- Additional Guarantor substantially in the form of Annex C to the Collateral Trust Agreement from the New Subsidiary and Wilmington Trust, National Association, as Collateral Trustee and (II) delivery of a UCC financing statement; and



(v) a certificate signed by a Responsible Officer of the Borrower certifying that the representations and warranties set out in Sections 4(a) and (b) are true and correct;

(b) the Borrower shall have reduced the L/C Commitments pursuant to Section 2.06(a) of the Existing Credit Agreement in an aggregate amount equal to \$16,834,413.42, representing the aggregate unused L/C Commitments on the Second Amendment Effective Date (and the Borrower, the Required Lenders and the Administrative Agent hereby waive any minimum amount requirements set forth in Section 2.06(a) of the Existing Credit Agreement with respect to such L/C Commitment reduction);

(c) to the extent invoiced at least two Business Days prior to the Second Amendment Effective Date, the Borrower shall have paid all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and the Lenders signatory hereto (including the reasonable and documented fees and expenses of any counsel to the Administrative Agent and/or a consenting Lender, plus such additional amounts of such reasonable and documented fees and expenses as shall constitute such party's reasonable estimate of such fees and expenses incurred or to be incurred by it through the closing proceedings); and

(d) each of the representations and warranties made by the Borrower in Section 4 hereof shall be true and correct.

For purposes of determining compliance with the conditions specified in this Section 3, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Second Amendment Effective Date specifying its objection thereto.

#### 4. Representations and Warranties.

In order to induce the Administrative Agent and the Lenders to enter into this Amendment, the Borrower represents and warrants to the Administrative Agent and the Lenders, for itself and for each other Loan Party and Gibraltar Holdings, as follows:

(a) no Default or Event of Default shall exist, or would result immediately, from transactions contemplated hereby on the Second Amendment Effective Date;

(b) the representations and warranties of (i) the Borrower contained in Article V of the Credit Agreement and (ii) each Loan Party contained in each Loan Document shall be true and correct in all material respects on and as of the Second Amendment Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that the representations and warranties contained in subsection (b) of Section 5.05 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clause (b) of Section 6.01 of the Credit Agreement; provided that, in each case, such materiality qualifier shall not be

applicable to any representations and warranties that already are qualified or modified by materiality or by a reference to a Material Adverse Effect in the text thereof; and

(c) the execution, delivery and performance by each Loan Party and Gibraltar Holdings of this Amendment and the consummation of the transactions contemplated hereby (a) have been duly authorized by all necessary corporate or other organizational action, (b) do not and will not (i) contravene the terms of any of such Person's Organizational Documents; (ii) conflict with or result in any breach or contravention of, or the creation of, any Lien (except for any Liens that may arise under the Loan Documents) under, or require any payment to be made under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject or (C) any arbitral award to which such Person or its property is subject; or (iii) violate any Law binding on such Person;

(d) this Amendment has been duly executed and delivered on behalf of each Loan Party and Gibraltar Holdings;

(e) this Amendment constitutes a legal, valid and binding obligation of each Loan Party and Gibraltar Holdings enforceable against each Loan Party and Gibraltar Holdings in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally, general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing; and

(f) as of the date hereof, all Liens, security interests, assignments and pledges encumbering the Collateral, created pursuant to and/or referred to in the Credit Agreement or the other Loan Documents, are valid, enforceable, duly perfected to the extent required by the Loan Documents, non-avoidable, first priority liens, security interests, assignments and pledges (subject to Liens permitted by Section 7.01 of the Credit Agreement), continue unimpaired, are in full force and effect and secure and shall continue to secure all of the obligations purported to be secured in the respective Security Documents pursuant to which such Liens were granted.

5. Reaffirmation.

(a) To induce the Lenders and the Administrative Agent to enter into this Amendment, each of the Loan Parties and Gibraltar Holdings hereby acknowledges and reaffirms its obligations under each Loan Document to which it is a party, including, without limitation, any grant, pledge or collateral assignment of a lien or security interest, as applicable, contained therein, in each case as amended, restated, amended and restated, supplemented or otherwise modified prior to or as of the date hereof. The Borrower acknowledges and agrees that each of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall not be impaired or limited by the execution or effectiveness of this Amendment.

(b) In furtherance of the foregoing clause (a), each Reaffirming Party that is party to any Security Document, in its capacity as a “grantor”, “pledgor” or other similar capacity under such Security Document, hereby acknowledges that it has reviewed and consents to the terms and conditions of this Amendment and the transactions contemplated hereby. In addition, each Reaffirming Party reaffirms the security interests granted by such Reaffirming Party under the terms and conditions of the Security Documents (in each case, to the extent a party thereto) to secure the Secured Obligations and agrees that such security interests remain in full force and effect and are hereby ratified, reaffirmed and confirmed. Each Reaffirming Party hereby (i) confirms that each Security Document to which it is a party or is otherwise bound and all Collateral encumbered thereby will continue to secure, to the fullest extent possible in accordance with the Security Documents, the payment and performance of the Secured Obligations, including without limitation the payment and performance of all such applicable Secured Obligations that are joint and several obligations of each Guarantor and each Reaffirming Party now or hereafter existing, in each case pursuant to the terms of the Security Documents such Reaffirming Party is a party to, (ii) confirms its respective grant to the Collateral Trustee for the benefit of the Secured Parties of the security interest in and continuing Lien on all of such Reaffirming Party’s right, title and interest in, to and under all Collateral to which such Reaffirming Party granted a security interest in and a continuing Lien on pursuant to the terms of the Security Documents to which such Reaffirming Party is party to, in each case whether now owned or existing or hereafter acquired or arising and wherever located, as collateral security for the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all applicable Secured Obligations, subject to the terms contained in the applicable Loan Documents and (iii) confirms its respective pledges, grants of security interests and other obligations, as applicable, under and subject to the terms of each of the Security Documents to which it is a party.

6. Miscellaneous Provisions.

(a) Governing Law; Submission to Jurisdiction; Consent to Service of Process; Waiver of Jury Trial, Etc. Sections 10.04, 10.14 and 10.15 of the Existing Credit Agreement are incorporated by reference herein as if such Sections appeared herein, mutatis mutandis.

(b) Severability. Section 10.12 of the Existing Credit Agreement is incorporated by reference herein as if such Section appeared herein, mutatis mutandis.

(c) Full Force and Effect. Except as expressly modified hereby, all terms and provisions of the Credit Agreement and all other Loan Documents remain in full force and effect and nothing contained in this Amendment shall in any way impair the validity or enforceability of the Credit Agreement or the Loan Documents, or alter, waive, annul, vary, affect, or impair any provisions, conditions, or covenants contained therein or any rights, powers, or remedies granted therein. The Borrower acknowledges and agrees that this Amendment shall not constitute a modification of the Credit Agreement or any of the other Loan Documents or a course of dealing with Administrative Agent or the Lenders at variance with the Credit Agreement or the other Loan Documents such as to require further notice by Administrative Agent or any Lender to require strict compliance with the

terms of the Credit Agreement and the other Loan Documents in the future, except in each case as expressly set forth herein.

(d) Counterparts; Electronic Execution; Headings. This Amendment 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. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Amendment and/or any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), 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. As used herein, “Electronic Signatures” means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record. Article and Section headings used herein are included for convenience of reference only, shall not constitute a part hereof, shall not be given any substantive effect and shall not affect the interpretation of this Amendment.

(e) Third Party Beneficiary. The Collateral Trustee shall be an express third-party beneficiary of this Amendment.

(f) Amendment, Modification and Waiver. This Amendment may not be amended, nor may any provision hereof be waived, except pursuant to a writing signed by each of the parties hereto.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed and delivered by their duly authorized officers, all as of the day and year first written above.

**PEABODY ENERGY CORPORATION,**  
as Borrower

A handwritten signature in blue ink, appearing to read "Brian R. Cropper", is written over a horizontal line.

By:            Name: Brian Cropper  
Title: Vice President and Treasurer

*[Signature Page to Amendment No. 2 to Credit Agreement]*

9 EAST SHIPPING US (f/k/a CAOLSALES II,  
LLC)  
AMERICAN LAND DEVELOPMENT, LLC  
AMERICAN LAND HOLDINGS OF  
COLORADO, LLC  
AMERICAN LAND HOLDINGS OF ILLINOIS,  
LLC  
AMERICAN LAND HOLDINGS OF INDIANA,  
LLC  
AMERICAN LAND HOLDINGS OF  
KENTUCKY,  
LLC  
BIG RIDGE, INC.  
BTU WESTERN RESOURCES, INC.  
CONSERVANCY RESOURCES, LLC  
EL SEGUNDO COAL COMPANY, LLC  
HAYDEN GULCH TERMINAL, LLC  
HILLSIDE RECREATIONAL LANDS, LLC  
KAYENTA MOBILE HOME PARK, INC.  
KENTUCKY UNITED COAL, LLC  
MOFFAT COUNTY MINING, LLC  
NEW MEXICO COAL RESOURCES, LLC  
PEABODY AMERICA, LLC  
PEABODY ARCLAR MINING, LLC  
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SERVICES, LLC  
PEABODY MIDWEST MINING, LLC  
PEABODY MIDWEST OPERATIONS, LLC  
PEABODY MIDWEST SERVICES, LLC  
PEABODY MONGOLIA, LLC

*[Signature Page to Amendment No. 2 to Credit Agreement]*

PEABODY NATURAL GAS, LLC  
PEABODY NATURAL RESOURCES COMPANY PEABODY NEW MEXICO SERVICES, LLC  
PEABODY OPERATIONS HOLDING, LLC PEABODY POWDER RIVER MINING, LLC  
PEABODY POWDER RIVER OPERATIONS, LLC PEABODY POWDER RIVER SERVICES,  
LLC PEABODY ROCKY MOUNTAIN MANAGEMENT  
SERVICES, LLC  
PEABODY ROCKY MOUNTAIN SERVICES, LLC PEABODY SCHOOL CREEK MINING, LLC  
PEABODY SERVICES HOLDINGS, LLC PEABODY TWENTYMILE MINING, LLC PEABODY  
VENEZUELA COAL CORP. PEABODY VENTURE FUND, LLC  
PEABODY WILD BOAR MINING, LLC PEABODY WILD BOAR SERVICES, LLC PEABODY  
WILLIAMS FORK MINING, LLC PEABODY WYOMING SERVICES, LLC PEABODY-  
WATERSIDE DEVELOPMENT, L.L.C. PEC EQUIPMENT COMPANY, LLC  
SAGE CREEK HOLDINGS, LLC  
SAGE CREEK LAND & RESERVES, LLC SENECA PROPERTY, LLC  
SHOSHONE COAL CORPORATION TWENTYMILE COAL, LLC  
UNITED MINERALS COMPANY, LLC



By: \_\_\_\_\_ Name: Eric R. Waller Title: Secretary

[Signature Page to Amendment No. 2 to Credit Agreement]



**PEABODY INVESTMENTS CORP.**

By: \_\_\_\_\_ Name: Brian Cropper  
Title: Vice President & Treasurer

**BIG SKY COAL COMPANY NGS ACQUISITION CORP.,LLC  
PEABODY SAGE CREEK MINING, LLC PEABODY SOUTHEAST MINING, LLC  
PEABODY WESTERN COAL COMPANY R3 RENEWABLES HOLDING, LLC**

By: \_\_\_\_\_ Name: Christopher W. Wittenauer Title: Secretary

**SENECA COAL COMPANY, LLC**

By: \_\_\_\_\_ Name: Eric R. Waller Title: Secretary

*[Signature Page to Amendment No. 2 to Credit Agreement]*



**PEABODY INVESTMENTS CORP.**

By: \_\_\_\_\_ Name: Brian Cropper  
Title: Vice President & Treasurer

**BIG SKY COAL COMPANY**

**NGS ACQUISITION CORP., LLC PEABODY SAGE CREEK MINING, LLC PEABODY SOUTHEAST  
MINING, LLC PEABODY WESTERN COAL COMPANY R3 RENEWABLES HOLDING, LLC**



By: \_\_\_\_\_  
Name: Christopher W. Wittenauer  
Title: Secretary

**SENECA COAL COMPANY, LLC**

By: \_\_\_\_\_  
Name: Eric R. Waller Title: Secretary

*[Signature Page to Amendment No. 2 to Credit Agreement]*

**PEABODY INVESTMENTS CORP.**

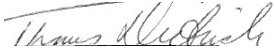
By: \_\_\_\_\_ Name: Brian Cropper  
Title: Vice President & Treasurer

**BIG SKY COAL COMPANY**

**NGS ACQUISITION CORP., LLC PEABODY SAGE CREEK MINING, LLC PEABODY SOUTHEAST  
MINING, LLC PEABODY WESTERN COAL COMPANY R3 RENEWABLES HOLDING, LLC**

By:  
Name: Christopher W. Wittenauer  
Title: Secretary

**SENECA COAL COMPANY, LLC**



By: \_\_\_\_\_ Name: Thomas Dietrich  
Title: Secretary

*[Signature Page to Amendment No. 2 to Credit Agreement]*



**PEABODY GLOBAL HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Eric R. Waller  
Title: Secretary

*[Signature Page to Amendment No. 2 to Credit Agreement]*

**ADMINISTRATIVE AGENT:**

JPMorgan Chase Bank, N.A.,  
as Administrative Agent

By:

Name: Lance Buxkemper

Title: Executive Director

*[Signature Page to Amendment No. 2 to Credit Agreement]*

**LENDERS:**

**Bank of Montreal, Chicago Branch**, as a Lender

By: *Aleen M Hartje* Name: Aleen Hartje  
Title: Managing Director

*[Signature Page to Amendment No. 2 to Credit Agreement]*

**LENDERS:**

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,  
as a Lender

A handwritten signature in cursive script, appearing to read "Gianni Russello".

By: \_\_ Name: Gianni Russello  
Title: Authorized Signatory


A handwritten signature in cursive script, appearing to read "Lawrence Park".

By: \_\_ Name: Lawrence Park  
Title: Authorized Signatory

[Signature Page to Amendment No. 2 to Credit Agreement]

**LENDERS:**

**Deutsche Bank AG New York Branch**, as a Lender



By: \_\_ Name: Jessica Lutrario  
Title: Associate  
212-250-8235  
jessica.lutrario@db.com

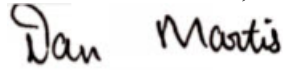


By: \_\_  
Name: Philip Tancorra  
Title: Vice President  
philip.tancorra@db.com  
212-250-6576

*[Signature Page to Amendment No. 2 to Credit Agreement]*

**LENDERS:**

**Goldman Sachs Bank USA**, as a Lender

A handwritten signature in black ink that reads "Dan Martis". The signature is written in a cursive, slightly stylized font.

By:

Name: Dan Martis

Title: Authorized Signatory

*[Signature Page to Amendment No. 2 to Credit Agreement]*



**LENDERS:**

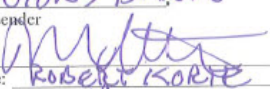
JPMorgan Chase Bank, N.A.,  
as a Lender

By:

Name: Lance Buxkemper  
Title: Executive Director

*[Signature Page to Amendment No. 2 to Credit Agreement]*

**LENDERS:**

REGIONS BANK  
as a Lender  
By:   
Name: ROBERT KORTE  
Title: SVP

*[Signature Page to Amendment No. 2 to Credit Agreement]*

## **Annex A**

[Attached]

~~March 7~~April 29, 2022

CREDIT AGREEMENT

among

PEABODY ENERGY CORPORATION,  
as Borrower,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent,

and

The Other Lenders Party Hereto Dated as of January 29, 2021

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- 7.08 Transactions with Affiliates
- 7.12 Burdensome Agreements
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## EXHIBITS

Form of:

- A L/C Borrowing Notice
- B [Reserved]
- C L/C Borrowing Note
- D Compliance Certificate
- E Assignment and Assumption
- F Guaranty
- G [Reserved]
- I-1 [Reserved]
- J [Reserved]
- K Solvency Certificate
- L Auction Procedures
- M-1 U.S. Tax Compliance Certificate M-2 U.S. Tax Compliance Certificate M-3 U.S. Tax Compliance Certificate M-4 U.S. Tax Compliance Certificate N Borrower Participation Procedures

This CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified, the “Agreement”) is entered into as of January 29, 2021, among, *inter alios*, PEABODY ENERGY CORPORATION, a Delaware corporation (the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and, individually, a “Lender”), and JPMorgan Chase Bank, N.A., as administrative agent.

#### PRELIMINARY STATEMENTS

WHEREAS, the Borrower is party to that certain Credit Agreement, dated as of April 3, 2017, as amended by Amendment No. 1 to Credit Agreement, dated as of September 18, 2017, Amendment No. 2 to Credit Agreement, dated as of November 17, 2017, Amendment No. 3 to Credit Agreement, dated as of December 8, 2017, Amendment No. 4 to Credit Agreement, dated as of April 11, 2018, Amendment No. 5 to Credit Agreement, dated as of June 27, 2018, Technical Amendment to Credit Agreement, dated as of July 19, 2018, Amendment No. 6 to Credit Agreement, dated as of September 17, 2019, Amendment No. 7 to Credit Agreement, dated as of September 17, 2019, and Amendment No. 8 to Credit Agreement, dated as of the date hereof (“Amendment No. 8 to Existing Credit Agreement”), and from time to time further amended, supplemented, restated, amended and restated or otherwise modified, the “Existing Credit Agreement”, by and among the Borrower, JPMorgan Chase Bank, N.A., as administrative agent, and the other lenders party thereto from time to time;

WHEREAS, the Borrower wishes to refinance certain Revolving Commitments (as defined in and under the Existing Credit Agreement) pursuant to Section 2.16 of the Existing Credit Agreement, and, in connection therewith, has requested that the Lenders provide the L/C Facility referred to herein; and

WHEREAS, the Lenders are willing to extend credit to the Borrower on the terms and subject to the conditions set forth herein, and the letters of credit identified on Schedule 1.01(g) hereto as of the Closing Date (the “Existing Letters of Credit”) shall be deemed to be Letters of Credit for all purposes under this Agreement.

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

#### ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“2022 Notes” means the senior notes due March 31, 2022, issued prior to the Closing Date pursuant to the Existing Priority Lien Notes Indenture.

“2024 Notes” means the senior secured priority notes due December 31, 2024 issued from time to time under the 2024 Notes Indenture.

“2024 Notes Indenture” means the Indenture, dated as of the Closing Date, between the Borrower and Wilmington Trust, National Association, as Trustee (as defined therein), as the

same may be amended, restated, supplemented, replaced, refinanced or otherwise modified from time to time in accordance with the Collateral Trust Agreement.

“2025 Notes” means the senior notes due March 31, 2025, issued prior to the Closing Date pursuant to the Existing Priority Lien Notes Indenture.

“A\$” means the lawful currency of Australia.

“Accepting Lenders” has the meaning specified in Section 10.01(g).

“Accounting Change” means changes in accounting principles after the Closing Date required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board or, if applicable, the SEC.

“Additional Refinancing 2024 Notes” has the meaning specified in Section 7.03(a). “Additional Extensions of Credit” has

the meaning specified in Section 10.01. “Administrative Agent” means JPMorgan Chase Bank, N.A., in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

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

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

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent Parties” has the meaning specified in Section 10.02(c). “Aggregate Commitments” means the

Commitments of all the Lenders.

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

“Alternative Currency” means each of Euro, Sterling, A\$ and each other currency (other than Dollars) that is approved in accordance with Section 1.05.

“Alternative Currency Equivalent” means, at any date, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, at such

time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars on such date.

“Amendment No. 8 to Existing Credit Agreement” has the meaning specified in the preamble.

“Ancillary Fees” has the meaning specified in Section 10.01(i). “Anti-Corruption Laws” has the meaning specified in Section 5.17.

“Applicable Percentage” means (i) with respect to the L/C Borrowing Facility, with respect to any L/C Borrowing Lender at any time, the percentage (carried out to the ninth decimal place) of the L/C Borrowing Facility represented by such Lender’s L/C Borrowings then outstanding and (ii) with respect to the L/C Commitment Facility, with respect to any L/C Commitment Lender at any time, the percentage (carried out to the ninth decimal place) of the L/C Facility represented by such L/C Commitment Lender’s L/C Commitment at such time. If the commitment of each L/C Commitment Lender to make L/C Advances and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the L/C Commitments have expired, then the Applicable Percentage of each L/C Commitment Lender in respect of the L/C Commitment Facility shall be determined based on the Applicable Percentage of such L/C Commitment Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments. There are no L/C Borrowing Lenders as of the Closing Date. The Applicable Percentage of each L/C Commitment Lender in respect of the L/C Commitment Facility as of the Closing Date is set forth opposite the name of such L/C Commitment Lender on Schedule 2.01(a).

“Applicable Rate” means a percentage *per annum* equal to (i) 6.00% for Eurocurrency Rate Loans and (ii) 5.00% for Base Rate Loans.

Notwithstanding the foregoing, the Applicable Rate in respect of any Class of Loans under any Refinancing L/C Borrowing Facility shall be the applicable percentages per annum set forth in the relevant agreement.

“Applicable Reserve Requirement” means, at any time, for any Eurocurrency Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to

(i) any category of liabilities which includes deposits by reference to which the applicable Eurocurrency Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurocurrency Rate Loans. A Eurocurrency Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on

Eurocurrency Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

“Applicable Premium” means the greater of (x) 1.00% and (y) the excess of (a) the sum of the present values of (I) the remaining scheduled payments of interest, the Letter of Credit Fees and Commitment Fees (excluding accrued and unpaid interest and fees to the date of the applicable repayment and/or reduction) each through January 30, 2023 and (II) the principal amount of L/C Borrowings and the face amount of outstanding Letters of Credit, each at 103% on the amount to be prepaid or Cash Collateralized, as applicable, computed using a discount rate equal to the Treasury Rate as of such prepayment date (discounted to the prepayment date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months)) plus 50 basis points, over (b) the sum of (x) the outstanding aggregate amount of L/C Borrowings and (y) the face amount of the Letters of Credit to be prepaid or Cash Collateralized, as applicable; provided that, for the purposes of calculating the “Applicable Premium”, the Commitment Fees, the outstanding face value of the Letters of Credit, and the principal amount of the L/C Borrowings shall be based on such amounts outstanding as on the Business Day immediately prior to the date of such prepayment and/or reduction.

“Applicable Time” means, with respect to any payments in any Alternative Currency, a New York City time reasonably determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, subject to the Administrative Agent or such L/C Issuer providing advance notice to the Borrower that such time is necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payments.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Asset Sale” means any Disposition or series of related Dispositions of property by the Borrower or any of its Restricted Subsidiaries to any Person; provided that “Asset Sale” shall exclude (x) any Disposition or series of related Dispositions with a fair market value (as reasonably determined by the Borrower in good faith) of less than \$10,000,000 and (y) the sale or discount of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof.

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

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b), and accepted by the Administrative Agent) in substantially the form of Exhibit E or any other form approved by the Administrative Agent, in accordance with Section 10.06(b).

“Attributable Indebtedness” means, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Auction” has the meaning specified in Section 2.19(a). “Auction Manager” has the meaning specified in Section 2.19(a).

“Auction Procedures” means the procedures for conducting any Auction set forth on Exhibit L, subject to modification as mutually determined by the Borrower and the Auction Manager and consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed).

“Audited Financial Statements” means the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of the fiscal year ended December 31, 2019, and the related consolidated statements of income or operations, changes in shareholders’ equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year.

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Maturity Date and (b) the date of termination of the L/C Commitments pursuant to Section 2.06 and (c) the date of termination of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 8.02.

“Available Repurchase Amount” has the meaning specified in Section 2.21(b)(i). “Available Tenor” means, as of any date of determination and with respect to the

then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (f) of Section 3.03.

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

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

“Bank Guarantee” means a direct guaranty or undertaking issued for the account of the Borrower pursuant to this Agreement by an L/C Issuer in form acceptable to such L/C Issuer issued to provide credit support to the Borrower or any of its Restricted Subsidiaries.

“Base Rate” means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the

Eurocurrency Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Eurocurrency Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Eurocurrency Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Eurocurrency Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Base Rate Loan” means an L/C Borrowing that bears interest based on the Base Rate. “Benchmark” means, initially, LIBO

Screen Rate; provided that if a Benchmark

Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBO Screen Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) or clause (c) of Section 3.03.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

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

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

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and

shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).

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

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

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

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

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

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

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

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement or Term SOFR Transition Event, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical,



administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement (including any Term SOFR Transition Event) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means 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 all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or

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

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

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

“Benchmark Transition Event” means 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 all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such

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

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

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

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

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

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in 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”.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower L/C Commitment Participations” shall have the meaning specified in Section 10.06(j).

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

“Borrower Participation Procedures” has the meaning specified in Section 10.06(j). “Borrowing” means an (a) L/C

Borrowing, (b) a conversion of an L/C Borrowing from one Type to the other or (c) a continuation of an L/C Borrowing as Eurocurrency Rate Loans, as the context may require.

“Borrowing Notice” means a notice of (a) an L/C Borrowing or (b) a conversion of an L/C Borrowing from one Type to the other or (c) a continuation of an L/C Borrowing as Eurocurrency Rate Loans, in each case, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Building” means a Building as defined in 12 CFR Chapter III, Section 339.2. “Business Day” means (i) any day excluding

Saturday, Sunday and any day which is a

legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and

(ii) with respect to all notices, determinations, fundings and payments in connection with the Eurocurrency Rate or any Eurocurrency Rate Loans, the term “Business Day” means any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“Capital Expenditure” means any expenditure that, in accordance with GAAP, is or should be included in “purchase of property and equipment” or similar items, or which should otherwise be capitalized, reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

“Capital Lease Obligations” means of any Person as of the date of determination, the aggregate liability of such Person under Financing Leases reflected on a balance sheet of such Person under GAAP.

“Capital Stock” means 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 or options to purchase any of the foregoing, but excluding any securities convertible into or exchangeable for shares of Capital Stock.

“Cash Collateralize” has the meaning specified in Section 2.17(a) and “Cash Collateral” shall have a correlative meaning.

“Cash Equivalents” means

- (a) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding two years from the date of acquisition,

- (b) (i) demand deposits, (ii) time deposits and certificates of deposit with maturities of two years or less from the date of acquisition, (iii) bankers' acceptances with maturities not exceeding two years from the date of acquisition, and (iv) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any state thereof (including any branch of a foreign bank licensed under any such laws) having capital, surplus and undivided profits in excess of \$250,000,000 (or the foreign currency equivalent thereof) whose short-term debt is rated A-2 or higher by S&P or P-2 or higher by Moody's,
- (c) commercial paper maturing within 364 days from the date of acquisition thereof and having, at such date of acquisition, ratings of at least A-1 by S&P or P-1 by Moody's,
- (d) readily marketable direct obligations issued by any state, commonwealth or territory of the U.S. or any political subdivision thereof, in each case rated at least A-1 by S&P or P-1 by Moody's with maturities not exceeding one year from the date of acquisition,
- (e) bonds, debentures, notes or other obligations with maturities not exceeding two years from the date of acquisition issued by any corporation, partnership, limited liability company or similar entity whose long-term unsecured debt has a credit rate of A2 or better by Moody's and A or better by S&P;
- (f) investment funds at least 95% of the assets of which consist of investments of the type described in clauses (a) through (e) above (determined without regard to the maturity and duration limits for such investments set forth in such clauses, provided that the weighted average maturity of all investments held by any such fund is two years or less),
- (g) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (b) above and
- (h) in the case of a Restricted Subsidiary that is a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

"Cash Flow Forecast" means a cash flow forecast for the Borrower and its Subsidiaries on a consolidated basis, broken down by weeks, covering the 13-week period following delivery thereof, in form and detail reasonably satisfactory to the Administrative Agent, which shall reflect, for the periods covered thereby, projected weekly disbursements (in line item detail), cash receipts (in line item detail), loan balances (in line item detail) and ending cash for each week covered by the Cash Flow Forecast.

"Cash Management Agreement" means any agreement evidencing Cash Management Obligations.

“Cash Management Bank” means any Person that (a) at the time it enters into a Cash Management Agreement, is a Lender, the Administrative Agent or an Affiliate of any of the foregoing or (b) becomes a Lender, the Administrative Agent or an Affiliate of any of the foregoing at any time after it has entered into a Cash Management Agreement.

“Cash Management Obligations” means any and all obligations of the Borrower or any Restricted Subsidiary arising out of (a) the execution or processing of electronic transfers of funds by automatic clearing house transfer, wire transfer or otherwise to or from the deposit accounts of the Borrower and/or any Restricted Subsidiary, (b) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts, (c) any other treasury, deposit, disbursement, overdraft, and cash management services afforded to the Borrower or any Restricted Subsidiary, and (d) stored value card, commercial credit card and merchant card services.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request or directive (whether or not having the force of law) by any Governmental Authority required to be complied with by any Lender. For purposes of this definition, (x) the Dodd-Frank Act and any rules, regulations, orders, requests, guidelines and directives adopted, promulgated or implemented in connection therewith, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to have been adopted, issued, promulgated or implemented after the Closing Date, but shall be included as a Change in Law only to the extent a Lender is imposing applicable increased costs or costs in connection with capital adequacy and other requirements similar to those described in Sections 3.04(a) and (b) generally on other similarly situated borrowers of loans under United States credit facilities.

“Change of Control” means:

(a) an event or series of events by which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis; or

(b) a “Change of Control” as defined in any Priority Lien Notes Indenture, in each case, as amended, restated, modified, replaced, or refinanced from time to time.

“Class” means (i) with respect to Lenders, each of the following classes of Lenders: (a) L/C Borrowing Lenders, (b) L/C Commitment Lenders and (d) Refinancing Facility Lenders in

respect of each applicable series of Refinancing Loans and (ii) with respect to Loans, each of the following classes of Loans: (a) L/C Borrowings and (b) each series of Refinancing Loans.

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

“Code” means the Internal Revenue Code of 1986, as amended from time to time (unless as indicated otherwise).

“Collateral” means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Security Documents as security for all or any part of the Obligations (subject to exceptions contained in the Security Documents), in each case excluding any Excluded Assets.

“Collateral Questionnaire” means a certificate in form reasonably satisfactory to Administrative Agent that provides information with respect to the personal or mixed property of each Loan Party.

“Collateral Trust Agreement” means the Collateral Trust Agreement, dated April 3, 2017, as amended by Amendment No. 1 to Collateral Trust Agreement, dated as of April 11, 2018, and Amendment No. 2 to Collateral Trust Agreement, dated as of July 19, 2018, among the Borrower, the Collateral Trustee and the other parties party thereto from time to time, as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Collateral Trustee” means Wilmington Trust, National Association and its successors and assigns as priority collateral trustee and junior collateral trustee pursuant to the Collateral Trust Agreement.

“Commitment” means an L/C Commitment or corresponding commitment under another Facility, as the context may require.

“Commitment Fee Rate” shall mean a rate per annum equal to 0.50%.

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

“Compliance Certificate” means a certificate substantially in the form of Exhibit D. “Consolidated EBITDA” means, as of

the last day of any period, Consolidated Net

Income for such period plus, without duplication, for such period (i) consolidated interest expense, determined in accordance with GAAP; (ii) to the extent deducted in computing such Consolidated Net Income, the sum of all income, franchise or similar taxes; (iii) depreciation, depletion, amortization (including, without limitation, amortization of intangibles, deferred financing fees and any amortization included in pension or other employee benefit expenses) and all other non-cash items reducing Consolidated Net Income (including, without limitation, write-downs and impairment of property, plant, equipment and intangibles and other long-lived assets and the impact of purchase accounting) but excluding, in each case, non-cash charges in a

period which reflect cash expenses paid or to be paid in another period); (iv) non-recurring restructuring costs, expenses and charges, including, without limitation, all business optimization costs and expenses, facility opening, pre-opening and closing and consolidation costs and expenses, advisory and professional fees and stay and retention bonuses; (v) any expenses, costs or charges related to any equity offering, Investment permitted under Section 7.02, acquisition, disposition, recapitalization or Indebtedness permitted to be incurred by the indenture (whether or not successful); (vi) all non-recurring or unusual losses, charges and expenses (and less all non-recurring or unusual gains); (vii) all non-cash charges and expenses; (viii) any debt extinguishment costs; (ix) any amount of asset retirement obligations expenses; (x) transaction costs, fees and expenses incurred during such period in connection with any acquisition or disposition not prohibited hereunder or any issuance of debt or equity securities by the Borrower or any of its Restricted Subsidiaries, in each case, for such expenses; (xi) net after-tax losses attributable to asset sales, and net after-tax extraordinary losses; (xii) (a) mark-to-market gains (and less any mark-to-market losses) relating to any Hedging Agreements permitted hereunder and (b) any mark-to-market losses attributed to short positions in any actual or synthetic forward sales contracts relating to coal or any other similar device or instrument or other instrument classified as a "derivative" pursuant to FASB ASC Topic No. 815, Derivatives and Hedging, (xiii) commissions, premiums, discounts, fees or other charges relating to performance bonds, bid bonds, appeal bonds, surety bonds, reclamation and completion guarantees and other similar obligations and (xiv) Transaction Costs; provided that, with respect to any Restricted Subsidiary, such items will be added only to the extent and in the same proportion that the relevant Restricted Subsidiary's net income was included in calculating Consolidated Net Income.

"Consolidated Net Income" means, for any period, the net income (or loss) attributable to the Borrower and its Restricted Subsidiaries for that period, determined in accordance with GAAP, excluding, without duplication, (a) noncash compensation expenses related to common stock and other equity securities issued to employees, (b) extraordinary or non-recurring gains and losses, (c) income or losses from discontinued operations or disposal of discontinued operations or costs and expenses associated with the closure of any mines (including any reclamation or disposal obligations), (d) any non-cash impairment charges or asset write-off resulting from the application of ASC 320 Investments-Debt and Equity Securities, ASC 323 Investments-Equity Method and Joint Ventures, ASC 350 Intangibles—Goodwill and Other and ASC 360 Property, Plant and Equipment and any future or similar ASC standards relating to impairment, (e) net unrealized gains or losses resulting in such period from non-cash foreign currency remeasurement gains or losses, (f) net unrealized gains or losses resulting in such period from the application ASC 815 Derivatives and Hedging, in each case, for such period, (g) non-cash charges including non-cash charges due to cumulative effects of changes in accounting principles, and (h) any net income (or loss) of the Borrower or a Restricted Subsidiary for such period that is accounted for by the equity method of accounting to the extent included therein, except to the extent that any such income is received in the form of dividends or distributions or other payments that are actually received by the Borrower or a Restricted Subsidiary from any Unrestricted Subsidiary and/or Joint Venture during such period to the extent not already included therein.

"Consolidated Net Tangible Assets" means, as of any particular time, the total of all the assets appearing on the most recent consolidated balance sheet prepared in accordance with GAAP of the Borrower and the Restricted Subsidiaries as of the end of the last fiscal quarter for

which financial information is available (less applicable reserves and other properly deductible items) after deducting from such amount (i) all current liabilities, including current maturities of long-term debt and current maturities of obligations under capital leases (other than any portion thereof maturing after, or renewable or extendable at the option of the Borrower or the relevant Restricted Subsidiary beyond, twelve months from the date of determination); and (ii) the total of the net book values of all assets of the Borrower and its Restricted Subsidiaries properly classified as intangible assets under GAAP (including goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangible assets).

“Consolidated Net Total Debt” means, as of any date of determination, (a) the aggregate stated balance sheet amount of all Indebtedness described in clauses (a), (b), (c), (f) and (g) (with respect to Indebtedness described in clauses (a), (b), (c) and (f)) of the definition of the term “Indebtedness” of Borrower and its Restricted Subsidiaries (for the avoidance of doubt, for this purpose, letters of credit will be deemed to have a principal amount equal to the amount drawn and not reimbursed thereunder, if any) determined on a consolidated basis in accordance with GAAP, minus (b) the aggregate amount of Unrestricted Cash included in the consolidated balance sheet of Borrower and its Restricted Subsidiaries as of such date.

“Contract” has the meaning specified in the definition of Excluded Assets.

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

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Controlled Subsidiary” means, with respect to any consent, waiver or right to terminate or accelerate the obligations under a Contract, any Subsidiary that the Borrower directly or indirectly Controls for purposes of the provision of such consent, waiver or exercise of such right to terminate or accelerate the obligations under such Contract.

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

“Copyright Security Agreement” means each Copyright Security Agreement, dated on April 3, 2017, or such other form of copyright security agreement reasonably acceptable to the Administrative Agent and the Borrower, by certain Loan Parties in favor of the Priority Collateral Trustee, for the benefit of the Secured Parties.

“Covered Party” has the meaning specified in Section 10.26.

“Credit Extension” means each of the following: (a) an L/C Borrowing and (b) an L/C Credit Extension.



“Credit Facilities” means one or more credit facilities (including, without limitation, the Existing Credit Facility and this Agreement) or commercial paper facilities with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit or issuances of debt securities evidenced by notes, debentures, bonds or similar instruments, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced (including by means of sales of debt securities) in whole or in part from time to time (and whether or not with the original administrative agent, lenders or trustee or another administrative agent or agents, other lenders or trustee).

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

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

“Debt Repurchase Mandatory Offer” has the meaning specified in Section 2.21(b)(i). “Debt Repurchase Quarterly Period”

has the meaning specified in Section 2.21(b)(i). “Default” means any event or condition that constitutes an Event of Default

or that, with

the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to outstanding principal of and interest on the L/C Borrowings, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate with respect to the applicable L/C Borrowings that are Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to (i) the Eurocurrency Rate otherwise applicable to such Eurocurrency Rate Loan plus (ii) the Applicable Rate with respect to the applicable L/C Borrowings plus (iii) 2% per annum; and (b) when used with respect to all other amounts, a rate equal to (i) the Base Rate plus (ii) the Applicable Rate with respect to L/C Borrowings that are Base Rate Loans plus (iii) 2% per annum.

“Defaulting Lender” means any Lender that (a) has failed to fund (i) any portion of the Loans, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or (ii) participations in L/C

Obligations required to be funded by it hereunder within three Business Days of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender or (d) has become the subject of a Bail-In Action. A Lender that has become a Defaulting Lender because of an event referenced in this definition may cure such status and shall no longer constitute a Defaulting Lender as provided in the last paragraph of Section 2.18.

“Designated Letters of Credit” means letters of credit issued with respect to Mine reclamation, workers’ compensation and other employee benefit liabilities.

“Designated Non-Cash Consideration” means the fair market value (as reasonably determined by the Borrower in good faith) of non-cash consideration received by the Borrower or any of its Restricted Subsidiaries in connection with a Disposition that is so designated as “Designated Non-Cash Consideration” minus the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) in one transaction or in a series of transactions, and whether effected pursuant to a division or otherwise, of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” means Equity Interests that by their terms (or by the terms of any security into which such Equity Interests are convertible, or for which such Equity Interests are exchangeable, in each case at the option of the holder thereof) or upon the happening of any event (i) mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are required to be redeemed or redeemable at the option of the holder for consideration other than Qualified Equity Interests, or (ii) are convertible at the option of the holder into Disqualified Equity Interests or exchangeable for Indebtedness, in each case of clauses (i) and (ii) prior to the date that is 91 days after the final Maturity Date hereunder, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full of all Obligations.

“Disqualified Institution” means (i) any financial institutions, competitors and entities identified by the Borrower to the Administrative Agent by name in writing on or prior to the Closing Date in consultation with the Administrative Agent, (ii) any competitors of the Borrower or any of its Subsidiaries to the extent such competitors (A) did not operate in the markets that the Borrower and its Subsidiaries serve as of the Closing Date and (B) are identified by the

Borrower to the Administrative Agent and Lenders by name in writing and upon three (3) Business Days' notice and (iii) affiliates of the foregoing that are readily identifiable solely on the basis of similarity of their names; provided that (x) "Disqualified Institutions" shall not include (i) any bona fide diversified debt fund or a diversified investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in, acquiring or trading commercial loans, bonds and similar extensions of credit in the ordinary course or (ii) any Consenting Noteholders (as defined in the Transaction Support Agreement) or their easily identifiable Affiliates; (y) the Administrative Agent shall not have any responsibility for monitoring compliance with any provisions of this Agreement with respect to Disqualified Institutions and (z) updates to the Disqualified Lender schedule shall not retroactively invalidate or otherwise affect any (A) assignments or participations made to, (B) any trades entered into with or (C) information provided to any Person, in each case, before it was designated as a Disqualified Institution. It is acknowledged and agreed by the Borrower that the identity of Disqualified Institutions will be made available to the Lenders by the Administrative Agent.

As of the Closing Date, no Persons have been identified to the Administrative Agent as Disqualified Institutions pursuant to clause (i) above.

"Dollar Equivalent" means, at any date, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"Dodd-Frank Act" means the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173) signed into law on July 21, 2010, as amended from time to time.

"Dollar" and "\$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States or any State thereof or the District of Columbia; provided, that in no event shall any such Subsidiary that is a Subsidiary of a Foreign Subsidiary be considered a "Domestic Subsidiary" for purposes of the Loan Documents.

"Early Opt-in Election" means, if the then-current Benchmark is LIBO Screen Rate, the occurrence of:

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

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBO Screen Rate and the provision by the Administrative Agent of written notice of such election to the Lenders.

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

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

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

“Eligible Assignee” means

(a) with respect to the L/C Borrowings, (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any other Person (other than a natural person) approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) and (v) the Borrower, solely pursuant to and in accordance with Sections 2.19 and 2.20; and

(b) with respect to the L/C Facility, (i) an L/C Commitment Lender, (ii) an Affiliate of a L/C Commitment Lender, (iii) any other Person (other than a natural person) approved by the Administrative Agent and each L/C Issuer (such approval not to be unreasonably withheld or delayed) and (iv) the Borrower, solely pursuant to and in accordance with Sections 2.19 and 2.20;

provided, however, in each case, that no Defaulting Lender or Disqualified Institution shall be an Eligible Assignee.

“Eligible L/C Issuer” means an L/C Commitment Lender, an Affiliate of an L/C Lender or any other financial institution, in each case, that has a long term unsecured debt investment grade rating, agrees to act as an L/C Issuer hereunder and, if replacing an existing L/C Issuer, agrees to replace the existing L/C Issuer in accordance with the terms of this Agreement, including having an L/C Issuance Limit at least equal to the L/C Issuance Limit of the replaced L/C Issuer unless otherwise agreed by the Borrower.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Environmental Laws” means any and all applicable current and future federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions or common law causes of action relating to (a) protection of the environment or to emissions,

discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface, water, ground water, or land, (b) human health as affected by Hazardous Materials, and (c) mining operations and activities to the extent relating to environmental protection or reclamation, including the Surface Mining Control and Reclamation Act, provided that “Environmental Laws” do not include any laws relating to worker or retiree benefits, including benefits arising out of occupational diseases.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any applicable Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of Capital Stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of Capital Stock of (or other ownership or profit interests in) such Person, and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination (but excluding any debt security that is convertible into, or exchangeable for, Equity Interests).

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, the regulations promulgated thereunder and any successor statute.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the failure to meet the minimum funding standards of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA) or the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a determination that any Pension Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Code or Section 303 of ERISA); (d) a determination that any Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status under Section 432 of the Code or Section 305 of ERISA; (e) a withdrawal by the Borrower or any ERISA Affiliate 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; (f) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent; (g) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (h) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (i) 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 the Borrower or any ERISA Affiliate; (j) receipt from the IRS of notice of the failure of any Pension Plan (or any other Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code; (k) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code with respect to any Pension Plan; or (l) the occurrence of any Foreign Plan Event.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Euro” and “EUR” means the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Eurocurrency Rate” means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurocurrency Rate Loan, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) then the Eurocurrency Rate shall be the Interpolated Rate. If, at any time, the Eurocurrency Rate would be less than zero, the Eurocurrency Rate shall be deemed to be zero at such time.

“Eurocurrency Rate Loan” means an L/C Borrowing that bears interest at a rate based on the Eurocurrency Rate.

“Event of Default” has the meaning specified in Section 8.01. “Excluded Assets” means

(a) motor vehicles and other assets subject to certificates of title where the net book value of any such motor vehicle or other such asset individually is less than \$1,000,000,

(b) commercial tort claims where the amount of the net proceeds claimed is less than \$1,000,000,

(c) (i) any lease, license or other written agreement or written obligation (each, a “Contract”) and any leased or licensed asset under a Contract or asset financed pursuant to a purchase money financing Contract or Capital Lease Obligation, in each case that is the direct

subject of such Contract (so long as such Contract is not entered into for purposes of circumventing or avoiding the collateral requirements of this Agreement), in each case only for so long as the granting of a security interest therein (x) would be prohibited by, cause a default under or result in a breach of such Contract (unless the Borrower or any Controlled Subsidiary may unilaterally waive it) or would give another Person (other than the Borrower or any Controlled Subsidiary) a right to terminate or accelerate the obligations under such Contract or to obtain a Lien to secure obligations owing to such Person (other than the Borrower or any Controlled Subsidiary) under such Contract (in each case, except to the extent any such prohibition is unenforceable after giving effect to applicable anti-assignment provisions of the UCC or other applicable law) or (y) would require obtaining the consent of any Person (other than the Borrower or any Controlled Subsidiary) or applicable Governmental Authority, except to the extent that such consent has already been obtained (but with respect to any leasehold interest that is Material Real Property, only to extent the applicable Loan Party could not obtain the required third party consent after using commercially reasonable efforts to obtain such consent (x) with respect to interests held on the Closing Date, for 90 days after the Closing Date or (y) with respect to interests acquired after the Closing Date, for 90 days after the acquisition thereof); provided that there shall be no requirement to pay any sums to the applicable lessor other than customary legal fees and administrative expenses (it is understood, for avoidance of doubt, that, without limiting the foregoing obligations of the Borrower set forth in this clause, any failure to grant a security interest in any such leasehold interest as a result of a failure to obtain a consent shall not be a Default hereunder, and, for avoidance of doubt, the Borrower and its Restricted Subsidiaries shall no longer be required to use commercially reasonable efforts to obtain any such consent after such above-mentioned time period to obtain a consent has elapsed) or such consent is unenforceable or overridden after giving effect to applicable anti-assignment provisions of the UCC or other applicable law or (ii) any asset the granting of a security interest therein in favor of the Secured Parties would be prohibited by any applicable Requirement of Law (other than any Organizational Document) (except to the extent such prohibition is unenforceable or overridden after giving effect to applicable anti-assignment provisions of the UCC or other applicable law, and in each case in respect of clause (i) and (ii) above, other than proceeds thereof, the assignment of which is expressly deemed effective under the UCC notwithstanding such prohibitions),

(d) those assets with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the costs of obtaining or perfecting such a security interest are excessive in relation to the benefits to be obtained by the Secured Parties therefrom or would result in materially adverse tax consequences to the Borrower or its Subsidiaries as reasonably determined by the Borrower in consultation with the Administrative Agent,

(e) any Letter of Credit Rights (as defined in the UCC) (other than to the extent a Lien thereon can be perfected by filing a customary financing statement),

(f) any right, title or interest in Receivables Assets sold, pledged or financed pursuant to a Permitted Securitization Program, and all of a Subsidiary's and any Loan Party's rights, interests and claims under a Permitted Securitization Program,

(g) any real property and leasehold rights and interests in real property other than Material Real Property,

(h) any “intent-to-use” application for registration of a Trademark (as defined in the Security Agreement) filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing and acceptance of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, and

(i) (i) [reserved], (ii) if the Borrower determines in good faith that a pledge to the Priority Collateral Trustee for the benefit of the Secured Parties of 100% of the Voting Stock of Peabody Investments (Gibraltar) Limited (or any successor thereto) could reasonably result in a material tax liability to the Borrower or its Subsidiaries, the amount of Voting Stock of such Subsidiary in excess of 65% of such Voting Stock such that there is no such material tax liability, provided that the Borrower provides the Administrative Agent with written notice thereof, upon which delivery thereof such Voting Stock shall automatically deemed acknowledged by the Administrative Agent and the Collateral Agent as an “Excluded Asset”, provided further that, during the continuance of a Default or an Event of Default, the Administrative Agent and Collateral Agent shall only be deemed to acknowledge such excess as an “Excluded Asset” upon the written direction of the Required Lenders), (iii) any Equity Interests in Gibraltar Holdings, Peabody International Investments, Inc., Peabody International Holdings, LLC and each other Subsidiary, whether now owned or hereafter acquired, substantially all of the assets of which consists of Equity Interests in Gibraltar Holdings and any successor to any of the foregoing, (iv) any Equity Interests of captive insurance subsidiaries and not-for-profit subsidiaries, (v) any Equity Interests in, or assets of, any Special Purpose Receivables Subsidiary (to the extent a pledge of the Equity Interests in such Special Purpose Receivables Subsidiary is prohibited under any Permitted Securitization Program entered into by such Special Purpose Receivables Subsidiary), (vi) margin stock and (vii) any Equity Interests in any Subsidiary that is not wholly-owned by the Borrower or any Restricted Subsidiary or in a Joint Venture, if the granting of a security interest therein (A) would be prohibited by, cause a default under or result in a breach of, or would give another Person (other than the Borrower or any Controlled Subsidiary) a right to terminate, under any Organizational Document, shareholders, joint venture or similar agreement applicable to such Subsidiary or Joint Venture or (B) would require obtaining the consent of any Person (other than the Borrower or any Controlled Subsidiary), in each case in respect of sub-clauses (A) and (B) of this clause (f), after giving effect to applicable anti-assignment provisions in the UCC or other applicable law;

provided that the Collateral shall include the replacements, substitutions and proceeds of any of the foregoing unless such replacements, substitutions or proceeds also constitute Excluded Assets.

“Excluded Flood Zone Property” means any “building”, “structure” or “mobile home” situated on any Real Property (each as defined in Regulation H as promulgated under the Flood Laws) located in a special flood hazard area and such Real Property under which such building, structure or mobile home stands.



“Excluded Hedging Obligation” means, with respect to any Guarantor, (a) as it relates to all or a portion of the Guarantee of such Guarantor of Hedging Obligations, any Hedging Obligation if, and to the extent that, such Hedging Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Hedging Obligation or (b) as it relates to all or a portion of the grant by such Guarantor of a security interest to secure any Hedging Obligation (or secure any Guarantee in respect thereof), any Hedging Obligation if, and to the extent that, the grant by such Guarantor of a security interest to secure such Hedging Obligation (or secure any Guarantee in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the grant of such security interest becomes effective with respect to such Hedging Obligation. If a Hedging Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Hedging Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal. As used in this definition, “Hedging Obligation” shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) branch profits Taxes or Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes imposed on it (in lieu of net income Taxes), in each case imposed (i) as a result of the Administrative Agent, such Lender or such L/C Issuer (or such other recipient) being organized under the laws of, or having its principal office in or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) other than in the case of an assignee pursuant to a request by the Borrower under Section 3.06, any United States federal withholding Tax that is imposed on amounts payable to a Lender under the law applicable at the time such Lender acquires an interest in a Loan or Commitment (or designates a new Lending Office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment) to receive additional amounts from the applicable Loan Party with respect to such withholding Tax pursuant to Section 3.01(a), (c) Taxes attributable to such Lender’s failure or inability to comply with Section 3.01(e) and (d) any Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning specified in the preamble. “Existing Letters of Credit” has the meaning set forth in the recitals. “Existing Lien” has the meaning specified in Section 10.01(i).

“Existing Securitization Facility” means the accounts receivable securitization financing of P&L Receivables Company LLC existing as of the Closing Date, and any replacements, refinancings, amendments, restatements, renewals or extensions thereof, subject in each case to the restrictions set forth in the definition of Permitted Securitization Programs.

“Existing Priority Lien Notes Indenture” means the Indenture, dated as of February 15, 2017, between Peabody Securities Finance Corporation, a Delaware corporation, and Wilmington Trust, National Association, as Trustee (as defined therein), as amended, restated, supplemented, replaced, refinanced or otherwise modified from time to time in accordance with the Collateral Trust Agreement.

“Extended Letter of Credit” has the meaning specified in Section 2.03(a)(ii)(B). “Facility” means the L/C Commitment Facility, the L/C Borrowing Facility and/or any Refinancing Facility, as the context may require.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Fee Letter” means that certain Fee Letter by and between the Administrative Agent and the Borrower.

“Financing Lease” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be accounted for as a finance lease.

“First Amendment” means that certain Amendment No. 1 to Credit Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the other Reaffirming Parties (as defined therein), the Lenders party thereto and the Administrative Agent.

“First Amendment Effective Date” means March 7, 2022, the date on which the conditions set forth in the First Amendment are satisfied.

“First Priority” means, with respect to any Lien purported to be created in any Collateral pursuant to any Security Document, that such Lien ranks first in priority to all other Liens, other than Liens permitted under clauses (b), (c), (d), (e), (f)(i), (f)(ii), (g), (p), (s), (t) (solely to the extent such Lien is *pari passu* with the Liens securing the Obligations and is subject to the Collateral Trust Agreement) and (w) (solely to the extent such Lien is *pari passu* with the Liens securing the Obligations and is subject to the Collateral Trust Agreement) of Section 7.01.

“Flood Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“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 LIBO Screen Rate.

“Foreign Lender” means any Lender that is not a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by any Loan Party or any of their respective Subsidiaries with respect to employees employed outside the United States and paid through a non-United States payroll.

“Foreign Plan Event” means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable law, within the time permitted by Law for such contributions or payments, (c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of any liability by any Loan Party under applicable law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein, in each case, which could reasonably be expected to have a Material Adverse Effect, or (e) the occurrence of any transaction with respect to a Foreign Plan that is prohibited under any applicable law and that could reasonably be expected to result in the incurrence of any liability by any Loan Party, or the imposition on any Loan Party of any fine, excise tax or penalty with respect to a Foreign Plan resulting from any noncompliance with any applicable law, in each case which could reasonably be expected to have a Material Adverse Effect.

“Foreign Subsidiary” means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any State thereof or the District of Columbia and any Subsidiary thereof.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Fee” has the meaning specified in Section 2.03(i).

“FSHCO” means any Domestic Subsidiary formed or acquired on or after the Closing Date substantially all of the assets of which consist of the Equity Interests of one or more Foreign Subsidiaries.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Funded Debt” means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent;

- (1) in respect of borrowed money or advances; or
- (2) evidenced by loan agreements, bonds, notes or debentures or similar instruments or letters of credit (solely to the extent such letters of credit or other similar instruments have been drawn and remain unreimbursed) or, without duplication, reimbursement agreements in respect thereof.

For the avoidance of doubt, “Funded Debt” shall not include Hedging Obligations or Cash Management Obligations.

“GAAP” means generally accepted accounting principles, which are applicable to the circumstances as of the date of determination. The sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements of nongovernmental entities that are presented in conformity with GAAP in the United States, are set forth in the Financial Accounting Standards Board’s Accounting Standards Codification.

“Gibraltar Deed of Confirmation” means the Deed of Confirmation of Existing Security, dated as of January 29, 2021, between Gibraltar Holdings, Peabody Investments (Gibraltar) Limited and the Priority Collateral Trustee, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Gibraltar Holdings” means Peabody Global Holdings, LLC, or any successor entity that directly holds the Capital Stock of Peabody Investments (Gibraltar) Limited.

“Gibraltar Pledge Agreement” means the Share Charge, dated as of April 3, 2017, between Gibraltar Holdings, Peabody Investments (Gibraltar) Limited and the Priority Collateral Trustee, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Governmental Authority” means the government of the United States or any other nation, or 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).

“Grantor” shall have the meaning set forth in the Collateral Trust Agreement. “Guarantee” means, as to any Person (the

“guaranteeing person”), any obligation of (a)

the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to the extent the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation in order to induce the creation of such obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, reimbursement obligations under letters of credit and any obligation of the guaranteeing person, whether or not contingent,

(i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or

(iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee obligation shall not include (i) indemnification or reimbursement obligations under or in respect of Surety Bonds or Designated Letters of Credit, (ii) ordinary course performance guarantees by any Loan Party of the obligations (other than for the payment of borrowed money) of any other Loan Party and (iii) endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means any Restricted Subsidiary that is a Domestic Subsidiary and each other Subsidiary, whether now owned or hereafter formed or acquired, that directly holds Equity Interests in Gibraltar Holdings at any time; provided, that such term shall not include (a) any Subsidiary not wholly-owned, directly or indirectly, by the Borrower to the extent (but only so long as) it is prohibited by the terms of any Contractual Obligation (including pursuant to any Organizational Documents of such Subsidiary) from guaranteeing the Secured Obligations or any other obligations or liabilities guaranteed pursuant to the terms of the Guaranty (it being understood that, for purposes of this definition, the terms of any Contractual Obligation shall be

deemed to prohibit such Guarantee if it would constitute a breach or default under or result in the termination of or require the consent of any Person (other than the Borrower or any Controlled Subsidiary, or the Administrative Agent or the Lenders in their respective capacities as such) under the security, agreement, instrument or other undertaking giving rise to such Contractual Obligation); provided further, that such Contractual Obligation is not and was not created in contemplation of this definition, and provided further, that this clause (a) shall not be deemed to exclude (or release) any Domestic Subsidiary which is a Guarantor in the case of a disposition of a portion of the Equity Interests in such Guarantor as a result of (i) the disposition or issuance of Equity Interests of such Domestic Subsidiary in either case to an Affiliate that is not the Borrower or a Restricted Subsidiary, (ii) any transaction entered into primarily in contemplation of such Domestic Subsidiary's ceasing to constitute a Loan Party or (iii) the disposition or issuance of Equity Interests of such Domestic Subsidiary for materially less than the fair market value of such shares as reasonably determined by the Borrower), (b) any FSHCO, (c) any Domestic Subsidiary that is a Subsidiary of any Foreign Subsidiary; provided, however, that clauses (b) and (c) shall not apply to any Subsidiary, whether now owned or hereafter formed or acquired, that directly holds Equity Interests in Gibraltar Holdings, or (d) any Special Purpose Receivables Subsidiaries and captive insurance entities. The Guarantors as of the Closing Date are the Subsidiaries of the Borrower listed on Schedule 1.01(a). For the avoidance of doubt and notwithstanding anything herein or in any other Loan Document to the contrary, (x) no Foreign Subsidiary now owned or hereafter formed or acquired shall be a Guarantor (other than a Foreign Subsidiary hereafter formed or acquired that directly holds Equity Interests in Gibraltar Holdings) and (y) Gibraltar Holdings shall not be a Guarantor.

"Guaranty" means that certain Guaranty Agreement, dated as of the Closing Date, made by the Guarantors in favor of the Administrative Agent and the Secured Parties, substantially in the form of Exhibit E, including any supplement, accession, assumption or joinder thereto, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Hazardous Materials" means (i) any explosive or radioactive substances or wastes and (ii) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that could reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue.

"Hedge Bank" has the meaning specified in the definition of "Secured Hedging Agreement".

"Hedging Agreement" means (i) any interest rate swap agreement, interest rate cap agreement, interest rate future agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement designed to protect against or mitigate interest rate risk, (ii) any foreign exchange forward contract, currency swap agreement, futures contract, option contract, synthetic cap or other agreement or arrangement designed to protect against or mitigate foreign exchange risk or (iii) any commodity or raw material, including coal, futures contract, commodity hedge agreement, option agreement, any actual or synthetic forward

sale contract or other similar device or instrument or any other agreement designed to protect against or mitigate raw material price risk (which shall for the avoidance of doubt include any forward purchase and sale of coal for which full or partial payment is required or received).

“Hedging Obligations” means all debts, liabilities and obligations of the Borrower or any Restricted Subsidiary in respect of any Hedging Agreement.

“Hedging Termination Value” means, in respect of any one or more Hedging Agreement, after taking into account the effect of any valid netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Agreements (which may include a Lender, the Administrative Agent or any Affiliate of a Lender or the Administrative Agent) (it being understood that any such termination values and marked-to-market values shall take into account any assets posted as collateral or security for the benefit of a party to the Hedging Agreement).

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

“Honor Date” shall have the meaning specified in Section 2.03(c)(i). “IBA” shall have the meaning specified in Section 1.11.

“Impacted Interest Period” has the meaning specified in the definition of “Eurocurrency Rate”.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments (other than any obligations in respect of performance bonds bid bonds, appeal bonds, surety bonds, reclamation bonds and completion guarantees, bank guarantees and similar obligations under any Mining Law or Environmental Law or with respect to worker’s compensation benefits);

(b) all obligations of such Person arising under letters of credit, bankers’ acceptances or similar instruments issued for the account of such Person (solely to the extent such letters of credit, bankers’ acceptances or other similar instruments have been drawn and remain unreimbursed);

(c) net obligations of such Person under any Hedging Agreement;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable and accrued expenses incurred in the ordinary course of business, (ii) obligations under federal coal leases, (iii) obligations under coal leases which may be terminated at the discretion of the lessee and (iv) obligations for take-or-pay arrangements);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on any property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Lease Obligations (other than obligations in connection with the IRBs);  
and

(g) all Guarantees of such Person in respect of any of the foregoing Indebtedness of any other Person (but excluding any performance and completion Guarantees of such Person);

provided that in no event shall Indebtedness include (i) asset retirement obligations or (ii) obligations (other than obligations with respect to Indebtedness for borrowed money or other Indebtedness evidenced by loan agreements, bonds, notes or debentures or similar instruments or letters of credit (solely to the extent such letters of credit or other similar instruments have been drawn and remain unreimbursed) (or, without duplication, reimbursement agreements in respect thereof)) related to surface rights under an agreement for the acquisition of surface rights for the production of coal reserves in the ordinary course of business in a manner consistent with historical practice of the Borrower and its Subsidiaries.

The amount of any net obligation under any Hedging Agreement on any date shall be deemed to be the Hedging Termination Value thereof as of such date. The amount of any Indebtedness issued with original issue discount shall be deemed to be the face amount of such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. The amount of any indebtedness of a Joint Venture secured by a Lien on property owned or being purchased by the Borrower or its Restricted Subsidiaries as of any date shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the indebtedness that is secured by such Lien and (b) the maximum amount for which the Borrower or its Restricted Subsidiaries may be liable (which may be determined with reference to the fair market value of the property securing such indebtedness as reasonably determined by the Borrower in good faith) pursuant to the terms of such indebtedness. Except as set forth in the sentence immediately above, the amount of indebtedness of any Joint Venture, which is attributable to the Borrower or any Restricted Subsidiary shall be deemed to equal the amount of indebtedness that would be attributable to the Borrower or any Restricted Subsidiary in accordance with GAAP.



“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b). “Information” has the meaning specified in Section 10.07.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter, or, if available to all Lenders making such Eurocurrency Rate Loan, twelve months thereafter (or such shorter period as may be agreed by the relevant Lenders and the Administrative Agent), as selected by the Borrower in its Borrowing Notice, or, as otherwise contemplated by the first proviso of Section 2.02(a); provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) below, end on the last Business Day of a calendar month; and

(iii) with respect to each Facility, no Interest Period shall extend beyond its applicable Maturity Date.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

“Interpolated Rate” means, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock or other securities of another Person, (b) a loan, advance (excluding intercompany liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries) or capital contribution to, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be (i) the amount actually invested, as determined immediately prior to the time of each such Investment, without adjustment for subsequent increases or decreases in the value of such Investment minus (ii) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents.

“IP Rights” has the meaning specified in Section 5.18.

“IP Security Agreements” means each Copyright Security Agreement, Trademark Security Agreement and Patent Security Agreement.

“IRBs” means the City of St. Louis, Missouri Taxable Industrial Development Revenue Bonds (Peabody Energy Corporation Project), Series 2010, in an aggregate principal amount not to exceed \$60,000,000, as evidenced by that certain Trust Indenture, dated as of March 1, 2011, between the City of St. Louis, Missouri and U.S. Bank, National Association, St. Louis, Missouri.

“IRS” means the United States Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (as the same may be amended from time to time).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the applicable L/C Issuer and the Borrower (or any Subsidiary) or in favor the applicable L/C Issuer and relating to any such Letter of Credit.

“Joint Venture” means any Person in which the Borrower or its Subsidiaries hold an ownership interest (a) that is not a Subsidiary and (b) of which the Borrower or such Subsidiary is a general partner or a joint venturer; provided, however, that Middlemount Coal Pty Ltd shall be considered a Joint Venture for this definition.

“Junior Collateral Trustee” means Wilmington Trust, National Association, in its capacity as junior collateral trustee pursuant to the Collateral Trust Agreement, together with its successors and assigns in such capacity.

“Junior Lien Indebtedness” means any Indebtedness that is secured by a junior Lien to the Lien securing the Secured Obligations and that was permitted to be incurred and so secured hereunder.

“Laws” means, as to any Person, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes, and determinations of arbitrators or courts or other Governmental Authorities, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“L/C Advance” means, with respect to each L/C Commitment Lender, an L/C Commitment Lender’s funding of its participation in any Unreimbursed Amount in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed in accordance with Section 2.03(c). All L/C Borrowings shall be denominated in Dollars.

“L/C Borrowing Lender” means any Person holding L/C Borrowings.

“L/C Borrowing Facility” means, at any time, the aggregate principal amount of the L/C Borrowings of all Lenders outstanding at such time.

“L/C Commitment” means, each L/C Commitment Lender’s obligation to (a) make L/C Advances on behalf of the Borrower pursuant to Section 2.03(c) and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding under such clauses (a) and (b) not to exceed the amount as of the ~~Closing~~Second Amendment Effective Date, set forth opposite such Lender’s name on Schedule 2.01(a), under the caption “L/C Commitment”.

“L/C Commitment Lender” means any Person who provides any portion of the L/C Commitments.

“L/C Commitment Redemption Price Premium” shall have the meaning specified in Section 2.06(d)(ii).

“L/C Facility” means, at any time, the aggregate L/C Commitments at such time.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuance Limit” means, at the time of the issuance of a Letter of Credit by the applicable L/C Issuer, with respect to each L/C Issuer, in its capacity as an L/C Issuer, the amount set forth opposite its name on Schedule 2.01(b) (or such other amount as may be agreed to in writing by such L/C Issuer and the Borrower from time to time with prompt notice to the

Administrative Agent), or any other L/C Issuer, such amount as may be agreed to by such L/C Issuer and the Borrower in writing from time to time with prompt notice to the Administrative Agent.

“L/C Issuer” means JPMorgan Chase Bank, N.A., Goldman Sachs Bank USA, Credit Suisse AG, Cayman Islands Branch, Bank of Montreal, Chicago Branch, Commerce Bank, Deutsche Bank AG New York Branch and Bank of America, N.A., each in its capacity as issuer of Letters of Credit hereunder, and such other L/C Lender or L/C Lenders that agree to act as L/C Issuer at the request of the Borrower, and any successor issuer of Letters of Credit hereunder or any of their respective Affiliates, in each case in its capacity as issuer of any Letter of Credit. Each L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such L/C Issuer shall, or shall cause such Affiliate to, comply with the requirements of Section 2.03 with respect to such Letters of Credit).

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule

3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto and includes any (a) L/C Commitment Lender, (b) L/C Borrowing Lender and (c) Refinancing Facility Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means a letter of credit or Bank Guarantee issued hereunder. Letters of Credit may be issued in Dollars or in an Alternative Currency.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any L/C Issuer.

“Letter of Credit Expiration Date” means December 23, 2024 (or such later date referred to in Section 2.03(a)(ii)(B)).

“Letter of Credit Fee” has the meaning specified in Section 2.03(i).

“LIBO Screen Rate” means, for any day and time, with respect to any L/C Borrowing of Eurocurrency Rate Loans for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that

displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion, provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Financing Lease having substantially the same economic effect as any of the foregoing).

“Liquidity” means, the sum of, without duplication, (x) Unrestricted Cash of the Borrower and its Restricted Subsidiaries, (y) undrawn committed Indebtedness of the Borrower and its Restricted Subsidiaries available for use by the Borrower and its Restricted Subsidiaries for general corporate purposes or for working capital; and (z) undrawn committed amounts under any Permitted Securitization Program to the extent such amounts can be borrowed for general corporate purposes or working capital of the Borrower and its Restricted Subsidiaries; provided that, for the avoidance of doubt, a commitment to issue letters of credit, bank guarantees and/or similar extensions of credit without any accompanying commitment to extend loans shall not be deemed to be committed Indebtedness or committed amounts for purposes of this definition.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of an L/C Borrowing or Refinancing Loan.

“Loan Documents” means this Agreement, the Collateral Trust Agreement, Amendment No. 1 to Collateral Trust Agreement, dated as of April 11, 2018, Amendment No. 2 to Collateral Trust Agreement, dated as of July 19, 2018, each Note, the Issuer Documents, the Fee Letter, the Guaranty, each Security Document, and all documents delivered in connection with the Secured Debt Designation.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Management Service Agreements” means, collectively, (i) the Management Services Agreement, dated as of August 4, 2020, by and between Peabody Investments Corp. and each of the Client Companies (as defined therein) listed on the signature page thereto and (ii) the Management Services Agreement, dated as August 4, 2020, by and between Peabody Energy Australia Pty Ltd and each of the Client Companies (as defined therein) listed on the signature page thereto, in each case, as amended, modified or replaced from time to time so long as the amended, modified or new arrangements, taken as a whole at the time such arrangements are entered into, are not materially less favorable to the Borrower and its Restricted Subsidiaries than those in effect on the Closing Date.

“Material Adverse Effect” means a material adverse effect upon (a) the business, assets, operations, property or condition (financial or otherwise) of the Borrower and its Restricted Subsidiaries taken as a whole, (b) the ability of the Borrower and the Guarantors, taken as a

whole, to perform their payment obligations under this Agreement or the Guaranty or (c) the validity or enforceability of this or any of the other Loan Documents or the rights or remedies of the Administrative Agent, the Priority Collateral Trustee or the Lenders hereunder or thereunder.

“Material Real Property” means (a) any owned Real Property interest held by a Loan Party in an active Mine or any leasehold interest in Real Property of a Loan Party in an active Mine, (b) any Real Property owned by a Loan Party or in which a Loan Party has a leasehold interest located on a Reserve Area that has a net book value in excess of \$2,500,000, and (c) any other parcel of owned Real Property held by a Loan Party (other than the types of property described in clauses (a) and (b) above) with a total net book value in excess of \$2,500,000 as of the date of acquisition of such Real Property; provided that Material Real Property shall not include (x) any Real Property that is identified on Schedule 1.01(d), (y) any leasehold interests of a Loan Party in commercial Real Property constituting offices of the Borrower and its Subsidiaries or (z) any Excluded Flood Zone Property; provided that the aggregate total net book value of all Excluded Flood Zone Property acquired after April 11, 2018 does not exceed \$25,000,000 in the aggregate as of the date of determination; provided further that, any future coal reserve or access to a coal reserve (x) that is owned by a Loan Party or in which a Loan Party has a leasehold interest and (y) that is located adjacent to, contiguous with, or in close proximity to, both geographically and geologically (according to reasonable standards used in the mining industry) an active Mine or Reserve Area, may, in the reasonable discretion of the Administrative Agent (in consultation with the Borrower) and by notice to the Collateral Trustee, be deemed part of an active Mine or Reserve Area and, as a result, a “Material Real Property” in the future. For purposes of this definition of “Material Real Property,” net book value shall be based on aggregated net book value of tracts that are located adjacent to, contiguous with or in close proximity, both geographically and geologically (according to reasonable standards used in the mining industry), with each other.

“Maturity Date” means December 31, 2024 (and, with respect to a Refinancing Facility, the date on which such Refinancing Facility shall become due and payable in full hereunder, as specified in the applicable amendment hereto); provided, however, that, if such date is not a Business Day, the Maturity Date shall be the preceding Business Day.

“Mine” means any excavation or opening into the earth in the United States now and hereafter made from which coal or other minerals are or can be extracted on or from any of the Real Property in which any Loan Party holds an ownership, leasehold or other interest.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto. “Mortgage” means any mortgages, deeds of

trust or similar document (including any

fixture filings whether recorded as part of such mortgages or deeds of trust or as separate instruments to the extent necessary in any particular state), substantially in the form of Exhibit J attached to the Existing Credit Agreement on the Seventh Amendment Effective Date or any such other form reasonably acceptable to the Administrative Agent and the Borrower.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to

make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“New Gibraltar Pledge Agreement” means the Share Charge, dated as of January 29, 2021, between Gibraltar Holdings, Peabody Investments (Gibraltar) Limited, and the Priority Collateral Trustee, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Net Proceeds” means, with respect to any Disposition pursuant to Section 7.05(k), the sum of (a) cash and Cash Equivalents actually received by the Borrower or any Restricted Subsidiary in connection with such Disposition (including any cash received by way of deferred payment (excluding, for avoidance of doubt, royalty payments customary in the mining industry) pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) minus (b) solely with respect to Dispositions of assets not constituting Collateral, the sum of (i) (A) the principal amount, premium or penalty, if any, interest and other amounts of any Indebtedness that is secured by such asset and that is required to be repaid in connection with such Disposition (other than Indebtedness under the Loan Documents or other Priority Lien Obligations) or (B) any other required debt payments or required payments of other obligations relating to the Disposition, in each case, with the proceeds thereof, (ii) the reasonable or customary out-of-pocket fees and expenses incurred by the Borrower or its Restricted Subsidiaries in connection with such Disposition (including attorneys’ fees, accountants’ fees, investment banking fees, real property related fees and charges and brokerage and consultant fees), (iii) all Taxes required to be paid or accrued or reasonably estimated to be required to be paid or accrued as a result thereof, (iv) in the case of any Disposition by a non-wholly-owned Restricted Subsidiary or non-wholly-owned Unrestricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iv)) attributable to minority or other third party interests and not available for distribution to or for the account of the Borrower or a wholly-owned Restricted Subsidiary as a result thereof and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (x) related to any of the applicable assets and (y) retained by the Borrower or any Subsidiary including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition occurring on the date of such reduction).

“Non-Recourse Debt” means Indebtedness (a) as to which neither the Borrower nor any of its Restricted Subsidiaries (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) other than a non-recourse pledge of the Equity Interests of any Unrestricted Subsidiary to the extent such Equity Interests do not constitute Collateral, (ii) is directly or indirectly liable (as a guarantor or otherwise) other than by virtue of a non-recourse pledge of the Equity Interests of any Unrestricted Subsidiary to the extent such Equity Interests do not constitute Collateral, or (iii) constitutes the lender; (b) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against any Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness (other than the Obligations) of the Borrower or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the

payment thereof to be accelerated or payable prior to its stated maturity; and (c) as to which the lenders thereunder will not have any recourse to the Capital Stock or assets of the Borrower or any of its Restricted Subsidiaries (other than solely the Equity Interests of any Unrestricted Subsidiary to the extent such Equity Interests do not constitute Collateral).

“Note” means a promissory note made by the Borrower in favor of a Lender and its registered assigns evidencing L/C Borrowings made by such Lender, substantially in the form of Exhibit C.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“Obligations” means (i) all advances to, and debts, liabilities and obligations (other than, for the avoidance of doubt, Hedging Obligations or Cash Management Obligations) of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (ii) any TSA Obligations owing to any Secured Party.

“Open Market Purchase” has the meaning specified in Section 2.20(a).

“Organizational Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-US jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any



obligation of the Borrower hereunder, Taxes imposed as a result of a present or former connection between such party and the jurisdiction imposing such Tax (other than connections arising solely from the Administrative Agent or such Lender or such L/C Issuer (or such other recipient) having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, received or perfected a security interest under, or engaged in any other transaction pursuant to this Agreement, any Note or any other Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court, intangible, recording, filing, or documentary taxes or any other similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, enforcement or registration of, from the receipt or perfection of a security interest under or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment pursuant to Section 10.13).

“Outstanding Amount” means (a) with respect to L/C Borrowings (including, without limitation, Refinancing Loans), on any date, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments of such L/C Borrowings (including, without limitation, Refinancing Loans) occurring on such date, and (b) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency Rate 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 published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Participant” has the meaning specified in Section 10.06(d). “Participant Register” has the meaning specified in Section 10.06(d).

“Patent Security Agreement” means the Patent Security Agreement, dated April 3, 2017, or such other form of patent security agreement reasonably acceptable to the Administrative Agent and the Borrower, by certain Loan Parties in favor of the Priority Collateral Trustee, for the benefit of the Secured Parties, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Participating Member State” means each state so described in any EMU Legislation. “PATRIOT Act” means the USA

PATRIOT Act (Title III of Pub. L. 107-56), as amended.

“Payment in Full” means, the time at which no Lender or L/C Issuer shall have (a) any Commitments, any Loan or other Obligations unpaid, unsatisfied or outstanding (other than in respect of contingent obligations, indemnities and expenses related thereto that are not then

payable or in existence) and (b) Letters of Credit outstanding that (i) have not been Cash Collateralized in a manner reasonably satisfactory or (ii) have not had other arrangements made with respect to them that are reasonably satisfactory, in each case, to the applicable L/C Issuer.

“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA, or any successor thereto.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Section 412 of the Code or Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Permitted Amendments” means, with respect to any Facility, an extension of the maturity date of any Loan and/or any Commitments in respect of such Facility by the Accepting Lenders and, in connection therewith, (a) any change in the Applicable Rate with respect to the applicable Loans and/or Commitments of the Accepting Lenders and/or the payment of additional fees (including rate floor, OID, upfront fees or other fees) to the Accepting Lenders (such change and/or payments to be in the form of cash, Equity Interests or other property as agreed by the Borrower and the Accepting Lenders to the extent not prohibited by this Agreement, excluding Section 2.13), (b) the repayment in full on the maturity date of such Facility of the non-extended Loans thereunder and other amounts owing to each of the Lenders who are not Accepting Lenders, (c) to the extent that such Facility is the L/C Borrowing Facility, any change in the amortization schedule and any prepayment premiums with respect to the applicable Loans of the Accepting Lenders, so long as a weighted average life of the extended L/C Borrowings is no shorter than that of the L/C Borrowings under such Facility prior to such extension, (d) no repayment of any extended Loans shall be permitted unless such repayment is accompanied by an at least pro rata repayment of all earlier maturing non-extended Loans of such Facility (including previously extended Loans) (or all earlier maturing Loans shall otherwise be or have been terminated and repaid in full) and (e) any other change in terms from the Facility so long as (i) they apply after the non-extended maturity date of such Facility or (ii) the non-Accepting Lenders receive the benefit of any such terms that are more restrictive to the Borrower and its Restricted Subsidiaries (it being understood that the benefit of such more restrictive terms may be provided to the non-Accepting Lenders without their consent) as certified by a Responsible Officer of the Borrower in good faith.

“Permitted Asset Swap” means the substantially concurrent purchase and sale, trade-in or exchange of equipment, real property or any other property of a nature or type that is used or useful in a Similar Business or a combination of such equipment, real property or any other property and cash or Cash Equivalents between the Borrower or any of its Restricted Subsidiaries and another Person; provided that the fair market value of the equipment, real property or any other property received is at least as great as the fair market value of the equipment, real property or other property being traded-in or exchanged as determined by the Borrower reasonably and in good faith; provided that any shortfall may be treated as an

Investment and shall constitute an Investment for purposes of calculating compliance with Section 7.02.

“Permitted Real Estate Encumbrances” means the following encumbrances which do not, in any case, individually or in the aggregate, materially detract from the value of any Mine subject thereto or interfere with the ordinary conduct of the business or operations of any Loan Party as presently conducted on, at or with respect to such Mine and as to be conducted following the Closing Date: (a) encumbrances customarily found upon real property used for mining purposes in the applicable jurisdiction in which the applicable real property is located to the extent such encumbrances would be permitted or granted by a prudent operator of mining property similar in use and configuration to such real property (e.g., surface rights agreements, wheelage agreements and reconveyance agreements); (b) rights and easements of (i) owners of undivided interests in any of the real property where the applicable Loan Party or Subsidiary owns less than 100% of the fee interest, (ii) owners of interests in the surface of any real property where the applicable Loan Party or Subsidiary does not own or lease such surface interest, (iii) lessees, if any, of coal or other minerals (including oil, gas and coal bed methane) where the applicable Loan Party or Subsidiary does not own such coal or other minerals, and (iv) lessees of other coal seams and other minerals (including oil, gas and coal bed methane) not owned or leased by such Loan Party or Subsidiary; (c) with respect to any real property in which the Borrower or any Restricted Subsidiary holds a leasehold interest, terms, agreements, provisions, conditions, and limitations (other than royalty and other payment obligations which are otherwise permitted hereunder) contained in the leases granting such leasehold interest and the rights of lessors thereunder (and their heirs, executors, administrators, successors, and assigns), subject to any amendments or modifications set forth in any landlord consent delivered in connection with a Mortgage; (d) farm, grazing, hunting, recreational and residential leases with respect to which the Borrower or any Restricted Subsidiary is the lessor encumbering portions of the real properties to the extent such leases would be granted or permitted by, and contain terms and provisions that would be acceptable to, a prudent operator of mining properties similar in use and configuration to such real properties; (e) royalty and other payment obligations to sellers or transferors of fee coal or lease properties to the extent such obligations constitute a lien not yet delinquent; (f) rights of others to subjacent or lateral support and absence of subsidence rights or to the maintenance of barrier pillars or restrictions on mining within certain areas as provided by any mining lease, unless in each case waived by such other person; and (g) rights of repurchase or reversion when mining and reclamation are completed.

“Permitted Refinancing Increase” means, with respect to the Refinancing of any Indebtedness, an amount equal to (a) any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such Refinancing, (b) any unpaid accrued interest on the Indebtedness being Refinanced, and (c) any existing commitments unutilized under the Indebtedness being Refinanced.

“Permitted Refinancing Indebtedness” mean any Indebtedness issued in exchange for, or the net proceeds of which are used to, extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”), the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus

any Permitted Refinancing Increase in respect of such Refinancing), (b) such Permitted Refinancing Indebtedness shall have the same obligors and same guarantees as, and be secured on a *pari passu* basis with, the Indebtedness so Refinanced (provided that the Permitted Refinancing Indebtedness may be subject to lesser guarantees or be unsecured or the Liens securing the Permitted Refinancing Indebtedness may rank junior to the Liens securing the Indebtedness so Refinanced) and, to the extent applicable, the Borrower shall have satisfied the requirements of Section 3.8 of the Collateral Trust Agreement with respect to such Permitted Refinancing Indebtedness, (c) the maturity date is later than or equal to, and the weighted average life to maturity of such Permitted Refinancing Indebtedness is greater than or equal to, in each case, that of the Indebtedness being Refinanced, (d) if the Indebtedness so Refinanced is subordinated in right of payment to the Obligations, then such Permitted Refinancing Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which it is outstanding, is expressly made subordinate in right of payment to the Obligations at least to the extent that the Indebtedness so Refinanced is subordinated to the Obligations and (e) the terms and conditions of any Permitted Refinancing Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties than the terms and conditions of the Indebtedness that is being Refinanced.

“Permitted Securitization Programs” means (a) the Existing Securitization Facility and (b) any receivables securitization program pursuant to which the Borrower or any of its Subsidiaries sells receivables and interests in Receivables Assets, which are non-recourse (except for representations, warranties, covenants, repurchase obligations and indemnities, in each case, that are reasonably customary for a seller or servicer of assets transferred in connection with such a facility) to the Borrower and the Restricted Subsidiaries providing for the sale, conveyance or contribution to capital of Receivables Assets to Special Purpose Receivables Subsidiary; provided, that the aggregate principal amount outstanding of any Permitted Securitization Program shall not exceed the greater of \$250,000,000 and 6.5% of Consolidated Net Tangible Assets.

“Permitted Wilpinjong Amendment” means, without the consent of the Lenders, any amendments to reflect any changes necessary to give effect to a Wilpinjong Mandatory Offer in accordance with its terms and pursuant to the Wilpinjong Term Loan Agreement, in form reasonably satisfactory to the Administrative Agent and the Borrower.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“PIC Intercompany Loan Agreement” means that certain Loan Agreement, dated as of April 11, 2012, among Peabody Investments Corp., as lender, and Peabody Energy Australia Pty Ltd, as borrower, with respect to advances made from time to time thereunder.

“PIC Intercompany Note” means that certain Promissory Note, dated as of April 3, 2017, evidencing the advances made pursuant to the PIC Intercompany Loan Agreement.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, by any ERISA Affiliate.

“Platform” has the meaning specified in Section 6.02.

“Pledged Intercompany Indebtedness” has the meaning specified in Section 7.03(f).

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Priority Collateral Trustee” means Wilmington Trust, National Association, in its capacity as priority collateral trustee pursuant to the Collateral Trust Agreement, together with its successors and assigns in such capacity.

“Priority Lien” means a Lien granted, or purported to be granted, by a Security Document to the Priority Collateral Trustee, at any time, upon any property of the Borrower, Pledgor or any Grantor to secure Priority Lien Obligations.

“Priority Lien Documents” means the Loan Documents, the Priority Lien Security Documents and the definitive documentation governing the Existing Credit Agreement, the Existing Priority Lien Notes Indenture, the Existing Priority Lien Notes, the 2024 Notes Indenture, and the 2024 Notes, and any other indenture, credit agreement or other agreement pursuant to which any Priority Lien Indebtedness is incurred and the Priority Lien Security Documents.

“Priority Lien Indebtedness” means:

- (1) the 2024 Notes and the related guarantees thereof;
- (2) Funded Debt in existence on the Closing Date under the Existing Credit Agreement;
- (3) Funded Debt in existence on the Closing Date under the Existing Priority Lien Notes Indenture;
- (4) Funded Debt incurred on the Closing Date hereunder;
- (5) any Funded Debt hereafter incurred under the Existing Credit Facility or hereunder that is permitted to be incurred and secured subject to the Collateral Trust Agreement;
- (6) any Funded Debt (including Additional Notes (as defined in the 2024 Notes Indenture) or under any Credit Facilities) that is secured by a Priority Lien and that is permitted to be incurred and permitted to be secured subject to the Collateral Trust Agreement;

provided, that, in the case of the Funded Debt referred to in clauses (5) and (6);

(a) on or before the date on which such Funded Debt is incurred, such Funded Debt is designated by the Borrower as “Priority Lien Debt” under the Collateral Trust Agreement pursuant to the procedures set forth in the Collateral Trust Agreement; provided, that no Funded Debt may be designated as both Priority Lien Indebtedness and Junior Lien Indebtedness;

(b) unless such Funded Debt is issued under an existing Secured Debt Document (as defined in the Collateral Trust Agreement) for any Series of Priority Lien Indebtedness whose Secured Debt Representative is already party to the Collateral Trust Agreement, the Priority Lien Representative for such Funded Debt executes and delivers a Collateral Trust Joinder in accordance with the terms of the Collateral Trust Agreement; and

(c) all other relevant requirements set forth in the Collateral Trust Agreement are complied with.

“Priority Lien Notes Indenture” means, collectively, (a) the Existing Priority Lien Notes Indenture and (b) the 2024 Notes Indenture.

“Priority Lien Obligations” means the Priority Lien Indebtedness and all other Obligations in respect of Priority Lien Indebtedness and any indemnification obligations under the Transaction Support Agreement (subject to the limitations set forth therein), including without limitation any post-petition interest whether or not allowable, together with all Hedging Obligations and Cash Management Obligations and guarantees of any of the foregoing.

“Priority Lien Representative” means the trustee, agent or representative of the holders of such Series of Priority Lien Indebtedness who maintains the transfer register for such Series of Priority Lien Indebtedness and is appointed as a representative of the Priority Lien Indebtedness (for purposes related to the administration of the Security Documents) pursuant to the credit agreement or other agreement governing such Series of Priority Lien Indebtedness, and who has executed a Collateral Trust Joinder, together with any successor in such capacity.

“Priority Lien Security Documents” means all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Borrower, a Pledgor or any Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Trustee, for the benefit of any Priority Lien Secured Parties, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with the Collateral Trust Agreement.

“Priority Lien Secured Parties” means the holders of Priority Lien Obligations, each Priority Lien Representative and the Collateral Trustee.

“Production Payments” means with respect to any Person, all production payment obligations and other similar obligations with respect to coal and other natural resources of such Person that are recorded as a liability or deferred revenue on the financial statements of such Person in accordance with GAAP.

“Pro Forma Basis” means, for purposes of calculating the financial covenant set forth in Section 7.11, Consolidated Net Tangible Assets, in Section 6.13 or any other test that is based on satisfying a financial ratio or metric, that with respect to any acquisition or disposition (in each case, that would be included in a Pro Forma Basis calculation pursuant to Section 1.03(c)), such acquisition or disposition shall be deemed to have occurred as of the first day of the most recent four fiscal quarter period preceding the date of such acquisition or disposition for which the Borrower has delivered financial statements pursuant to Section 6.01. In connection with the foregoing, (a) with respect to any such acquisition, income statement items attributable to the Person or property or assets acquired shall be included to the extent relating to any period applicable in such calculations to the extent (i) such items are not otherwise included in such income statement items for the Borrower and its Restricted Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.01, (ii) such items are supported by financial statements or other information reasonably satisfactory to the Administrative Agent and (iii) any Indebtedness incurred or assumed by the Borrower or any Subsidiary (including the Person, property or assets acquired) in connection with such acquisition and any Indebtedness of the Person, property or assets acquired which is not retired in connection with such acquisition (A) shall be deemed to have been incurred as of the first day of the most recent four fiscal quarter period preceding the date for such acquisition and (B) if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the most recent four fiscal quarter period preceding the date of such acquisition for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination; and (b) with respect to any such disposition, income statement items attributable to the Person or property or assets being disposed of shall be excluded to the extent relating to any period applicable in such calculations in accordance with the foregoing principles applicable to acquisitions, mutatis mutandis.

“Properties” has the meaning specified in Section 5.09(a).

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified in Section 10.26.

“Qualified Equity Interests” means all Equity Interests of a Person other than Disqualified Equity Interests.

“Real Property” means, collectively, all right, title and interest (including any leasehold or mineral estate) in and to any and all parcels of real property owned, leased, licensed, used or operated whether by lease, license or other use or occupancy agreement, including but not limited to, coal leases and surface use agreements, together with, in each case, all improvements and appurtenant fixtures (including all conveyors, preparation plants or other coal processing facilities, silos, shops and load out and other transportation facilities), access rights, easements and other property and rights incidental to the ownership, lease or operation thereof, including but not limited to, access rights, water rights and extraction rights for minerals, any

improvements thereon and real property rights and interests appurtenant thereto, including, in each case, title or rights to surface and/or coal, coal products, methane gas, and other minerals that are or may be extracted from such Real Property (whether or not characterized as “as-extracted Collateral” or “inventory” under the UCC).

“Receivables Assets” means any receivable (whether constituting an account, chattel, paper, instrument or general intangible) from time to time originated, acquired or otherwise owned by the Borrower or any Subsidiary, including, with respect to any receivable:

(a) all of a Subsidiary’s and any Loan Party’s interest in any goods (including returned goods) to the extent related to such receivable, and documentation of title evidencing the shipment or storage of any such goods (including any such returned goods),

(b) all instruments and chattel paper that may evidence such receivable (and to the extent they do not evidence any asset that is not a receivable),

(c) all other security interests or liens and property subject thereto from time to time purporting to secure payment of such receivable, whether pursuant to the contract related to such receivable or otherwise, together with all UCC financing statements or similar filings related thereto,

(d) solely to the extent applicable to such receivable, the rights, interests and claims under the contracts and all guarantees, indemnities, insurance and other agreements (including the related contract) or arrangements of whatever character from time to time supporting or securing payment of such receivable or otherwise relating to such receivable whether pursuant to the contract related to such receivable or otherwise,

(e) all funds that are received or deemed received by a Loan Party or a Subsidiary in payment of any amounts owed in respect of such receivable (including, without limitation, purchase price, finance charges, fees, interest and all other charges) or are applied to amounts owed in respect of such receivable (including, without limitation, insurance payments and net proceeds of sale or other disposition of repossessed goods or other collateral or property of the related obligor or any other person directly or indirectly liable for the payment of any such receivable and available to be applied thereon),

(f) the lock-box accounts designated solely as the accounts to receive the proceeds of such receivables and all amounts on deposit therein, and all certificates and instruments, if any, from time to time evidencing such lock-box accounts and amounts on deposit therein,

(g) all monies due or to become due with respect to any of the foregoing,

(h) all collections, proceeds and products of any of the foregoing, as defined in the UCC, that are received or are receivable by a Loan Party or a Subsidiary, and

(i) all books and records to the extent related to any of the foregoing Receivables Assets.



For the avoidance of doubt, Receivables Assets shall exclude any intercompany receivables, including, without limitation, amounts owing under the PIC Loan Agreement and the PIC Intercompany Note.

“Redemption Price Premium” shall have the meaning specified in Section 2.05(d)(ii). “Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the LIBO Screen Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not the LIBO Screen Rate, the time determined by the Administrative Agent in its reasonable discretion.

“Refinance” has the meaning specified in the definition of Permitted Refinancing Indebtedness.

“Refinancing L/C Facility” has the meaning specified in Section 2.16(a). “Refinancing L/C Borrowing Facility” has the meaning specified in Section 2.16(a). “Refinancing L/C Commitment Facility” has the meaning specified in Section 2.16(a). “Refinancing Facility Effective Date” has the meaning specified in Section 2.16(a). “Refinancing Facility Lender” means any Person who provides a Refinancing Facility.

“Refinancing Loan” means, with respect to any Refinancing L/C Borrowing Facility, an L/C Borrowing under such Refinancing L/C Borrowing Facility.

“Refinancing Notes” has the meaning specified in Section 7.03(n). “Register” has the meaning specified in Section 10.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, attorneys and advisors of such Person and of such Person’s Affiliates.

“Related Party Transaction” has the meaning specified in Section 7.08.

“Relevant Governmental Body” means the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or any successor thereto.

“Remaining 2022 Notes” has the meaning specified in Section 7.03(a).

“Remaining 2022 Notes Excess Repayment” has the meaning specified in Section 2.05(b).

“Renewable Commitment Reduction Date” shall mean (i) the last Business Day of each June and (ii) the last Business Day of each December, in each case occurring after the Second Amendment Effective Date.

“Renewable Commitment Reduction Date Amount” shall mean, with respect to any Renewable Commitment Reduction Date, the greater of (x) \$5,000,000 and (y) the amount of Investments made pursuant to Section 7.02(n) during the six-month period ending on each such Renewable Commitment Reduction Date.

“Renewable Energy Projects” means any type of (a) electricity generation that does not directly emit carbon dioxide, solely in the form of solar or wind, and (b) storage of electric energy facilitating the integration of the foregoing sources of generation, in each case using technology that has a documented track record of being used in a commercial power project (excluding proof-of-concept or prototype- piloting projects) that has achieved commercial operations in the past ten years.

“Renewable Investment Reserve Amount” has the meaning specified in Section 2.06(b)(iii).

“Renewable Investment Reserve Return” has the meaning specified in Section 2.14. “Renewable JV” means a Joint Venture

formed solely for the purpose of engaging in the development, ownership and maintenance of Renewable Energy Projects.

“Renewable L/C Obligation” means debts, liabilities and obligations (whether absolute or contingent, due or to become due) of the Borrower or its Restricted Subsidiaries arising under letters of credit, bankers’ acceptances or similar instruments (whether or not such letters of credit, bankers’ acceptances or other similar instruments have been drawn and remain unreimbursed) or in respect of performance bonds bid bonds, appeal bonds, surety bonds, reclamation bonds and completion guarantees, bank guarantees and similar obligations under any Environmental Law or with respect to worker’s compensation benefits issued for the account of, or created, incurred, assumed or guaranteed for the benefit of, any Renewable JV.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a conversion or continuation L/C Borrowings, a Borrowing Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“Required Facility Lenders” means, as of any date of determination, with respect to any Facility, Lenders under such Facility holding more than 50% of the Total Outstandings (and, if such Facility is a L/C Commitment Facility, aggregate unused L/C Commitments) with respect to such Facility; provided (a) if such Facility is a L/C Commitment Facility, the aggregate amount of each L/C Commitment Lender’s risk participation and funded participation in L/C Obligations shall be deemed “held” by such L/C Commitment Lender for purposes of this definition and (b) the unused Commitment of, and the portion of such Total Outstandings held or deemed held by or participated by, (x) any Defaulting Lender or (y) any of the Borrower or its

Affiliates pursuant a Borrower L/C Commitment Participation shall be excluded from both the numerator and the denominator for purposes of making a determination of Required Facility Lenders.

“Required L/C Commitment Lenders” means, as of any date of determination, L/C Commitment Lenders holding more than 50% of the sum of the (a) Total L/C Commitment Outstandings (with the aggregate amount of each L/C Commitment Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Revolving Lender for purposes of this definition) and (b) aggregate unused L/C Commitments; provided that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by or participated by, (x) any Defaulting Lender or (y) any of the Borrower or its Affiliates pursuant a Borrower L/C Commitment Participation shall be excluded from both the numerator and the denominator for purposes of making a determination of Required Lenders.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each L/C Commitment Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Revolving Lender for purposes of this definition) and (b) aggregate unused L/C Commitments; provided that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by or participated by, (x) any Defaulting Lender or (y) any of the Borrower or its Affiliates pursuant a Borrower L/C Commitment Participation shall be excluded from both the numerator and the denominator for purposes of making a determination of Required Lenders.

“Requirement of Law” means as to any Person, the Organizational Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserve Area” means (a) the Real Property owned by any Loan Party or in which a Loan Party has a leasehold interest that is part of the areas listed on Schedule 1.01(e) as of the Closing Date and (b) any Real Property constituting coal reserves or access to coal reserves owned by any Loan Party or in which a Loan Party has a leasehold interest, acquired after the Closing Date, that is not an active Mine.

“Reserve Reimbursement Amount Reduction” shall have the meaning specified in Section 2.03(c)(i).

“Responsible Officer” means the chief executive officer, president, vice president, treasurer, secretary or assistant secretary of the Borrower or any applicable Subsidiary and, in addition, any Person holding a similar position or acting as a director or managing director with respect to any Foreign Subsidiary of the Borrower or, with respect to financial matters, the president, chief financial officer, treasurer or assistant treasurer of the Borrower.

“Restricted Payment” means (a) any dividend or other distribution (whether in cash, securities or other property) by the Borrower or any Restricted Subsidiary with respect to its Capital Stock, or any payment (whether in cash, securities or other property) by the Borrower or

any Restricted Subsidiary, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any of its Capital Stock, or on account of any return of capital to its stockholders, partners or members (or the equivalent Person thereof) and (b) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any unsecured Indebtedness, Subordinated Indebtedness or Junior Lien Indebtedness.

“Restricted Subsidiary” means any Subsidiary that is not an Unrestricted Subsidiary. “Retained Excess Available

Repurchase Amount” means the excess of (x) the aggregate

principal amount or commitment amount, as applicable, of Obligations hereunder and such other Priority Lien Obligations tendered or exercised pursuant to a Debt Repurchase Mandatory Offer, *over* (y) the Available Repurchase Amount for such Debt Repurchase Mandatory Offer.

“Revaluation Date” means, with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (a) each date of issuance of such Letter of Credit, (b) the first Business Day of each month and (c) during the existence of an Event of Default, such additional dates as the Administrative Agent or the applicable L/C Issuer shall determine or the Required Lenders shall require.

“Series of Priority Lien Indebtedness” means, severally, each series of the notes and each other issue or series of Priority Lien Indebtedness for which a single transfer register is maintained.

“S&P” means S&P Global Ratings and any successor thereto.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds and (b) with respect to disbursements and payments in an Alternative Currency, same day funds as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“Sanctions” means any economic or financial sanctions administered by OFAC, the US State Department, any other agency of the US government, the United Nations, the European Union or any member state thereof, the United Kingdom, and Australia.

“Sanctioned Person” means any person, organization or vessel (i) designated on the OFAC list of Specially Designated Nationals and Blocked Persons, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty’s Treasury or on any list of targeted persons issued under the Sanctions of any other country, (ii) that is, or is part of, a government of a Sanctioned Territory, (iii) owned or controlled by, or acting on behalf of, any of the foregoing, (iv) located within or operating from a Sanctioned Territory, or (v) otherwise targeted under any Sanctions.

“Sanctioned Territory” means any country or other territory subject to a general export, import, financial or investment embargo under Sanctions, which countries and territories, as of the date of this Agreement, are the Crimea region, Cuba, Iran, North Korea, and Syria.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Amendment” means that certain Amendment No. 2 to Credit Agreement, dated as of the Second Amendment Effective Date, by and among the Borrower, the other Reaffirming Parties (as defined therein), the Lenders party thereto and the Administrative Agent.

“Second Amendment Effective Date” means April 29, 2022, the date on which the conditions set forth in the Second Amendment are satisfied.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between the Borrower or any Restricted Subsidiary and any Cash Management Bank.

“Secured Cash Management Obligations” means all advances to, and debts, liabilities and obligations of the Borrower or any Restricted Subsidiary arising under any Secured Cash Management Agreement.

“Secured Debt Designation” shall have the meaning specified in Section 4.01(b). “Secured Hedging Agreement” means any

Hedging Agreement between the Borrower or

a Restricted Subsidiary, on the one hand, and any Lender, the Administrative Agent, or an Affiliate of any of the foregoing (or with any Person that was a Lender, the Administrative Agent, or an Affiliate of the foregoing when such Hedging Agreement was entered into) (any such counterparty, a “Hedge Bank”).

“Secured Hedging Obligations” means all debts, liabilities and obligations of the Borrower or any Restricted Subsidiary in respect of any Secured Hedging Agreement.

“Secured Obligations” means the Obligations, the Secured Hedging Obligations and the Secured Cash Management Obligations. Notwithstanding anything to the contrary herein, the “Secured Obligations” shall not include any Excluded Hedging Obligations.

“Secured Parties” means, collectively, the Administrative Agent, the Priority Collateral Trustee, the Lenders, the L/C Issuers, any Cash Management Bank and, with respect to any Secured Hedging Agreement, any Hedge Bank.

“Security Agreement” means that certain Priority Lien Pledge and Security Agreement, dated as of the April 3, 2017, among the Borrower, the Restricted Subsidiaries from time to time party thereto and the Priority Collateral Trustee, for the benefit of the Secured Parties, as amended by that certain Amendment No. 1 to Priority Lien Pledge and Security Agreement, dated as of June 27, 2018, Amendment No. 2 to Priority Lien Pledge and Security Agreement, dated as of September 17, 2019, Amendment No. 3 to Priority Lien Pledge and Security

Agreement, dated as of the Closing Date, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Security Documents” means, collectively, the Security Agreement, the Gibraltar Pledge Agreement, the New Gibraltar Pledge Agreement, the IP Security Agreements, the Mortgages, the Collateral Trust Agreement, the Wilpinjong Collateral Trust Agreement, the Wilpinjong Security Agreement, each of the pledge agreements and supplements thereto, security agreements and supplements thereto, and other similar agreements delivered to Administrative Agent and Lenders pursuant to Section 6.16, and any other documents, agreements or instruments that grant or purport to grant a Lien on any assets of the Borrower or any other Loan Party in favor of the Priority Collateral Trustee to secure the Secured Obligations.

“Senior Indebtedness” has the meaning specified in Section 10.01(i).

“Similar Business” means any of the following, whether domestic or foreign: the mining, production, marketing, sale, trading and transportation (including, without limitation, any business related to terminals) of natural resources including coal, ancillary natural resources and mineral products, exploration of natural resources, any acquired business activity so long as a material portion of such acquired business was otherwise a Similar Business, and any business that is ancillary or complementary to the foregoing.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Solvent” means, with respect to any Person, that as of the date of determination, both (i) (a) the sum of such Person’s debt (including contingent liabilities) does not exceed the present fair saleable value of such Person’s present assets; (b) such Person’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date and reflected in the projections delivered pursuant to Section 4.01(a)(xii)(D) or with respect to any transaction contemplated to be undertaken after the Closing Date; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is “solvent” within the meaning given that term and similar terms under the Bankruptcy Code and other applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective

of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standards No. 5).

“Special Purpose Receivables Subsidiary” means P&L Receivables Company LLC and any other direct or indirect Subsidiary of the Borrower established in connection with a Permitted Securitization Program for the acquisition of Receivables Assets or interests therein that is organized in a manner intended to reduce the likelihood that it would be substantively consolidated with the Borrower or any of the Restricted Subsidiaries in the event the Borrower or any such Restricted Subsidiary becomes subject to a proceeding under any Debtor Relief Law.

“Specified Subsidiary” means each of Gibraltar Holdings, Peabody International Investments, Inc., Peabody International Holdings, LLC, each other Subsidiary, whether now owned or hereafter formed or acquired, that directly holds Equity Interests in Gibraltar Holdings at any time, and any successor to any of the foregoing; provided that in no event shall any Guarantor be designated as a Specified Subsidiary so long as (i) any Equity Interests owned by such Guarantor constitute Collateral and (ii) the Equity Interests of such Guarantor constitutes Collateral.

“Spot Rate” for a currency means the spot rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the applicable L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent if such Person does not have as of the date of determination a spot buying rate for any such currency; and provided further that the applicable L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Sterling” and “£” means the lawful currency of the United Kingdom.

“Subordinated Indebtedness” means any Indebtedness of the Borrower and its Restricted Subsidiaries that is contractually subordinated to the Indebtedness under the Loan Documents.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Supported QFC” has the meaning specified in Section 10.26.

“Surety Bonds” means surety bonds obtained by the Borrower or any Restricted Subsidiary consistent with market practice and the indemnification or reimbursement obligations of the Borrower or such Restricted Subsidiary in connection therewith.

“Surety Transaction Support Agreement” means that certain Transaction Support Agreement, dated as of November 6, 2020, by and among the Borrower, certain Subsidiaries and the Sureties (as defined therein) signatory thereto (as amended, supplemented or otherwise modified from time to time).

“Tangible Assets” means at any date, with respect to any Person, (a) the sum of all amounts that would, in accordance with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of such Person at such date minus (b) the sum of all amounts that would, in accordance with GAAP, be set forth opposite the captions “goodwill” or other intangible categories (or any like caption) on a consolidated balance sheet of such Person on such date.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 3.03 that is not Term SOFR.

“Threshold Amount” means \$75,000,000.

“Total L/C Commitment Outstandings” means the aggregate Outstanding Amount of all L/C Obligations.

“Total Leverage Ratio” means, as of any date of determination, the ratio of (i) Consolidated Net Total Debt as of the date of the financial statements most recently delivered by the Borrower pursuant to Section 6.01(a) or (b), as applicable, to (ii) Consolidated EBITDA for the period of the four consecutive fiscal quarters ending as of the date of such financial statements.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Trademark Security Agreement” means the Trademark Security Agreement, dated April 3, 2017, or such other form of trademark security agreement reasonably acceptable to the Administrative Agent, by certain Loan Parties in favor of the Priority Collateral Trustee, for the



benefit of the Secured Parties, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Transaction” has the meaning specified in the Transaction Support Agreement. “Transaction Costs” means all reasonable fees, costs and expenses incurred by the Borrower in connection with the Transaction.

“Transaction Support Agreement” means that certain Amended and Restated Transaction Support Agreement, dated as of December 31, 2020, by and among, among others, the Borrower, PIC AU Holdings LLC, PIC AU Holdings Corporation, the Consenting Noteholders defined therein and the Revolving Lenders defined therein.

“Treasury Rate” means, as of any prepayment date, the yield to maturity as of such prepayment date, of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H. 15 (519) that has become publicly available at least two Business Days prior to the prepayment or reduction date, as applicable (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the prepayment or reduction date, as applicable, to January 30, 2023; provided, that if the period from the prepayment date to January 30, 2023 is less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used. The Borrower will calculate the applicable Treasury Rate at least two but no more than four Business Days prior to the applicable prepayment date and file with the Administrative Agent, before such prepayment or reduction date, as applicable, a written statement setting forth the Applicable Premium and showing the calculation of the Applicable Premium in reasonable detail, and the Administrative Agent will have no responsibility for verifying any such calculation.

“TSA Obligations” means any indemnification obligations under the Transaction Support Agreement (subject to the limitations set forth therein), including without limitation any postpetition interest whether or not allowable, together with any guarantees of any of the foregoing.

“Type” means, with respect to an L/C Borrowing, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the applicable state of jurisdiction.

“UCP” means the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 600, as the same may be amended from time to time.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfunded Pension Liability” means the excess of a Pension Plan’s accrued benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s

assets, determined in accordance with the actuarial assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“United States” and “US” mean the United States of America.

“Unreimbursed Amount” means the amount of any unreimbursed drawing (expressed in Dollars or in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) on any Letter of Credit.

“Unrestricted Cash” means the aggregate amount of cash and Cash Equivalents held in accounts on the consolidated balance sheet of Borrower and its Restricted Subsidiaries to the extent that the use of such cash for application to payment of the Obligations or other Indebtedness is not prohibited by law or any contract or other agreement and such cash is and Cash Equivalents are free and clear of all Liens (other than Liens in favor of the Collateral Trustee) and Liens permitted pursuant to Section 7.01(p)(i) hereof (and, for the avoidance of doubt, any Renewable Investment Reserve Amounts paid shall not appear on the consolidated balance sheet of Borrower and its Restricted Subsidiaries).

“Unrestricted Subsidiary” means, as of the Closing Date, each of (i) Ribfield Pty Ltd, (ii) Middlemount Mine Management Pty Ltd, (iii) Middlemount Coal Pty Ltd, (iv) Newhall Funding Company (MBT), (v) P&L Receivables Company, LLC (provided that, if such Subsidiary shall, upon termination of the Permitted Securitization Program (other than as a result of an event of default thereunder unless and until the obligations thereunder are paid in full), it shall cease to be an Unrestricted Subsidiary), (vi) Sterling Centennial Missouri Insurance Corporation, (vii) Wilpinjong Coal Pty Ltd, (viii) PIC AU Holdings LLC, (ix) PIC AU Holdings Corporation, and (x) PIC Acquisition Corp.

“U.S. Government Obligations” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agency or instrumentality thereof; provided that the full faith and credit of the United States of America is pledged in support thereof.

“U.S. Special Resolution Regimes” has the meaning specified in Section 10.26.

“Voting Stock” means, with respect to any Person, such Person’s Equity Interest having the right to vote for the election of directors of such Person under ordinary circumstances.

“Weighted Average Yield” means with respect to any Loan, on any date of determination, the weighted average yield to maturity, in each case, based on the interest rate applicable to such Loan on such date and giving effect to all upfront or similar fees or original issue discount payable with respect to such Loan.

“Wilpinjong Collateral Trust Agreement” means that certain Collateral Trust Agreement dated as of the Closing Date, among PIC AU Holdings LLC, PIC AU Holdings Corporation, Wilmington Trust, National Association, in its capacity as the “Priority Collateral Trustee,” and Wilmington Trust, National Association, in its capacity as the “Junior Collateral Trustee,” and

the other parties party thereto from time to time, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Wilpinjong Mandatory Offer” means the Borrower’s obligations to make an offer to Refinance Indebtedness of PIC AU Holdings LLC and PIC AU Holdings Corporation and accrued and unpaid interest thereon (i) into term loans to be issued under this Agreement in accordance with the terms and conditions of Section 2.21 of the Wilpinjong Term Loan Agreement and (ii) to issue additional 2024 Notes in accordance with the terms and conditions of Section 4.17 of the 2024 Notes Indenture (as in effect on the Closing Date).

“Wilpinjong Security Agreement” means that certain Junior Lien Pledge and Security Agreement, dated as of the Closing Date, among PIC AU Holdings LLC, PIC AU Holdings Corporation, the other grantors from time to time party thereto and the Junior Collateral Trustee (as defined therein), as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Wilpinjong Term Loan Agreement” means the Credit Agreement, dated as of the Closing Date (as in effect on the Closing Date), among the Borrower, as parent, PIC AU Holdings LLC and PIC AU Holdings Corporation, as borrowers, JPMorgan Chase Bank, N.A., as the administrative agent, and the lenders from time to time party thereto.

“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.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organizational Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any

Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof," "hereto" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) all references to "wholly-owned" when referring to a Subsidiary of the Borrower shall mean a Subsidiary of which all of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned directly or indirectly by the Borrower or another wholly-owned Subsidiary of the Borrower, (vi) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (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.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only, shall not constitute a part hereof, shall not be given any substantive effect and shall not affect the interpretation of this Agreement or any other Loan Document.

### **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any Accounting Change would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such Accounting Change as if such Accounting Change has not been made (subject to the approval of the Required Lenders); provided that, until so amended, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred. Notwithstanding any other provision contained herein, the definitions set forth in this Agreement and any financial calculations required by the Loan Documents shall be computed to exclude all liabilities related to operating leases, as defined by Financial Accounting Standards Board Accounting Standards Codification

842 (or any successor provision), from the definition of Indebtedness and payments related to operating leases are not included in interest expenses in part or in whole.

(c) **Pro Forma Basis Calculation.** Notwithstanding anything herein to the contrary, the parties hereto acknowledge and agree that all calculations of (i) Total Leverage Ratio, Section 6.13 and Section 7.11, (ii) Consolidated Net Tangible Assets, or (iii) any other test that is based on satisfying a financial ratio or metric, shall be made on a Pro Forma Basis: (A) with respect to any acquisition by the Borrower or its Restricted Subsidiaries of any Person, property or assets, if the Consolidated EBITDA for the acquired Person or business for the most recent four fiscal quarter period for which financial statements are available is equal to or greater than 5% of the Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for such period and (B) with respect to any disposition by the Borrower or its Restricted Subsidiaries of any Person, property or assets, if the Consolidated EBITDA for the Person or business being disposed of for the most recent four fiscal quarter period for which financial statements are available was equal to or exceeded 5% of the Consolidated EBITDA of the Borrower and its Restricted Subsidiaries for such period. With respect to the above Pro Forma Basis calculations, in the event that the relevant entity or property, which is being acquired or disposed, reports its financial results on a semi-annual basis, the Administrative Agent and the Borrower may utilize the two most recent semi-annual financial results for purposes of making such calculation and such above determination in a manner similar to the above that is mutually agreeable.

#### **1.04 Exchange Rates; Currency Equivalents.**

(a) The Administrative Agent or the applicable L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of L/C Credit Extensions and Outstanding Amounts of L/C Obligations denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit or a Reserve Reimbursed Amount Reduction, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be.

#### **1.05 Additional Alternative Currencies.**

(a) The Borrower may from time to time request that Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency"; provided that such requested currency is a lawful currency (other than Dollars) that is readily available and

freely transferable and convertible into Dollars. In the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., ten (10) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and the L/C Issuer, in their sole discretion). The Administrative Agent shall promptly notify the applicable L/C Issuer thereof. Each L/C Issuer shall notify the Administrative Agent, not later than 11:00 a.m., eight (8) Business Days after receipt of such request whether it consents, in its sole discretion, to the issuance of Letters of Credit in such requested currency.

(c) Any failure by an L/C Issuer to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such L/C Issuer to permit Letters of Credit to be issued in such requested currency. If the Administrative Agent and the applicable L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances by such L/C Issuer. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.05, the Administrative Agent shall promptly so notify the Borrower.

#### **1.06 Change of Currency.**

(a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

**1.07 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

**1.08 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.09 Negative Covenant Compliance.** For purposes of determining whether the Borrower and its Restricted Subsidiaries comply with any exception to the negative covenants contained in Section 7.01, Section 7.02 and 7.03 where compliance with any such exception is based on a financial ratio or metric being satisfied, it is understood that (a) compliance shall be measured at the time when the relevant event is undertaken, as such financial ratios and metrics are intended to be “incurrence” tests and not “maintenance” tests and (b) correspondingly, any such ratio and metric shall only prohibit the Borrower and its Restricted Subsidiaries from creating, incurring, assuming, suffering to exist or making, as the case may be, any new Liens, Indebtedness or Investments, but shall not result in any previously permitted Liens, Indebtedness or Investments ceasing to be permitted hereunder.

**1.10 Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

**1.11 Interest Rates; LIBOR Notification..** The interest rate on a Loan denominated in dollars or an Alternative Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. The interest rate on Eurocurrency Loans is determined by reference to the LIBO Screen Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurocurrency Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative

reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, Section 3.03(b) and (c) provide the mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 3.03(e), of any change to the reference rate upon which the interest rate on Eurocurrency Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “LIBO Screen Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 3.03(b) or (c), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 3.03(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Screen Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

## **ARTICLE II. THE COMMITMENTS AND L/C BORROWINGS**

### **2.01 The Commitments and L/C Borrowings.**

(a) Subject to the terms and conditions set forth herein, each L/C Commitment Lender severally agrees to (i) participate in Letters of Credit issued for the account of the Borrower or any Restricted Subsidiary and any drawings thereunder, which participations shall terminate on the Letter of Credit Expiration Date, and (ii) fund L/C Borrowings by making L/C Advances in Dollars pursuant to Section 2.03(c) until the Letter of Credit Expiration Date; provided, however, that after giving effect to any L/C Credit Extension (i) the Total L/C Commitment Outstandings shall not exceed the aggregate L/C Commitments and (ii) the Applicable Percentage of the Outstanding Amount of any L/C Commitment Lender’s L/C Obligations shall not exceed such L/C Commitment Lender’s L/C Commitment.

(b) Each Borrowing of L/C Borrowings shall consist of L/C Borrowings made simultaneously by the L/C Commitment Lenders in accordance with their respective Applicable Percentage of the L/C Facility. L/C Borrowings repaid or prepaid may not be reborrowed. L/C Borrowings may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein. Each L/C Commitment Lender may, at its option, make any L/C Advance by causing any domestic or foreign branch or Affiliate of such L/C Commitment Lender to make such L/C Advance; provided that any exercise of such option shall not affect in any manner the obligation of the Borrower to repay any L/C Borrowing in accordance with the terms of this Agreement.

### **2.02 Borrowings, Conversions and Continuations of the Loans..**

(a) Each Borrowing of L/C Borrowings shall be made in accordance with Section 2.01(b). Each conversion of L/C Borrowings from one Type to the other and each continuation of



Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m., New York City time (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans and (ii) on the requested date of any Borrowing of Base Rate Loans; provided, however, that if the Borrower wishes to request Eurocurrency Rate Loans having an Interest Period other than one, two, three, or six months or, to the extent available to all Lenders making such Eurocurrency Rate Loans, twelve months or such shorter period in duration as provided in the definition of "Interest Period", the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. New York City time four Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans. Not later than 12:00 p.m. New York City time three Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the applicable requested Interest Period referenced in the above proviso has been consented to by all such Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Section 2.03(c), each conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a conversion of L/C Borrowings from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) which existing L/C Borrowings are to be converted and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Borrowing Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation of Eurocurrency Rate Loans, then the applicable L/C Borrowing shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a conversion to, or continuation of Eurocurrency Rate Loans in any such Borrowing Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Borrowing Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable L/C Borrowing, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans as described in the preceding subsection.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans if the Required Lenders or the Administrative Agent so notify the Borrower.

(d) As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurocurrency Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect hereunder, except as may occur from a deemed L/C Borrowing pursuant to Section 2.03(c) without a Request for Credit Extension.

### **2.03 Letters of Credit.**

#### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the L/C Commitment Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of the Borrower or any Restricted Subsidiary, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the L/C Commitment Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or any Restricted Subsidiary and any drawings thereunder, which participations shall terminate on the Letter of Credit Expiration Date; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total L/C Commitment Outstandings shall not exceed the aggregate L/C Commitments and (y) the Applicable Percentage of the Outstanding Amount of any L/C Commitment Lender's L/C Obligations shall not exceed such L/C Commitment Lender's L/C Commitment. Each request by the Borrower or any Restricted Subsidiary for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. Notwithstanding anything herein to the contrary, (A) the Administrative Agent and Goldman Sachs Bank USA shall not be required to issue commercial Letters of Credit and (B) Credit Suisse AG and Deutsche Bank AG New York Branch shall not be required to issue commercial Letters of Credit or Bank Guarantees. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto and deemed L/C Obligations and shall be governed and subject to the terms and conditions hereof.

(ii) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iii) or an agreement by the Borrower to Cash Collateralize such Letter of Credit in the same manner as set forth in Section 2.03(g), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required L/C Commitment Lenders and the applicable L/C Issuer have approved such expiry date;

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date (each such issued Letter of Credit, whether pursuant to an amendment, extension or otherwise, an “Extended Letter of Credit”), unless (x) Cash Collateralized in the same manner as set forth in Section 2.03(g) as applicable to Extended Letters of Credit or (y) all the L/C Commitment Lenders and the applicable L/C Issuer have approved such expiry date; or

(C) such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency.

if:  
(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer;

(C) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder or any provisions for automatic extension of its expiry date;

(D) a default of any Lender's obligations to fund under Section 2.03(c) exists or any Lender is at such time a Defaulting Lender hereunder, unless the obligations of such Defaulting Lender have been fully reallocated to the non-Defaulting Lenders pursuant to Section 2.18(c) or such L/C Issuer has entered into arrangements satisfactory to it (such as through the posting of Cash Collateral) with the Borrower or such Lender to eliminate such L/C Issuer's risk with respect to such Lender; or

(E) after giving effect to such issuance (other than the deemed issuance of the Existing Letters of Credit on the Closing Date), the aggregate face amount of Letters of Credit issued by such L/C Issuer would exceed its L/C Issuance Limit;

(iv) The applicable L/C Issuer and the Borrower shall not amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) No L/C Issuer shall be under any obligation to amend any Letter of Credit if the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the L/C Commitment Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuers with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers.

(vii) Notwithstanding any other term set forth herein, no L/C Issuer shall have any obligation to issue an Extended Letter of Credit, unless such L/C Issuer consents to such issuance in its sole discretion.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by such L/C Issuer and the Administrative Agent not later than 11:00 a.m., New York City time, at least two Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as such L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as such L/C Issuer may

reasonably require. Additionally, the Borrower shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such L/C Issuer or the Administrative Agent may reasonably require.

(ii) Unless such L/C Issuer has received written notice from the Administrative Agent or any Loan Party at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or any Restricted Subsidiary or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each L/C Commitment Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such L/C Commitment Lender's Applicable Percentage times the amount of such Letter of Credit. The Administrative Agent shall promptly notify each L/C Commitment Lender of the amount of each Letter of Credit issuance and each amendment with respect to the amount of any Letter of Credit, provided that a failure to provide such notice shall not affect the obligations of each L/C Lender to purchase participations in each Letter of Credit as provided in this Agreement. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit, subject to Section 2.03(c)(iii). The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, an L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the L/C Commitment Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the applicable L/C Issuer shall have no obligation to permit any such extension if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a)), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is fifteen (15) days before the Non-Extension Notice Date from the Administrative Agent or the Borrower that one or more of the applicable conditions specified in

Section 4.02 is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(iv) [reserved]

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in Dollars, any reimbursement of such L/C Issuer shall be in Dollars. In the case of a Letter of Credit denominated in an Alternative Currency, any reimbursement by the Borrower of such L/C Issuer shall be in such Alternative Currency, unless the Borrower shall have notified such L/C Issuer promptly following receipt of the notice of drawing that the Borrower will reimburse such L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, such L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. The Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency on (x) with respect to payment in US Dollars, the Business Day immediately following the date on which the Borrower receives notice of any payment by such L/C Issuer under a Letter of Credit or (y) with respect to payment in Alternative Currencies, by the Applicable Time after receipt of such notice (each such date, an "Honor Date"), with such amount reduced (any such reduction, a "Reserve Reimbursed Amount Reduction") by (x) the aggregate Renewable Investment Reserve Amount paid prior to the applicable Honor Date, less (y) the aggregate amount of Reserve Reimbursed Amount Reductions made prior to the applicable Honor Date. If the Borrower fails to so reimburse such L/C Issuer by the time set forth in the preceding sentence, the applicable L/C Issuer shall promptly notify the Administrative Agent of the Honor Date and the Unreimbursed Amount, and such failure shall not be a Default or Event of Default. The Administrative Agent shall promptly notify each L/C Commitment Lender thereof and of the amount of such L/C Commitment Lender's Applicable Percentage thereof. Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if promptly confirmed in writing; provided that the lack of such a prompt confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each L/C Commitment Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the applicable L/C Issuer, in Dollars, at the Administrative Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m., New York City time, on the Business Day specified in such notice from the Administrative Agent. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not repaid pursuant to clause (i) above, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in Dollars in the amount of the Unreimbursed Amount, which L/C Borrowing shall be due and payable on the Maturity Date in accordance with Section 2.07 and shall bear interest at the rate applicable to Base Rate Loans from the Honor Date (subject to any conversions and continuations in accordance with Section 2.02). Each L/C Commitment Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such Letter of Credit and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each L/C Commitment Lender funds its L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such L/C Commitment Lender's Applicable Percentage of such amount shall be solely for the account of such L/C Issuer.

(v) Each L/C Commitment Lender's obligation to make L/C Advances to reimburse the L/C Issuers for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such L/C Commitment Lender may have against any L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing.

(vi) If any L/C Commitment Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable NYFRB Rate from time to time in effect. A certificate of the applicable L/C Issuer submitted to any L/C Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive, absent manifest error.

(d) Repayment of Participations.

(i) [Reserved].

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer by or on behalf of the Borrower pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion, but excluding any payment with respect to an Extended Letter of Credit required to be returned after the Letter of Credit Expiration Date), each L/C Commitment Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by

such Lender, at a rate per annum equal to the applicable NYFRB Rate from time to time in effect. The obligations of the L/C Commitment Lenders under this clause shall survive Payment in Full and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse each L/C Issuer for each drawing under each Letter of Credit and to repay each Unreimbursed Amount shall be absolute, unconditional and irrevocable under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff or defense to payment that the Borrower or any Restricted Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Issuer or any L/C Commitment Lender, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit, except to the extent caused by the applicable L/C Issuer's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction;

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not comply with the terms of such Letter of Credit, so long as such L/C Issuer shall have determined in the absence of gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction, that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment appear on their face to be in conformity with such Letter of Credit;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Restricted Subsidiary or in the relevant currency markets generally; or

(vi) any other action taken or omitted to be taken by an L/C Issuer under or in connection with any Letter of Credit or the related drafts or documents, whether or not similar to any of the foregoing, if done in the absence of gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable



L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each L/C Commitment Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, no L/C Issuer shall have any responsibility to obtain any document (other than any documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuers shall be liable to any L/C Commitment Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the L/C Commitment Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Notwithstanding anything to the contrary herein, the Borrower may have a claim against an L/C Issuer, and an L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence, as determined by a final, non-appealable judgment of a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, an L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and an L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a 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.

(g) Cash Collateral. If any L/C Obligation (x) has a stated maturity date or an expiration date that extends beyond the Letter of Credit Expiration Date or has no stated expiry or maturity date, or (y) provides for automatic extensions of the stated maturity date or the expiration date thereof, in each case, beyond the Letter of Credit Expiration Date, then the Borrower shall Cash Collateralize any portion of such Letter of Credit described in clause (x) above that remains outstanding by the earlier of (A) a date that is no earlier than 120 days prior to the Letter of Credit Expiration Date, but no later than 90 days prior to the Letter of Credit Expiration Date (or, if such Letter of Credit is issued on or after the date that is 90 days prior to the Letter of Credit Expiration Date, on the date of issuance thereof) and (B) 15 days prior to the date on which the applicable L/C Issuer must deliver notice electing not to extend such Letter of Credit or, in each case, such shorter period as any applicable L/C Issuer may agree.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, with respect to Letters

of Credit other than Bank Guarantees, the rules of the ISP shall apply to each standby Letter of Credit and the rules of the UCP shall apply to each commercial Letter of Credit.

(i) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each L/C Commitment Lender in accordance with its Applicable Percentage for the L/C Facility a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit issued on behalf of the Borrower equal to the Applicable Rate for Eurocurrency Rate Loans times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit issued on behalf of the Borrower, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. The Letter of Credit Fees shall be (x) computed on a quarterly basis in arrears and (y) due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Notwithstanding anything to the contrary contained herein, all Letter of Credit Fees shall accrue at the Default Rate (i) automatically if such Letter of Credit Fee is not paid when due, whether at stated maturity, by acceleration or otherwise and (ii) while any other Event of Default exists upon the request of the Required L/C Commitment Lenders.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the applicable L/C Issuer for its own account, in Dollars, a fronting fee with respect to each Letter of Credit issued by such L/C Issuer at the rate of 0.125% per annum on the face amount of each such Letter of Credit, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears (any such fronting fee, a "Fronting Fee"). Fronting Fees shall be due and payable on the date that is ten Business Days after the last day of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand; provided that, notwithstanding the foregoing, except in the event that there exists any Event of Default under Section 8.01(f) when such Fronting Fee is due, the Fronting Fee shall be due but not payable until five days following receipt by Borrower of an invoice from the applicable L/C Issuer setting forth the amount payable. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit or bank guarantees, as applicable, as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Letters of Credit Issued for Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Restricted Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby

acknowledges that the issuance of Letters of Credit for the account of Restricted Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

(m) Additional L/C Issuer. Any Person permitted to become an L/C Issuer pursuant to the definition of L/C Issuer may become an L/C Issuer under this Agreement with the obligations, rights, powers and privileges of an L/C Issuer hereunder by executing a joinder, in a form reasonably satisfactory to (and acknowledged and accepted by) the Administrative Agent, indicating such Lender's L/C Issuance Limit and, upon the execution and delivery of any such joinder, such Lender shall be an L/C Issuer for all purposes hereof.

(n) Reallocation. If at any time prior to the termination in full of the L/C Facility, a portion of the L/C Commitments of any Lender expire as a result of the occurrence of the Letter of Credit Expiration Date with respect thereto, then, the participation obligations with respect to existing Letters of Credit shall be fully reallocated to the remaining L/C Commitment Lenders (subject to the limitations set forth in Section 2.03(a)(i) as if such Letters of Credit were being issued at such time) or such L/C Issuer shall enter into arrangements satisfactory to it (such as through the posting of Cash Collateral) with the Borrower to eliminate such L/C Issuer's risk with respect to such expiring L/C Commitments.

(o) Renewable JVs. No Letter of Credit shall be issued on account of any Renewable JV or to the Borrower or any Restricted Subsidiary to support the obligations, contingent or otherwise, of any Renewable JV.

**2.04** [Reserved].

**2.05** ~~Prepayments and Commitment Reductions.~~

(a) Voluntary Prepayments. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay L/C Borrowings in whole or in part, subject to Section 2.05(d), without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m., New York City time (or such other later time which is acceptable to the Administrative Agent), (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, the entire amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that any such notice may be contingent upon the consummation of a refinancing and such notice may otherwise be extended or revoked, in each case, with the requirements of Section 3.05 to apply to any failure

of the contingency to occur and any such extension or revocation. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Loans pursuant to this Section 2.05(a) shall be applied to the Type(s) of Loan(s) in the manner as the Borrower shall direct, and each prepayment of Loans shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(b) Mandatory Prepayment ~~Prepayments~~. (i) To the extent that the aggregate consideration for the payment or prepayment of principal of, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance) of Remaining 2022 Notes (including at the stated maturity thereof, pursuant to the basket set forth in Section 7.06(n)(B)(i) or otherwise, but excluding pursuant to the baskets set forth in Section 7.06(n)(B)(ii) and 7.06(n)(B)(iii)) exceeds \$22,950,000.00 (any such payment in excess thereof, a "Remaining 2022 Notes Excess Repayment"), not later than 5 Business Days after such Remaining 2022 Notes Excess Repayment, the Borrower shall make (or cause to be made) a prepayment in an amount equal to such Remaining 2022 Notes Excess Repayment to be applied, *first*, pro rata to outstanding L/C Borrowings and, *second*, to Cash Collateralize Letters of Credit issued hereunder, provided that the amount of such Cash Collateralization may be decreased on a dollar-for-dollar basis to the extent the Borrower elects to and makes an L/C Commitment reduction of unused L/C Commitments pursuant to Section 2.06(a) prior to 5 Business Days after the applicable Remaining 2022 Notes Excess Repayment.

(ii) If on any Renewable Commitment Reduction Date (including as a result of any L/C Commitment reductions pursuant to Section 2.06(b)(ii) or payments of Renewable Investment Reserve Amounts made pursuant to Section 2.06(b)(iii)), in each case, on such Renewable Commitment Reduction Date) (A) the aggregate Renewable Investment Reserve Amount paid by the Borrower exceeds 106% of the greater of (x) the L/C Facility on such date and (y) the aggregate outstanding face value of the Letters of Credit on such date or (B) if there are no L/C Commitments then in effect and no Letters of Credit Outstanding, the Borrower shall make (or cause to be made) a prepayment to be applied pro rata to outstanding L/C Borrowings on or before the tenth Business Day immediately succeeding each such Renewable Commitment Reduction Date in an amount equal to any portion of the Renewable Commitment Reduction Date Amount not otherwise applied as an L/C Commitment reduction pursuant to Section 2.06(b)(ii) or Renewable Investment Reserve Amount payment under Section 2.06(b)(iii) on such Renewable Commitment Reduction Date.

(iii) Each prepayment of L/C Borrowings under this clause (b) shall be (x) paid to the ~~L/C~~ Administrative Agent for the benefit of the L/C Borrowing Lenders in accordance with their respective Applicable Percentages. and (y) applied on a pro rata basis to the then outstanding Base Rate Loans and Eurocurrency Rate Loans. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(c) Excess Over L/C Commitment. If the Administrative Agent notifies the Borrower at any time that the Dollar Equivalent of the Total L/C Commitment Outstandings at such time exceeds the L/C Commitments then in effect, then, within two Business Days after receipt of

such notice, the Borrower shall Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the L/C Commitments then in effect. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the incremental effects of further exchange rate fluctuations if the Dollar Equivalent of the Total L/C Commitment Outstandings at such time less the amount of Cash Collateral held by the Administrative Agent with respect to obligations to honor Letter of Credit drawings exceeds the L/C Commitments then in effect.

(d) Prepayment Premium.

(i) The Borrower shall pay to the Administrative Agent, for the benefit of each L/C Borrowing Lender in accordance with its Applicable Percentage in connection with prepayments made under Section 2.05(a), (x) with respect to any prepayment made prior to the date that is two years after the Closing Date, the Applicable Premium and (y) and with respect to any prepayment made after the date that is two years after the Closing Date but on or prior to the date that is two years and six months after the Closing Date, 3.00% of the principal amount of Loans prepaid.

(ii) Without limiting the generality of the foregoing, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to their stated maturity, in each case, as a result of an Event of Default (including, without limitation, an Event of Default under clause (f) of Section 8.01 (including the acceleration of any portion of the Loans by operation of law)), the greater of (x) the Applicable Premium and (y) the amount by which the applicable redemption price set forth in clause (i)(y) above exceeds the principal amount of the Loans (the "Redemption Price Premium"), as applicable, with respect to an optional prepayment of the Loans shall also be due and payable as though the Loans had been optionally redeemed on the date of such acceleration and shall constitute part of the Obligations with respect to the Loans in view of the impracticability and difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each holder's lost profits as a result thereof. If the Redemption Price Premium becomes due and payable, it shall be deemed to be principal of the Loans, and interest shall accrue on the full principal amount of the Loans (including the Redemption Price Premium) from and after the applicable triggering event, including in connection with an Event of Default specified under clause (f) of Section 8.01. Any Redemption Price Premium payable above shall be presumed to be liquidated damages sustained by each holder as the result of the acceleration of the Loans and the Borrower and the Loan Parties to the extent they provide guarantees for the Obligations pursuant to the Guaranty agree that it is reasonable under the circumstances currently existing. The premium shall also be payable in the event the Loans or the Obligations are satisfied, released or discharged through foreclosure, whether by judicial proceeding, deed in lieu of foreclosure, sale or collection of Collateral or by any other means, or in connection with the restructuring, reorganization or compromise of the obligations by a plan of reorganization or otherwise. The Borrower and, if applicable, the Loan Parties will expressly agree (to the fullest extent they may lawfully do so) that: (A) the Redemption Price Premium is reasonable and is the product of an arm's length transaction between sophisticated business entities ably represented by counsel; (B) the Redemption Price Premium shall be payable notwithstanding the then prevailing market rates at

the time acceleration occurs; (C) there has been a course of conduct between holders and the Borrower giving specific consideration in this transaction for such agreement to pay the Redemption Price Premium; and (D) the Borrower shall be estopped from claiming differently than as agreed to in this paragraph. The Borrower and, if applicable, the Loan Parties expressly acknowledge that their agreement to pay the Redemption Price Premium to Lenders as herein described was a material inducement to the Lenders to enter into this Agreement.

## **2.06 Termination or Reduction of L/C Commitments.**

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the L/C Commitments, or from time to time permanently reduce the L/C Commitments in whole or in part, subject to Section 2.06(d), without premium or penalty; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m., New York City time, three Business Days prior to the date of termination or reduction, (ii) any such partial reduction with respect to the L/C Commitments shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, and (iii) the Borrower shall not terminate or reduce the L/C Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total L/C Commitment Outstandings under the L/C Facility would exceed the L/C Commitments under the L/C Facility. The Administrative Agent will promptly notify the L/C Lenders of any such notice of the foregoing, and any such notice may be contingent upon the consummation of a refinancing and such notice may otherwise be extended or revoked.

### **(b) Automatic Commitment Reductions.**

(i) ~~(b) Automatic Commitment Reduction~~ L/C Borrowings. The L/C Commitments automatically shall be reduced upon the deemed making of any L/C Borrowing in the aggregate principal amount of such L/C Borrowing made.

(ii) Renewable Commitment Reduction Date. On the tenth Business Day immediately succeeding each Renewable Commitment Reduction Date, the L/C Commitments automatically shall be reduced in an amount equal to the lesser of (i) the applicable Renewable Commitment Reduction Date Amount and (ii) the unused L/C Commitments on such Renewable Commitment Reduction Date.

(iii) Renewable Investment Reserve Amount Payments. If on any Renewable Commitment Reduction Date, the applicable Renewable Commitment Reduction Date Amount exceeds the unused L/C Commitments on such Renewable Commitment Reduction Date, then, on the tenth Business Day immediately succeeding such Renewable Commitment Reduction Date, the Borrower shall make a payment to the Administrative Agent for the benefit of the L/C Commitment Lenders in the amount of such excess (each such amount, a "Renewable Investment Reserve Amount") in accordance with each such L/C Commitment Lender's respective Applicable Percentage of the L/C Facility until the aggregate Renewable Investment Reserve Amount paid by the Borrower exceeds 106% of the greater of (x) the L/C Facility on such date and (y) the aggregate outstanding face value of the Letters of Credit on such date.

(c) Application of Commitment Reductions; Payment of Fees. Upon any reduction of the L/C Commitments, the L/C Commitment of each L/C Lender shall be reduced by such L/C

Lender's Applicable Percentage in respect of the L/C Facility of such reduction amount. All fees and other amounts under this Agreement in respect of the L/C Facility accrued until the effective date of any termination of the L/C Facility shall be paid on the effective date of such termination.

(d) Prepayment Premium.

(i) The Borrower shall pay to the Administrative Agent, for the benefit of each L/C Commitment Lender in accordance with its Applicable Percentage in connection with reductions and terminations made under Section 2.06(a), (x) with respect to any reductions or termination made prior to the date that is two years after the Closing Date, the Applicable Premium and (y) and with respect to any reductions or termination made after the date that is two years after the Closing Date and the date that is two years and six months after the Closing Date, 3.00% of the L/C Commitment reduced or terminated.

(ii) Without limiting the generality of the foregoing, it is understood and agreed that if the L/C Commitment is terminated prior to the Letter of Credit Expiration Date, as a result of an Event of Default (including, without limitation, an Event of Default under clause (f) of Section 8.01 (including the early termination or reduction of any portion of the L/C Commitment by operation of law)), the greater of (x) the Applicable Premium and (y) the amount by which the applicable redemption price set forth in clause (i)(y) above exceeds the L/C Commitment reduced or terminated (the "L/C Commitment Redemption Price Premium"), as applicable, with respect to an optional reduction or termination of the L/C Commitment shall also be due and payable as though the L/C Commitment had been optionally reduced or terminated on the date of such earlier reduction or termination and shall constitute part of the Obligations with respect to the L/C Commitment in view of the impracticability and difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each holder's lost profits as a result thereof. If the L/C Commitment Redemption Price Premium becomes due and payable, it shall be deemed to be principal of a Loan, and interest shall accrue on the full principal amount of such Loan (including the L/C Commitment Redemption Price Premium) from and after the applicable triggering event, including in connection with an Event of Default specified under clause (f) of Section 8.01. Any L/C Commitment Redemption Price Premium payable above shall be presumed to be liquidated damages sustained by each holder as the result of the early termination or reduction of the L/C Commitment and the Borrower and the Loan Parties to the extent they provide guarantees for the Obligations pursuant to the Guaranty agree that it is reasonable under the circumstances currently existing. The Borrower and, if applicable, the Loan Parties will expressly agree (to the fullest extent they may lawfully do so) that: (A) the L/C Commitment Redemption Price Premium is reasonable and is the product of an arm's length transaction between sophisticated business entities ably represented by counsel; (B) the L/C Commitment Redemption Price Premium shall be payable notwithstanding the then prevailing market rates at the time early reduction or termination occurs; (C) there has been a course of conduct between holders and the Borrower giving specific consideration in this transaction for such agreement to pay the L/C Commitment Redemption Price Premium; and (D) the Borrower shall be estopped from claiming differently than as agreed to in this paragraph. The Borrower and, if applicable, the Loan Parties expressly acknowledge that their agreement to pay the L/C Commitment Redemption Price Premium to

Lenders as herein described was a material inducement to the Lenders to enter into this Agreement.

## **2.07 Repayment of Loans.**

The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all L/C Borrowings outstanding on such date.

## **2.08 Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) If any amount of principal or interest of any Loan (or any other Obligations) is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.09 Fees.** In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each L/C Commitment Lender in accordance with its Applicable Percentage in respect of the L/C Facility, a commitment fee in Dollars equal to the Commitment Fee Rate times the actual daily amount by which the aggregate L/C Commitments of all L/C Lenders exceed the sum of the Outstanding Amount of L/C Obligations of the Borrower, determined on the last day of the immediately preceding fiscal quarter. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date and on the Maturity Date.

(b) The Borrower shall pay to the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.



**2.10 Computation of Interest and Fees.** All computations of interest for Base Rate Loans, where the rate of interest is calculated on the basis of the prime rate, and of Fronting Fees shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.11 Evidence of Debt.** (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

**2.12 Payments Generally; Administrative Agent's Clawback.**

(a) **General.** All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m., New York City time, on the date specified herein. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage of such payment in like funds as received by wire transfer to such

Lender's Lending Office. All payments received by the Administrative Agent after 3:00 p.m., New York City time shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) [reserved].

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer 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 L/C Issuer, 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 L/C Issuer, 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 L/C Issuer, in Same Day Funds 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 NYFRB Rate.

A notice of the Administrative Agent to any Lender or Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and/or L/C Advances, to fund participations in Letters of Credit and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan and/or L/C Advance, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to fund its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.13 Pro Rata; Sharing of Payments by Lenders.** Except as otherwise expressly provided in this Agreement, each payment (including each prepayment) by the Borrower on account of principal of and interest or fees on any L/C Borrowings or L/C Obligations shall be allocated by the Administrative Agent pro rata according to the respective outstanding principal amounts of the Loans of such Class then held by the respective Lenders of such Class. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it (or the participation in L/C Obligations held by it) resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, 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 applicable Loans (and subparticipations in L/C Obligations) of the other Lenders of such Class, 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 of the applicable Class and other amounts owing them, provided that:

(a) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its L/C Borrowings (or subparticipations in L/C Obligations) to any assignee or participant.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

**2.14 ~~Reserved~~ Renewable Investment Reserve Return.**

If at any time the Renewable Investment Reserve Amounts the Borrower has paid exceeds in the aggregate 106% of the greater of (x) the L/C Facility at such time and (y) the aggregate outstanding face value of the Letters of Credit at such time, each L/C Commitment Lender, at the written request of the Borrower to the L/C Commitment Lenders, shall, in accordance with each such L/C Commitment Lender's respective Applicable Percentage of the L/C Facility, cause its portion of such excess to be paid to the Borrower (a "Renewable Investment Reserve Return") for use in the ordinary course of its business within 10 Business Days by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the L/C Commitment Lenders by the Borrower.

**2.15 [Reserved].**

**2.16 Refinancing Debt.**

(a) Refinancing L/C Facility. The Borrower may, without the consent of any Lender, extend, refinance, renew or replace, in whole or in part, the L/C Borrowings or the L/C Commitments under the L/C Facility with one or more term loan facilities (each a “Refinancing L/C Borrowing Facility”) or one or more letter of credit facilities (each a “Refinancing L/C Commitment Facility”) (each Refinancing L/C Borrowing Facility and Refinancing L/C Commitment Facility, a “Refinancing L/C Facility”); provided that any such request for a Refinancing L/C Facility shall be in a minimum amount equal to the lesser of (i) \$25,000,000 and (ii) the entire amount of any Facility which is being extended, refinanced, renewed or replaced under this Section 2.16.

(b) Refinancing L/C Facility Lender. A Refinancing L/C Facility may be provided by (i) (x) with respect to a Refinancing L/C Borrowing Facility, an existing Lender or (y) with respect to a Refinancing L/C Commitment Facility, an existing L/C Commitment Lender (but, in each case, no Lender shall be obligated to provide a commitment in respect of a Refinancing L/C Facility, nor shall the Borrower have any obligation to approach any existing Lenders to provide a commitment in respect of a Refinancing L/C Facility) or (ii) any other Refinancing L/C Facility Lender so long as any such Person is approved by the Administrative Agent and any other Person who would have consent rights pursuant to Section 10.06(b) if such Refinancing L/C Facility Lender was becoming an L/C Commitment Lender or L/C Borrowing Lender, as applicable. Subject to any such consents being received and if not already a party hereto, any such Refinancing L/C Facility Lender may become a party to this Agreement by entering into a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent.

(c) Effective Date. In connection with any Refinancing L/C Facility, the Administrative Agent and the Borrower shall determine the effective date (the “Refinancing Facility Effective Date”). The Administrative Agent shall promptly notify the Borrower and the Lenders of the principal amount of the Refinancing L/C Facility and the Refinancing Facility Effective Date.

(d) Conditions to Effectiveness of Refinancing L/C Facility. The effectiveness of each Refinancing L/C Facility shall be subject to the following conditions:

(i) the aggregate principal amount (or accreted value, if applicable) of any Refinancing L/C Facility will not exceed the outstanding aggregate principal amount (or accreted value, if applicable) of any Facility which it is extending, refinancing, renewing or replacing plus any Permitted Refinancing Increase, unless such additional principal amount would otherwise be permitted pursuant to (and any such additional amount shall be deemed to have been incurred under) Section 7.03 and, if applicable, Section 7.01;

(ii) such Refinancing L/C Facility shall have the same guarantees as, and be secured on a *pari passu* basis with, the Secured Obligations; provided that, if agreed by the Borrower and the relevant Refinancing L/C Facility Lenders, the Refinancing L/C Facility may

be subject to lesser guarantees or be unsecured or less secured, or the Liens securing the Refinancing L/C Facility may rank junior to the Liens securing the L/C Facility;

(iii) in the event such Refinancing Facility is a Refinancing L/C Borrowing Facility, such Refinancing L/C Facility (A) shall have (1) a final maturity no earlier than the Maturity Date with respect to the L/C Borrowing Facility and (2) a weighted average life no shorter than that of the L/C Borrowing Facility and (B) shall not have any terms which require it to be voluntarily or mandatorily prepaid prior to the prepayment in full of the L/C Borrowings, unless accompanied by at least a ratable payment of the L/C Borrowings;

(iv) in the event such Refinancing L/C Facility is a Refinancing L/C Commitment, such Refinancing L/C Facility shall have a final maturity no earlier than the Maturity Date with respect to the L/C Commitment and shall require no mandatory commitment reduction prior to such Maturity Date, unless accompanied by at least ratable mandatory commitment reduction, as applicable, of the L/C Commitment; and

(v) to the extent such terms and documentation for the Refinancing L/C Facility are not substantially consistent with the applicable Loan Documents, they shall be reasonably satisfactory to the Administrative Agent, unless such terms (A) are more favorable to the Borrower, taken as a whole, than the Loan Documents in respect of the L/C Commitment Facility, in the case of a Refinancing L/C Commitment Facility, or the L/C Borrowing Facility, in the case of a Refinancing L/C Borrowing Facility (or the Lenders under the L/C Commitment Facility or the L/C Borrowing Facility, as applicable, receive the benefit of the more restrictive terms, which, for avoidance of doubt, may be provided to them without their consent), in each case, as certified by a Responsible Officer of the Borrower in good faith, (B) concern pricing (including interest rates, rate floors, fees, OID or other fees), the amortization schedule, commitment reductions, prepayments and any prepayment premiums applicable to such Refinancing L/C Facility or (C) apply after the Maturity Date.

(e) Amendment. With the consent of the Lenders providing a Refinancing L/C Facility, the Borrower and the Administrative Agent (and without the consent of the other Lenders), this Agreement shall be amended in a writing (which may be executed and delivered by the Borrower and the Administrative Agent) to reflect any changes necessary to give effect to such Refinancing L/C Facility in accordance with its terms (including, without limitation, to give such Refinancing L/C Facility the benefits of Section 2.05, as applicable).

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 to the contrary.

## **2.17 Cash Collateral.**

(a) Sections 2.03, 2.05 and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of Sections 2.03, 2.05 and 8.02(c), “Cash Collateralize” means (i) (other than with respect to Extended Letters of Credit in connection with Section 2.03(a)(ii)(B)) to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuers, as collateral for the obligation to honor drawings under the Letters of Credit, cash or deposit account balances pursuant to documentation in form and substance reasonably

satisfactory to the Administrative Agent and the applicable L/C Issuer (which documents are hereby consented to by the L/C Commitment Lenders) in an amount equal to 106% of the applicable L/C Obligations or (ii) with respect to Extended Letters of Credit in connection with Section 2.03(a)(i)(B) to pledge and deposit with or deliver to the applicable L/C Issuer, for the benefit of such L/C Issuer, as collateral for the obligation to honor drawings under the Letters of Credit issued by such L/C Issuer, cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to the applicable L/C Issuer in an amount not to exceed 106% of the L/C Obligations with respect to the applicable Extended Letters of Credit. Derivatives of such term have corresponding meanings. The Borrower, and to the extent provided by any L/C Lender, such L/C Commitment Lender, hereby grants to the Administrative Agent, for the benefit of the L/C Issuers, and each of the L/C Issuers, for the benefit of itself, as applicable, a security interest in all such cash and such deposit account balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked deposit accounts at the Administrative Agent or another institution reasonably acceptable to the Administrative Agent.

(b) Notwithstanding anything to the contrary contained in this Agreement, (i) Cash Collateral or other credit support (and proceeds thereof) provided by any Defaulting Lender pursuant to Section 2.03 to support the obligations of such Lender in respect of Letters of Credit shall be held and applied, *first*, to fund the L/C Advances of such Lender, and, *second*, to fund any interest accrued for the benefit of the applicable L/C Issuer pursuant to Section 2.03(c)(vi) allocable to such Lender, and (ii) Cash Collateral and other credit support (and proceeds thereof) otherwise provided by or on behalf of any Loan Party under Sections 2.03, 2.05(c), or 8.02(c) to support L/C Obligations shall be held and applied, *first*, to the satisfaction of the specific L/C Obligations or obligations to fund participations therein of the applicable Defaulting Lender for which the Cash Collateral or other credit support was so provided and, *second*, if remedies under Section 8.02 shall have been exercised, to the application of such collateral or other credit support (or proceeds thereof) to any other Secured Obligations in accordance with Section 8.04.

(c) Cash Collateral and other credit support (or a portion thereof as provided in clause (2) below) provided under Section 2.03 in connection with any Lender's status as a Defaulting Lender shall be released to the Person that provided such collateral or other credit support (except as the applicable L/C Issuer and the Person providing such collateral or other credit support may agree otherwise (as applicable)) promptly following the earlier to occur of (A) the termination of such Lender's status as a Defaulting Lender or (B) the applicable L/C Issuer's good faith determination, (1) in the case of such Cash Collateral or other credit support provided by or on behalf a Defaulting Lender, that there remain outstanding no L/C Obligations as to which it has actual or potential fronting exposure in relation to such Lender as to which it desires to maintain Cash Collateral or other credit support and (2) in the case of such Cash Collateral or other credit support provided by or on behalf of a Loan Party, that the outstanding L/C Obligations as to which it has actual or potential fronting exposure in relation to such Lender are less than the value of such Cash Collateral or other credit support provided (such release to be provided upon reasonable request from the Borrower to the Administrative Agent and only to the extent of the excess amount of Cash Collateral or other credit support provided); subject, however, to the additional condition that, as to any such collateral or other credit support

provided by or on behalf of a Loan Party, no Default or Event of Default shall then have occurred and be continuing.

**2.18 Defaulting Lenders.** Notwithstanding anything contained in this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) **Reallocation of Loan Payments.** Any payment or prepayment (i) of any portion of the principal amount of Loans of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) shall be applied, *first*, to the Loans of other L/C Lenders as if such Defaulting Lender had no Loans outstanding, until such time as the Outstanding Amount of L/C Obligations of each Lender shall equal its pro rata share thereof based on its Applicable Percentage (without giving effect to Section 2.18(c)), ratably to the Lenders in accordance with their Applicable Percentages of Loans being repaid or prepaid, *second*, to the then outstanding amounts (including interest thereon) owed under the terms hereof by such Defaulting Lender to the Administrative Agent, L/C Issuer or (to the extent the Administrative Agent has received notice thereof) to any other Lender, ratably to the Persons entitled thereto, *third*, to the posting of Cash Collateral in respect of its Applicable Percentage of L/C Obligations, ratably to the L/C Issuers in accordance with their respective applicable fronting exposure, and *fourth*, the balance, if any, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction, and (ii) of any other amounts thereafter received by the Administrative Agent for the account of such Defaulting Lender (including amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.08) to have been paid to such Defaulting Lender and applied on behalf of such Defaulting Lender, *first*, to the liabilities above referred to in item *second* of clause (i) above, *second*, to the matters above referred to in item *third* of clause (i) above, and *third*, the balance, if any, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any of such amounts as are reallocated pursuant to this Section 2.18(a) that are payable or paid (including pursuant to Section 10.08) to such Defaulting Lender shall be deemed paid to such Defaulting Lender and applied by the Administrative Agent on behalf of such Defaulting Lender, and each Lender hereby irrevocably consents thereto.

(b) **Certain Fees.** Such Defaulting Lender (i) shall not be entitled to receive any commitment fee on the unused portion of its Commitment pursuant to Section 2.09(a) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender in respect of its unused Commitment) and (ii) shall not be entitled to receive any Letter of Credit Fees pursuant to Section 2.03(i) for any period during which such Lender is a Defaulting Lender (and, unless required by the following sentence, the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender). If any Defaulting Lender's L/C Obligations are neither cash collateralized nor reallocated pursuant to this Section 2.18, then, without prejudice to any rights or remedies of the L/C Issuer or any Lender hereunder, all fees payable to such Defaulting Lender under Section 2.03 shall be payable to the L/C Issuer until such L/C Obligations are Cash Collateralized or reallocated.

(c) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the “Applicable Percentage” of each non-Defaulting Lender shall be computed without giving effect to the Commitment of such Defaulting Lender in either the numerator or the denominator; provided, that, in all cases, the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit shall not exceed the positive difference, if any, between (1) the Commitment of such non-Defaulting Lender and (2) such Lender’s Applicable Percentage of the aggregate Outstanding Amount of all L/C Obligations (prior to giving effect to such reallocation). For avoidance of doubt, this Section 2.18(c) will operate for the benefit of the L/C Issuer notwithstanding the fact that a Letter of Credit is issued at the time that one or more Defaulting Lenders exist hereunder (regardless of whether the L/C Issuer has notice thereof). Notwithstanding any provision contained herein to the contrary, during any period in which a Default or Event of Default has occurred and is continuing the provisions of this Section 2.18(c) shall not apply.

A Lender that has become a Defaulting Lender because of an event referenced in the definition of Defaulting Lender may cure such status and shall no longer constitute a Defaulting Lender as a result of such event when (i) such Defaulting Lender shall have fully funded or paid, as applicable, all Loans, L/C Advances, participations in respect of Letters of Credit or other amounts required to be funded or paid by it hereunder as to which it is delinquent (together, in each case, with such interest thereon as shall be required to any Person as otherwise provided in this Agreement), (ii) the Administrative Agent and each of the Borrower shall have received a certification by such Defaulting Lender of its ability and intent to comply with the provisions of this Agreement going forward, and (iii) each of (w) the Administrative Agent, (x) any L/C Issuer and any other Lender as to which a delinquent obligation was owed and (y) the Borrower, shall have determined (and notified the Administrative Agent) that they are satisfied, in their sole discretion, that such Defaulting Lender intends to continue to perform its obligations as a Lender hereunder and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder. No reference in this subsection to an event being “cured” shall by itself preclude any claim by any Person against any Lender that becomes a Defaulting Lender for such damages as may otherwise be available to such Person arising from any failure to fund or pay any amount when due hereunder or from any other event that gave rise to such Lender’s status as a Defaulting Lender.

## **2.19 Dutch Auction Repurchases.**

(a) Notwithstanding anything to the contrary contained in this Agreement, the Borrower and its Subsidiaries may at any time and from time to time purchase L/C Borrowings and enter into Borrower L/C Commitment Participations, by conducting modified Dutch auctions (each, an “Auction”) (each Auction to be managed exclusively by the Administrative Agent or another investment bank of recognized standing elected by the Borrower following consultation with the Administrative Agent in accordance with the Auction Procedures (in such capacity, the “Auction Manager”)), so long as the following conditions are satisfied:



(i) no Default or Event of Default shall have occurred and be continuing at the time of the purchase of any L/C Borrowings and entry into Borrower L/C Commitment Participations in connection with any Auction;

(ii) the minimum principal amount (calculated on the face amount thereof) of all Total Outstandings and the aggregate unused L/C Commitments that the Borrower purchases in any such Auction shall be no less than \$1,000,000 and whole increments of \$500,000 in excess thereof (unless another amount is agreed to by the Administrative Agent and Auction Manager);

(iii) the aggregate principal amount (calculated on the face amount thereof) of all L/C Borrowings so purchased by the Borrower or its Subsidiaries shall immediately and automatically be cancelled and retired by them on the settlement date of the relevant purchase (and may not be resold);

(iv) the Borrower will promptly advise the Administrative Agent of the total amount of all L/C Borrowings so purchased by the Borrower or its Subsidiaries and the Administrative Agent is authorized to make appropriate entries in the Register to reflect such cancellation and retirement; and

(v) no more than one Auction may be ongoing at any one time.

(b) The Borrower shall have no liability to any Lender for any termination of the respective Auction as a result of its failure to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of L/C Borrowings or entry into Borrower L/C Commitment Participations, pursuant to the respective Auction, and any such failure shall not result in any Default hereunder. With respect to all purchases of L/C Borrowings and entries into Borrower L/C Commitment Participations made by the Borrower pursuant to this Section 2.19, (i) the Borrower shall pay on the settlement date of each such purchase all accrued and unpaid interest (except to the extent otherwise set forth in the relevant offering documents), if any, on the purchased L/C Borrowings up to the settlement date of such purchase and (ii) such purchases (and the payments made by the Borrower or its Subsidiaries and the cancellation of the purchased L/C Borrowings, in each case, in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.05 or 2.06.

(c) The Administrative Agent and the Lenders hereby consent to the Auctions and the other transactions contemplated by this Section 2.19 (provided that no Lender shall have an obligation to participate in any such Auctions) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.05, 2.06, 2.12, 2.13 and 10.06, it being understood and acknowledged that purchases of the L/C Borrowings and entry into Borrower L/C Commitment Participations by the Borrower or its Subsidiaries contemplated by this Section 2.19 shall not constitute Investments by the Borrower) that may otherwise prohibit any Auction or any other transaction contemplated by this Section 2.19. The Auction Manager acting in its capacity as such hereunder shall be entitled to the benefits of the provisions of Article IX and Section 10.04 mutatis mutandis as if each reference therein to the "Administrative Agent" were a reference to the Auction Manager, and the Administrative Agent

shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Auction.

## **2.20 Open Market Repurchases.**

Notwithstanding anything to the contrary contained in this Agreement, the Borrower and its Subsidiaries may at any time and from time to time make open market purchases of L/C Borrowings and enter into open market Borrower L/C Commitment Participations (each, an “Open Market Purchase”), so long as no Default or Event of Default shall have occurred and be continuing on the time of such Open Market Purchase. All offers for Open Market Purchases of L/C Borrowings and L/C Commitment Participations shall be made pursuant to a bona fide offer to all Lenders ratably in accordance with the Total Outstandings and the aggregate unused L/C Commitments, provided that if any Lender holds L/C Borrowings and L/C Commitments at the time of any such Open Market Purchase offer, such offer will be deemed to made, *first*, to such Lender’s L/C Borrowings and, *second*, if such Lenders’ pro rata allocation of the Open Market Purchase offer is in excess of such Lender’s principal amount of L/C Borrowings outstanding, to such Lender’s L/C Commitment pursuant to a Borrower L/C Commitment Participation. The offer must specify an expiration date (the “*expiration date*”) not less than 30 days or more than 60 days after the date of the offer, and, with respect to L/C Borrowings, a settlement date for purchase (the “*purchase date*”) not more than five Business Days after the expiration date. The offer must include information concerning the business of the Borrower and its Subsidiaries which the Borrower in good faith believes will enable the holders to make an informed decision with respect to the Open Market Purchase offer. The offer will also contain instructions and materials necessary to enable Lenders to exercise the Open Market Purchase pursuant to the offer.

(a) The aggregate principal amount (calculated on the face amount thereof) of all L/C Borrowings so purchased by the Borrower or its Subsidiaries shall immediately and automatically be cancelled and retired by them on the settlement date of the relevant purchase (and may not be resold).

(b) The Borrower will promptly advise the Administrative Agent of the total amount of all L/C Borrowings so purchased by the Borrower or its Subsidiaries and the Administrative Agent is authorized to make appropriate entries in the Register to reflect such cancellation and retirement.

(c) With respect to all purchases of L/C Borrowings made by the Borrower pursuant to this Section 2.20, (i) the Borrower or its Subsidiaries shall pay on the settlement date of each such purchase all accrued and unpaid interest, if any, on the purchased L/C Borrowings up to the settlement date of such purchase (except to the extent otherwise set forth in the relevant purchase document as agreed by the respective selling Lender) and (ii) such purchases (after the payments made by the Borrower or its Subsidiaries and the cancellation of the purchased L/C Borrowings, in each case in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.05 or 2.07.

(d) The Administrative Agent and the Lenders hereby consent to the Open Market Purchases contemplated by this Section 2.20 and hereby waive the requirements of any provision

of this Agreement (including, without limitation, Sections 2.05, 2.07, 2.12, 2.13 and 10.06, it being understood and acknowledged that purchases of the L/C Borrowings and entries into Borrower L/C Commitment Participations by the Borrower or its Subsidiaries contemplated by this Section 2.20 shall not constitute Investments by the Borrower or its Subsidiaries) that may otherwise prohibit any Open Market Purchase by this Section 2.20.

## **2.21 Mandatory Offers.**

(a) Closing Date Offer. Within 15 calendar days of the Closing Date, the Borrower shall make an Open Market Purchase offer to the Lenders in an aggregate amount equal to \$3,125,000 of principal amount of L/C Borrowings and L/C Commitments at a discounted price of 80% of par, *plus* accrued interest, commitment fees and letter of credit fees, if any, to, but not including, the date of purchase or exercise. If the Lenders elect to exercise such Open Market Purchase with respect to an aggregate principal amount of L/C Borrowings and L/C Commitments in excess of \$3,125,000, such Open Market Purchases will be effectuated on a pro rata basis. For the avoidance of doubt, no Applicable Premium will be payable with respect to the exercise of the offer pursuant to this clause (a).

(b) (i) Priority Debt Repurchase Triggered Offers. If for any fiscal quarter of the Borrower ending on or before September 30, 2024 (“Debt Repurchase Quarterly Period”), the Borrower or its Restricted Subsidiaries make any open-market repurchases of Priority Lien Debt (which term, for the avoidance of doubt, would not include any 2022 Notes outstanding after the Closing Date) pursuant to Section 7.06(o), the Borrower must, within 30 days of the end of such Debt Repurchase Quarterly Period, make an Open Market Purchase Offer for an aggregate principal amount or commitment amount, as applicable, on a pro rata basis, of (i) 2024 Notes and (ii) Priority Lien Obligations incurred under this Agreement in accordance with the mechanics set forth herein (a “Debt Repurchase Mandatory Offer”) equal to 25.0% of the aggregate principal amount of Indebtedness repurchased during the applicable Debt Repurchase Quarterly Period (the “Available Repurchase Amount”); provided, that any repurchases of pursuant to clause (a) above or pursuant to the Issue Date Offer (as defined in the 2024 Notes Indenture), will not be subject to the Debt Repurchase Mandatory Offer provisions of this clause (b).

(ii) The purchase or exercise price for any 2024 Notes and Priority Lien Obligations repurchased in such Debt Repurchase Mandatory Offer will be at a price to principal amount or commitment amount, as applicable, that is the weighted-average repurchase price for all Indebtedness repurchased during the applicable Debt Repurchase Quarterly Period (other than as pursuant to a prior Debt Repurchase Mandatory Offer), *plus* accrued interest, commitment fees and letter of credit fees, if any, to, but not including, the date of purchase or exercise.

(iii) If the aggregate principal amount or commitment amount, as applicable, of Obligations hereunder and such other Priority Lien Obligations surrendered in a Debt Repurchase Mandatory Offer exceeds the Available Repurchase Amount, the Borrower will select the Obligations hereunder and 2024 Notes to be purchased on a pro rata basis based on the aggregate outstanding principal amount and committed amounts tendered or electing to exercise the related Open Market Purchase, as applicable, with such adjustments as needed so that no 2024 Notes in an unauthorized denomination are purchased in part based on principal amount of

the 2024 Notes tendered, and such Open Market Purchases will be effectuated on a pro rata basis.

(iv) Any repurchases of Priority Lien Debt by the Borrower with Retained Excess Available Repurchase Amounts pursuant to Section 7.06(o) will not be subject to the Debt Repurchase Mandatory Offer provisions of this Section 2.21.

### **ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **3.01        Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on behalf of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith of the applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable 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 3.01(a)) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made.

(b) Payment of Other Taxes by the Borrower. Without duplication of any obligation set forth in subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes.

(c) Indemnification by the Borrower. The Loan Parties shall jointly and severally indemnify the Administrative Agent, each Lender and each L/C Issuer within 10 days after demand therefor for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by, or required to be withheld or deducted from a payment to, the Administrative Agent, such Lender or such L/C Issuer, as the case may be, on or with respect to any payment made by or on account of any obligation of the Loan Parties under any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, the applicable Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by

such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law and from time to time when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or 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 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.

Each Lender that is not a Foreign Lender shall deliver to the Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable Law or upon the reasonable request of the Borrower or Administrative Agent), two duly completed and executed copies of IRS Form W-9.

Without limiting the generality of the foregoing, each Foreign Lender holding any Loan to the Borrower shall deliver to the Borrower and the Administrative Agent 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 request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two copies of whichever of the following is applicable or any subsequent version thereof or successor thereto:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, duly completed and executed copies of IRS Form W-8BEN or IRS W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty,

(ii) duly completed and executed copies of IRS Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described

in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) duly completed and executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable,

(iv) to the extent a Foreign Lender is not the beneficial owner, duly completed and executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or Exhibit M-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner, and

(v) duly completed and executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding Tax duly completed and executed together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or Administrative Agent to determine the withholding or deduction required to be made; provided, that notwithstanding anything to the contrary in this Section 3.01(e), the completion, execution and submission of the documentation described in this clause (v) 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.

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 as 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 the purposes of this paragraph, “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.

Notwithstanding the foregoing, no Lender nor any Participant shall be required to deliver any form or other document under this Section 3.01(e) that it is not legally entitled to deliver.

(f) **Treatment of Certain Refunds.** If the Administrative Agent, any Lender or any L/C Issuer receives a refund with respect to Taxes to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), which in the reasonable discretion and good faith judgment of such Administrative Agent, Lender or L/C Issuer is allocable to such payment, it shall promptly pay such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Administrative Agent, Lender or L/C Issuer incurred in obtaining such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that the Borrower agrees to promptly return such amount (plus any penalties, interest or other charges imposed by the relevant Governmental Authority), to the applicable Administrative Agent, Lender or L/C Issuer, as the case may be, if it receives notice from the applicable Administrative Agent, Lender or L/C Issuer that such Administrative Agent, Lender or L/C Issuer is required to repay such refund to the relevant Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the Administrative Agent, any Lender or L/C Issuer be required to pay any amount to the Borrower pursuant to this paragraph (f) the payment of which would place the Administrative Agent, any Lender or L/C Issuer in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require the Administrative Agent, any Lender or L/C Issuer to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(g) **Survival.** Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**3.02 Illegality.** If any Lender determines that as a result of any Change in Law it becomes unlawful, or that any Governmental Authority asserts that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case, until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or convert all such Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on Base Rate Loans of such

Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender, which it shall do as promptly as possible, that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

### **3.03 Inability to Determine Rates.**

(a) If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (i) adequate and reasonable means do not exist for determining the Eurocurrency Rate (including because the Eurocurrency Rate is not available or published on a current basis) for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or (ii) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended and (ii) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case, until the Administrative Agent (upon the instruction of the Required Lenders, who agree to so instruct the Administrative Agent once the circumstances giving rise to the inability ability to determine rates no longer exist) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for conversion to or a continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, or in connection with any Early Opt-in Election, 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 of each Class.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (c) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(d) In connection with the implementation of a Benchmark Replacement (including in connection with any Term SOFR Transition Event), the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement (including in connection with any Term SOFR Transition Event), (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.03, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.03.

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement or Term SOFR Transition Event), (i) if the then-current Benchmark is a term rate (including Term SOFR or LIBO Screen Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information

announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurocurrency Rate Borrowing of, conversion to or continuation of Eurocurrency Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

### **3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate contemplated by Section 3.04(e));

(ii) subject any Lender, any L/C Issuer or the Administrative Agent to any Taxes (other than Indemnified Taxes or Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein (other than Taxes addressed by Section 3.01 and Excluded Taxes);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer 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 or L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or L/C Issuer setting forth in reasonable detail such increased costs, the Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or

amounts as will compensate such Lender or L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; provided that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be materially disadvantageous to it, in its reasonable discretion, in any legal, economic or regulatory manner) to designate a different Eurocurrency lending office if the making of such designation would allow the Lender or its Eurocurrency lending office to continue to perform its obligation to make Eurocurrency Rate Loans or to continue to fund or maintain Eurocurrency Rate Loans and avoid the need for, or reduce the amount of, such increased cost.

(b) Capital Requirements. If any Lender or any L/C Issuer reasonably determines that any Change in Law affecting such Lender or L/C Issuer or any Lending Office of such Lender or such Lender's or L/C Issuer's holding company, if any, regarding capital or liquidity requirements has the effect of reducing the rate of return on such Lender's or L/C Issuer's capital or on the capital of such Lender's or L/C Issuer'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 held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or L/C Issuer's policies and the policies of such Lender's or L/C Issuer's holding company with respect to capital adequacy), then from time to time, after submission to the Borrower (with a copy to the Administrative Agent) of a written request therefor setting forth in reasonable detail the change and the calculation of such reduced rate of return, the Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section, describing the basis therefor and showing the calculation thereof in reasonable detail, and delivered to the Borrower shall be conclusive, absent manifest error. The Borrower shall pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 90 days prior to the date that such Lender or L/C Issuer, 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 L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Additional Reserve Requirements.** The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as “Eurocurrency liabilities”), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as reasonably determined by such Lender in good faith, which determination shall be conclusive, absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive, absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 Business Days’ prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender describing the basis therefor and showing the calculation thereof, in each case, in reasonable detail. If a Lender fails to give notice 10 Business Days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable within 30 days from receipt of such notice.

(f) **Certain Rules Relating to the Payment of Additional Amounts.** If any Lender requests compensation pursuant to this Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, such Lender shall either (A) forego payment of such additional amount from the Borrower or (B) reasonably afford the Borrower the opportunity to contest, and reasonably cooperate with the Borrower in contesting, the imposition of any Indemnified Taxes or other amounts giving rise to such payment; provided that the Borrower shall reimburse such Lender for its reasonable and documented out-of-pocket costs, including reasonable and documented attorneys’ and accountants’ fees and disbursements incurred in so cooperating with the Borrower in contesting the imposition of such Indemnified Taxes or other amounts.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

(c) any failure by the Borrower to make payment of any drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency or its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including 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, but excluding any loss of anticipated profits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate used in determining the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall (i) 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 (A) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (B) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender and (ii) promptly inform the Borrower and Administrative Agent when the circumstances giving rise to the applicability of such Sections no longer exists. The Borrower hereby agrees to pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender gives a notice pursuant to Section 3.02 or if any Lender is at such time a Defaulting Lender, then the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.** The parties' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

## ARTICLE IV. CONDITIONS PRECEDENT

**4.01 Closing Date.** The effectiveness of the Closing Date is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be (w) originals, telecopies or electronic copies (followed promptly by originals upon request of the Administrative Agent), (x) properly executed by a duly authorized officer of the signing Loan Party, if and as applicable, (y) dated on or before the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and (z) in form and substance reasonably satisfactory to the Administrative Agent and, in the case of Security Documents, the Priority Collateral Trustee:

(i) executed counterparts of (a) this Agreement from the parties hereto, (b) the Guaranty from each of the Loan Parties, and (c) the Wilpinjong Collateral Trust Agreement from PIC AU Holdings LLC, PIC AU Holdings Corporation, the "Priority Collateral Trustee" thereunder, the "Junior Collateral Trustee" thereunder and the other parties party thereto;

(ii) Notes executed by the Borrower in favor of each Lender requesting Notes;

(iii) (x) the New Gibraltar Pledge Agreement and (y) the Gibraltar Deed of Confirmation, each duly executed by each party thereto, together with:

(1) to the extent that any Capital Stock pledged pursuant to the New Gibraltar Pledge Agreement or the Gibraltar Pledge Agreement is certificated and required to be delivered thereunder, the original share certificates for such Capital Stock accompanied by undated share transfer forms or other approved or instruments of transfer executed in blank;

(2) results of recent lien searches (or their equivalent under the Laws of Gibraltar) with respect to Gibraltar Holdings in the jurisdiction in which such Person is organized and the District of Columbia;

(4) an irrevocable proxy and power of attorney in favor of the Collateral Trustee and granted pursuant to the New Gibraltar Pledge Agreement;

(5) a memorandum of resolutions signed by each of the directors of Peabody Investments (Gibraltar) Limited; and

(6) any documents that are required to be delivered under the New Gibraltar Pledge Agreement and the Gibraltar Deed of Confirmation.

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of duly authorized officers of each Loan Party and each Restricted Subsidiary party to a Loan Document, in each case, as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each officer of each Loan Party or

Restricted Subsidiary executing the Loan Documents to which each Loan Party or Restricted Subsidiary is a party;

(v) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing;

(vi) the executed opinion of Jones Day, counsel to the Borrower and special New York counsel to the other Loan Parties, addressed to the Administrative Agent, the Priority Collateral Trustee and each Lender, including, but not limited to, due execution, enforceability, non-contravention of law and agreements (including, without limitation, the Existing Credit Agreement and the Existing Priority Lien Notes Indenture) with respect to the Loan Documents, including and all documents delivered in connection with the Secured Debt Designation);

(vii) the Fee Letter;

(viii) the executed opinion of Triay Stagnetto Neish, special Gibraltar counsel to the Loan Parties, addressed to the Administrative Agent, the Collateral Trustee and each Lender;

(ix) the executed opinion of Dentons Bingham Greenebaum LLP, special Indiana counsel to the Loan Parties, addressed to the Administrative Agent, the Collateral Trustee and each Lender;

(x) that certain Amendment No. 3 to Priority Lien Pledge and Security Agreement, dated as of the date hereof;

(xi) a certificate of a Responsible Officer of the Borrower either (A) attaching copies of all material consents, licenses and approvals required in connection with the execution, delivery and performance by each Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect or (B) stating that no such consents, licenses or approvals are so required;

(xii) (A) [reserved], (B) unaudited consolidated financial statements (each of which shall have undergone a SAS 100 review) for each of the first three fiscal quarters of the fiscal year ending December 31, 2020 prepared in accordance with GAAP, (C) an unaudited pro forma consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of September 30, 2020 and for the three-quarter period then ended, giving effect to the effectiveness of the Transaction and the other transactions contemplated hereby as if the effectiveness of the Transaction and the other transactions contemplated hereby had occurred as of such date (in the case of the balance sheet) or at the beginning of such period (in the case of the income statements), in the case of each of clauses (B) through (C), meeting the requirements of Regulation S-X under the Securities Act of 1933 (as amended) and (D) financial projections (including the assumption on which such projections are based) for fiscal years 2021 through 2024;

(xiii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.01(d) and (j) and 4.02(a) and (b) have been

satisfied, and (B) that there has not occurred since December 31, 2019, any Material Adverse Effect;

(xiv) a solvency certificate from the chief financial officer of the Borrower in the form of Exhibit K, which demonstrates that the Borrower and its Restricted Subsidiaries on a consolidated basis, are, and immediately after giving effect to the Transaction and the other transactions contemplated hereby, will be, Solvent;

(xv) the Wilpinjong Term Loan Agreement duly executed by the parties thereto;

(xvi) the Indenture, dated as of the Closing Date, among PIC AU Holdings LLC and PIC AU Holdings corporation, as co-issuers, the Borrower and Wilmington Trust National Association, as Trustee (as defined therein), duly executed by the parties thereto;

(xvii) Amendment No. 8 to Existing Credit Agreement duly executed by the parties thereto;

(xviii) the 2024 Notes Indenture duly executed by the parties thereto;

(xix) that certain Seventh Supplemental Indenture to the Existing Priority Lien Note Indenture, dated as of the date hereof, duly executed by the parties thereto.

(xx) that certain Eighth Supplemental Indenture to the Existing Priority Lien Note Indenture, dated as of the date hereof, duly executed by the parties thereto.

(b) the Administrative Agent shall have received duly executed counterparts of the below listed documents (as each such term is defined in the Collateral Trust Agreement), in form and substance satisfactory to the Administrative Agent, in connection with the designation of this Agreement as "Priority Lien Debt" under the Collateral Trust Agreement (the "Secured Debt Designation"):

(i) Additional Secured Debt Designation;

(ii) Collateral Trust Joinder with respect to the "Additional Secured Debt" (as defined therein);

(iii) Reaffirmation Agreement;

(iv) Officer's Certificate executed by the Borrower in accordance with Section 3.1 of the Collateral Trust Agreement; and

(v) Collateral Trust Joinder with respect to PIC AU Holdings LLC and PIC AU Holdings Corporation as additional Grantors.

(c) The Existing Revolving Commitments shall be terminated in their entirety prior to or simultaneously with the effectiveness hereof.



(d) The Borrower and its Restricted Subsidiaries shall have complied in all material respects with all state and federal regulations regarding bonding requirements.

(e) [Reserved].

(f) [Reserved].

(g) the Administrative Agent shall have received a certificate from the applicable Loan Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 6.07 is in full force and effect, together with endorsements naming Collateral Trustee, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under the Collateral Trust Agreement.

(h) Each Loan Party shall have delivered or cause to be delivered to Collateral Trustee:

(i) the Wilpinjong Security Agreement duly executed by the parties thereto;

(ii) except to the extent set forth on Schedule 6.18 or otherwise not required as of the Closing Date pursuant to the terms of the Security Agreement, evidence reasonably satisfactory to Administrative Agent of the compliance by each Loan Party of their obligations under the Security Agreement and the other Security Documents (including their obligations to execute or authorize, as applicable, and deliver UCC financing statements (including, without limitation, as-extracted financing statements), originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(iii) a completed Collateral Questionnaire dated the Closing Date and executed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby;

(iv) fully executed IP Security Agreements, in proper form for filing or recording in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, memorializing and recording the encumbrance of the Intellectual Property listed in Schedule 3 to the Collateral Questionnaire; and

(v) except to the extent set forth on Schedule 6.18 or otherwise not required as of the Closing Date pursuant to the terms of the Security Agreement, evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by the Administrative Agent.

(i) Any fees required to be paid on or before the Closing Date to the Administrative Agent or the Lenders under this Agreement, the Fee Letter or otherwise in connection with the Facilities shall have been paid and, unless waived by the Administrative Agent or the Lenders, as applicable, to the extent invoiced at least two Business Days prior to the Closing Date, the

Borrower shall have paid all reasonable and documented costs and expenses of the Administrative Agent and the Lenders (including the reasonable and documented fees and expenses of counsel to the Administrative Agent and the Lenders, plus such additional amounts of such reasonable and documented fees and expenses (including filing fees in respect of collateral) as shall constitute its reasonable estimate of such fees and expenses incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent)).

(j) There shall not exist any action, suit, investigation, litigation, proceeding or hearing, pending or threatened in any court or before any arbitrator or Governmental Authority that affects the transactions contemplated hereunder or otherwise impairs the ability of the Loan Parties to consummate the Transaction and the transactions contemplated hereunder and no preliminary or permanent injunction or order by a state or federal court shall have been entered, in each case that would be material and adverse to the Administrative Agent or the Lenders. All Governmental Authorities and Persons shall have approved or consented to the transactions contemplated hereby, to the extent required, and such approvals shall be in full force and effect.

(k) The Administrative Agent shall have received at least three business days prior to the Closing Date all documentation, including a completed certification regarding beneficial owners of legal entity customers, as required by FINCEN, and other information required by regulatory authorities with respect to the Borrower and the other Loan Parties under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act, that has been requested by the Administrative Agent at least five Business Days prior to the Closing Date.

(l) Each of the Lenders and the Administrative Agent shall have received evidence satisfactory to each Lender of flood insurance with respect to Real Property that is part of the Collateral as of the Closing Date as may be required to comply with the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Biggert-Waters Flood Insurance Act of 2012, in form and substance satisfactory to each Lender.

(m) The Administrative Agent (as defined in the Existing Credit Agreement) shall have received in immediately available funds (i) the cash paydown of Existing Revolving Loans in the aggregate amount of \$10,000,000; and (ii) the Amendment Fee (as defined in Amendment No. 8 to the Existing Credit Agreement).

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to all L/C Credit Extensions (Including on the Closing Date).** The obligation of each Lender to honor any Request for Credit Extension (other than

a Borrowing Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of (i) the Borrower contained in Article V and (ii) each Loan Party contained in each other Loan Document or in any document required to be furnished at any time thereunder, shall be true and correct in all material respects on and as of the date of such L/C Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02 following the Closing Date, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality or by a reference to a Material Adverse Effect in the text thereof.

(b) No Default or Event of Default shall exist, or would result immediately, from such proposed L/C Credit Extension or the application of the proceeds thereof.

(c) (i) The Administrative Agent and, if applicable, the applicable L/C Issuer, shall have received a Letter of Credit Application in accordance with the requirements hereof, and (ii) with respect to an L/C Credit Extension, the Administrative Agent shall have received a certificate from the Borrower certifying to compliance with the proviso to the first sentence of Section 2.03(a) after giving effect to such L/C Credit Extension.

(d) In the case of an L/C Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any Change in Law which in the reasonable opinion of the Administrative Agent or the applicable L/C Issuer would prohibit such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Borrowing Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Section 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent, the Priority Collateral Trustee and the Lenders that:

**5.01 Existence, Qualification and Power.** Each of the Borrower and its Restricted Subsidiaries (a) (i) is duly organized or formed and validly existing and (ii) is in good standing under the Laws of the jurisdiction of its incorporation or organization, if such legal concept is applicable in such jurisdiction, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified, licensed, and in good

standing (to the extent good standing is an applicable legal concept in the relevant jurisdiction), under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (a)(ii), (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party and Gibraltar Holdings of each Loan Document to which such Person is a party, (a) have been duly authorized by all necessary corporate or other organizational action and (b) do not and will not (i) contravene the terms of any of such Person's Organizational Documents; (ii) conflict with or result in any breach or contravention of, or the creation of, any Lien (except for any Liens that may arise under the Loan Documents) under, or require any payment to be made under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject or (C) any arbitral award to which such Person or its property is subject; or (iii) violate any Law binding on such Person, except in each case referred to in clauses (b)(ii) or (b)(iii), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.03 Governmental Authorization.** (a) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority and (b) no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with any other Person, in each case, is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party or Gibraltar Holdings of this Agreement or any other Loan Document, except for those approvals, consents, exemptions, authorizations or other actions which have already been obtained, taken, given or made and are in full force and effect.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party and Gibraltar Holdings, as applicable, that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party and Gibraltar Holdings, as applicable, enforceable against each Loan Party and Gibraltar Holdings, as applicable, that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally, general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing.

**5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements of the Borrower and its Subsidiaries and any financial statements delivered pursuant to Section 6.01(a) (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period

covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries for each of the fiscal quarters ended March 31, 2019, June 30, 2019 and September 30, 2019 and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarters ended on such dates (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of such dates and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end adjustments.

(c) Since the date of the last Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The financial projections delivered pursuant to Section 4.01(a)(vii)(D) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable in light of the conditions existing at the time of delivery of such forecasts (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that no assurance can be given that the future developments addressed in such information can be realized).

**5.06 Litigation.** There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower threatened, at law, in equity, by or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in public filings prior to the date hereof, as to which there is a reasonable possibility of an adverse determination and that could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.** None of the Borrower or any of its Restricted Subsidiaries is in default under or with respect to any Contractual Obligation that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership and Identification of Property.**

(a) The Borrower and its Restricted Subsidiaries have good record and marketable title in fee simple to, or valid leasehold interests in, all Real Property necessary or used in the ordinary conduct of its business, except for such defects in title as could not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, with respect to all Real Property listed on Schedule 5.08(c): (i) the Borrower and its Restricted Subsidiaries possess all leasehold interests necessary for the operation of the Mines currently being operated by each of

them and included or purported to be included in the Collateral pursuant to the Security Documents, except where the failure to possess such leasehold interests could not reasonably be expected to have a Material Adverse Effect, (ii) each of their respective rights under the leases, contracts, rights-of-way and easements necessary for the operation of such Mines are in full force and effect, except to the extent that failure to maintain such leases, contracts, rights of way and easements in full force and effect could not reasonably be expected to have a Material Adverse Effect; and (iii) each of the Borrower and its Restricted Subsidiaries possesses all licenses, permits or franchises which are necessary to carry out its business as presently conducted at any Mine included or purported to be included in the Collateral pursuant to the Security Documents, except where failure to possess such licenses, permits or franchises could not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

(b) Schedule 5.08(b) lists completely and correctly as of the Closing Date all Material Real Property that constitutes an active Mine.

(c) Schedule 5.08(c) lists completely and correctly as of the Closing Date all Material Real Property that constitutes a Reserve Area.

**5.09 Environmental Compliance.** Except as disclosed on Schedule 5.09 as of the Closing Date, or as otherwise could not reasonably be expected to have a Material Adverse Effect:

(a) The facilities and properties currently or formerly owned, leased or operated by the Borrower, or any of its respective Restricted Subsidiaries (the “Properties”) do not contain any Hazardous Materials in amounts or concentrations which (i) constitute a violation of, or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(b) None of the Borrower, nor any of its respective Restricted Subsidiaries has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding compliance with or liability under Environmental Laws with regard to any of the Properties or the business operated by the Borrower, or any of its Restricted Subsidiaries (the “Business”), or any prior business for which the Borrower has retained liability under any Environmental Law.

(c) Hazardous Materials have not been transported or disposed of from the Properties in violation of, or in a manner or to a location which could reasonably be expected to give rise to liability under, any applicable Environmental Law, nor have any Hazardous Materials been generated, treated, stored or disposed of at, or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(d) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened under any Environmental Law to which the Borrower, or any of its Restricted Subsidiaries is or, to the knowledge of the Borrower, will be named as a party or with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other similar

administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business.

(e) There has been no release or threat of release of Hazardous Materials at or from the Properties, or arising from or related to the operations of the Borrower, or any of its Restricted Subsidiaries in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under any applicable Environmental Laws.

(f) The Properties and all operations at the Properties are in compliance with all applicable Environmental Laws.

(g) The Borrower, and each of its Restricted Subsidiaries has obtained, and is in compliance with, all Environmental Permits required for the conduct of its businesses and operations, and the ownership, occupation, operation and use of its Property, and all such Environmental Permits are in full force and effect.

#### **5.10 Insurance.**

(a) The material properties of the Borrower and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies which may be Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates.

(b) As to any Building located on Material Real Property and constituting Collateral, all flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full.

**5.11 Taxes.** The Borrower and its Restricted Subsidiaries have filed all applicable US Federal, state, foreign and other material tax returns and reports required to be filed, and have paid all US Federal, state, foreign and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable except (a) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP, or (b) where failure to do any of the foregoing could not reasonably be expected to result in a Material Adverse Effect; no material tax Lien has been filed which would not be permitted under Section 7.01 and, to the knowledge of the Borrower, no material claim is being asserted, with respect to any material tax, fee or other charge which could reasonably be expected to result in a Material Adverse Effect.

**5.12 ERISA Compliance.** Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) Each Plan is in material compliance in all respects with the applicable provisions of ERISA, the Code and other Federal or state Laws (except that with respect to any Multiemployer Plan which is a Plan, such representation is deemed made only to the knowledge

of the Borrower), and each Foreign Plan is in material compliance in all respects with the applicable provisions of Laws applicable to such Foreign Plan.

(b) There has been no non-exempt “prohibited transaction” (as described in Section 406 of ERISA or Section 4975 of the Code) or violation of the fiduciary responsibility rules with respect to any Plan.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; and (iii) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

**5.13 Subsidiaries.** As of the Closing Date, the Borrower has no Subsidiaries other than those specifically disclosed in Schedule 5.13.

**5.14 Margin Regulations; Investment Company Act.**

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, nor any Restricted Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure.** (a) No report, financial statement, certificate or other information furnished in writing by any Loan Party or Gibraltar Holdings to the Administrative Agent, the Priority Collateral Trustee or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, taken as whole with any other information furnished or publicly available, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date when made or delivered; provided that, with respect to any forecast, projection or other statement regarding future performance, future financial results or other future developments, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of delivery of such information (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower’s control, and that no assurance can be given that the future developments addressed in such information can be realized).

(b) As of the Closing Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Closing Date (if any) to any Lender in connection with this Agreement is true and correct in all respects.

**5.16 Compliance with Laws.** The Borrower and each Restricted Subsidiary is in compliance in all material respects with the requirements of all Laws (including any zoning, building, ordinance, code or approval or any building or mining permits and all



orders, writs, injunctions and decrees applicable to it or to its properties), except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

#### **5.17 Anti-Corruption; Sanctions.**

(a) None of the Borrower, any Restricted Subsidiary, any of their respective directors or officers, nor, to the knowledge of the Borrower or its Restricted Subsidiaries, agent, employee or Affiliate of the Borrower or any Restricted Subsidiary is, or is owned or controlled by, a Sanctioned Person; and the Borrower will not directly or, to the knowledge of the Borrower or its Subsidiaries, indirectly use the proceeds of the Loans for the purpose of financing the activities of any Sanctioned Persons, or in any Sanctioned Territory.

(b) No part of the proceeds of any Loan will be used, directly or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, “Anti-Corruption Laws”).

(c) The Borrower and each Restricted Subsidiary is in compliance, in all material respects, with Sanctions, Anti-Corruption Laws, and the PATRIOT Act.

**5.18 Intellectual Property; Licenses, Etc.** The Borrower and its Restricted Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, except where the failure to own or possess the right to use such IP Rights could not reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Borrower, the use of such IP Rights by the Borrower or any Restricted Subsidiary does not infringe upon any rights held by any other Person except for any infringement that could not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.18 as of the Closing Date, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which could reasonably be expected to have a Material Adverse Effect.

#### **5.19 Security Documents.**

(a) (i) Each Security Document (other than each Mortgage), when executed and delivered, is effective to create in favor of the Priority Collateral Trustee (for the benefit of the Secured Parties), a legal, valid and enforceable security interest in the Collateral described therein and the Priority Collateral Trustee has been authorized (and is hereby authorized) to make all filings of UCC-1 and as-extracted collateral financing statements in the appropriate filing office necessary or desirable to fully perfect the Priority Collateral Trustee’s security interest in such Collateral described therein which can be perfected by filing a UCC-1 financing

statement in the appropriate filing office, and (ii) with respect to the security interest created in the Collateral pursuant to each Security Document (other than each Mortgage), upon such filings (or, with respect to possessory Collateral, upon the taking of possession by the Collateral Trustee of any such Collateral which may be perfected by possession), such security interests will constitute perfected First Priority Liens on, and security interests in, all right, title and interest of the debtor party thereto in the Collateral described therein that can be perfected by filing a UCC-1 or as-extracted financing statement, as applicable, in the appropriate filing office or by delivery, in the case of possessory Collateral.

(b) Each of the Mortgages, when executed and delivered, will be effective to create in favor of the Collateral Trustee, for the ratable benefit of the Secured Parties, a legal, valid and enforceable lien on the Material Real Property described therein and such security interests will constitute, upon such Mortgage being and recorded in the appropriate filing offices, First Priority liens on such Material Real Property.

**5.20 Mines.** Schedule 5.20 sets forth a complete and accurate list of all Mines owned or operated by the Borrower or any of its Restricted Subsidiaries as of the Closing Date and included or purported to be included in the Collateral pursuant to the Security Documents.

**5.21 Solvency.** The Borrower and its Restricted Subsidiaries, immediately after giving effect to the Transaction, and upon the incurrence of any Obligation by any Loan Party on any date on which this representation and warranty is made, will be, on a consolidated basis, Solvent.

**5.22 Labor Relations.** Neither the Borrower nor any of its Restricted Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any of its Restricted Subsidiaries, or to the best knowledge of the Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against the Borrower or any of its Restricted Subsidiaries or to the best knowledge of the Borrower, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving the Borrower or any of its Restricted Subsidiaries, and (c) to the best knowledge of the Borrower, no union representation question existing with respect to the employees of the Borrower or any of its Restricted Subsidiaries and, to the best knowledge of the Borrower, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

**5.23 Cash Flow Forecast.** The Cash Flow Forecast has been prepared in good faith based upon assumptions of the Borrower reasonable at the time made.

## ARTICLE VI. AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower shall, and shall cause each of its respective Restricted Subsidiaries to:

**6.01 Financial Statements.** Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2020) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP; such consolidated statements shall be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than (x) with respect to or resulting from the upcoming maturity of any Loans under this Agreement, the other Priority Lien Documents, or any documents evidencing a Permitted Securitization Program, occurring within one year from the time such opinion is delivered, or (y) with respect to a projected breach of Section 7.11 (*Minimum Liquidity*)); and

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended March 31, 2021), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail; such consolidated statements shall be certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

**6.02 Certificates; Other Information.** Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants reporting on such financial statements stating that in performing their audit nothing came to their attention that caused them to believe the Borrower failed to comply with the financial covenant set forth in Section 7.11, except as specified in such certificate;

(b) concurrently with the delivery of the financial statements referred to in [Section 6.01\(a\)](#) and (b) (commencing with the delivery of the financial statements for the fiscal year ended December 31, 2020), (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower and (ii) a reconciliation of such financial statements for the Borrower and its Restricted Subsidiaries; provided, that, for the avoidance of doubt, any such reconciliation of the financial statements referred to in [Section 6.01\(a\)](#) shall not be audited;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(e) not later than 60 days after the end of each fiscal year of the Borrower (commencing with the delivery of the financial statements for the fiscal year ended December 31, 2020), a copy of summary projections by the Borrower of the operating budget and cash flow budget of the Borrower and its Subsidiaries for the succeeding fiscal year, such projections to be accompanied by a certificate of a Responsible Officer to the effect that such projections have been prepared based on assumptions believed by the Borrower to be reasonable (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that no assurance can be given that the future developments addressed in such information can be realized);

(f) not later than 90 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2020), coal reserve figures, including production, content and proven and probable reserves of "assigned" reserves and additional information with respect to "assigned" and "unassigned" reserves, and supporting information for each Mine, in detail similar to that is included in the Borrower's then most recent Form 10-K in accordance with SEC rules; ~~and~~

(g) concurrently with the delivery of the financial statements referred to in [Section 6.01\(a\)](#), an updated [Schedule 6.07\(b\)](#) setting forth a complete and accurate list of the Buildings on Material Real Property (including the coordinates, address and owner thereof) owned by the Borrower or any of its Restricted Subsidiaries as of the end of the applicable fiscal year.; and

(h) on or before the tenth Business Day after each Renewable Commitment Reduction Date, a certificate of a Responsible Officer setting forth the amount of Investments made pursuant to Section 7.02(n) during the six-month period ending on each such Renewable Commitment Reduction Date.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (iii) on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval system.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (a) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (b) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the L/C Issuer and the Lenders to treat the Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent the Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); and (c) all Borrower Materials marked "PUBLIC" or not marked as containing material non-public information are permitted to be made available through a portion of the Platform designated "Public Investor." Notwithstanding the foregoing, the Borrower shall not be under any obligation to mark the Borrower Materials "PUBLIC" or as containing material non-public information. In connection with the foregoing, each party hereto acknowledges and agrees that the foregoing provisions are not in derogation of their confidentiality obligations under Section 10.07.

**6.03 Notices.** Notify the Administrative Agent:

- (a) promptly, of the occurrence of any Default or Event of Default hereunder or the occurrence of any "Default" or "Event of Default" under the Priority Lien Documents;
- (b) promptly, of any event which could reasonably be expected to have a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event that, individually or in the aggregate, would be reasonably likely to have a Material Adverse Effect, as soon as possible and in any event within 30 days after the Borrower knows or has obtained notice thereof;

(d) 5 Business Days days (or such shorter period as is reasonably acceptable to the Administrative Agent) prior to any Borrower or any Guarantor (or Peabody Investments (Gibraltar) Limited) changing its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business;

(e) to the extent that there will be a cancellation or material reduction in amount or material change in coverage for any insurance maintained by the Borrower or any Guarantor, at least 10 days (or such shorter period as is acceptable to the Administrative Agent) prior to such cancellation, reduction or change;

(f) promptly, (x) as to any Building located on Material Real Property and constituting Collateral, any redesignation of any such property on which such Building is located into or out of a special flood hazard area and (y) in the event of any construction and/or expansion of any Building located on Material Real Property in a special flood hazard area that results in such Building no longer constituting an Excluded Asset; and

(g) any change in the information provided in the Beneficial Ownership Certification (if any) delivered to the Administrative Agent that would result in a change to the list of beneficial owners identified in such certification.

Each notice pursuant to clauses (a)-(c) of this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

**6.04 Payment of Tax Obligations.** Except where failure to do so could not reasonably be expected to result in a Material Adverse Effect, with respect to the Borrower and each of its Restricted Subsidiaries, pay and discharge all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Restricted Subsidiary.

**6.05 Preservation of Existence.** Preserve, renew and maintain in full force and effect its legal existence except in a transaction permitted by Sections 7.04 or 7.18.

**6.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its material properties and material equipment, including Collateral, necessary in the operation of its business in good working order and condition (ordinary wear and tear and damage by fire or other casualty or taking by condemnation excepted), except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Keep in full force and effect all of its material leases and other material contract rights, and all material rights of way, easements and privileges necessary or appropriate for the proper operation of the Mines being operated by the Borrower or a Restricted Subsidiary and included or purported to be included in the Collateral by the Security Documents, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.** (a) Maintain with financially sound and reputable insurance companies which may be Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) With respect to any Building located on Material Real Property and constituting Collateral, the Borrower shall and shall cause each appropriate Loan Party to (i) maintain fully paid flood hazard insurance on any such Building that is located in a special flood hazard area, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 and (ii) furnish to the Administrative Agent an insurance certificate evidencing the renewal (and payment of renewal premiums therefor) of all such policies prior to the expiration or lapse thereof (or at such other time acceptable to the Administrative Agent). The Borrower shall cooperate with the Administrative Agent's reasonable request for any information reasonably required by the Administrative Agent to comply with The National Flood Insurance Reform Act of 1994, as amended. Schedule 6.07(b) sets forth a complete and accurate list of the Buildings on Material Real Property (including the coordinates, address and owner thereof) owned by the Borrower or any of its Restricted Subsidiaries as of the Closing Date.

**6.08 Compliance with Laws.** Comply in all respects with the requirements of all Laws (including the PATRIOT Act, Sanctions, the Anti-Corruption Laws and Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (or, in the case of compliance with the PATRIOT Act, Sanctions and the Anti-Corruption Laws, the failure to comply therewith is not material).

**6.09 Books and Records.** (a) Maintain proper books of record and account, in which in all material respects full, true and correct entries in conformity with GAAP shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all material requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Restricted Subsidiary, as the case may be.

**6.10 Inspection Rights.** Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (except to the extent (a) any such access is restricted by a Requirement of Law or (b) any such agreements, contracts or the like are subject to a written confidentiality agreement with a non-Affiliate that prohibits the Borrower or any of its Subsidiaries from

granting such access to the Administrative Agent or the Lenders; provided that, with respect to such confidentiality restrictions affecting the Borrower or any of its Restricted Subsidiaries, a Responsible Officer is made available to such Lender to discuss such confidential information to the extent permitted), and to discuss the business, finances and accounts with its officers and independent public accountants at such reasonable times during normal business hours and as often as may be reasonably desired, provided that the Administrative Agent or such Lender shall give the Borrower reasonable advance notice prior to any contact with such accountants and give the Borrower the opportunity to participate in such discussions, provided further that the costs of one such visit per calendar year (or an unlimited amount if an Event of Default has occurred and is continuing) for the Administrative Agent, the Lenders and their representatives as a group shall be the responsibility of the Borrower.

**6.11 Use of Proceeds.** Use the proceeds of the L/C Facility for the Letters of Credit for the accounts of the Borrower or any of its Restricted Subsidiaries.

**6.12 Additional Guarantors.** As of the date the Compliance Certificate referred to in Section 6.02 is required to be delivered, notify the Administrative Agent of any Restricted Subsidiary that is not a Guarantor and, by virtue of the definition of Guarantor would be required to be a Guarantor. Within 30 days of such notification, the Borrower shall cause any such Restricted Subsidiary to become a Guarantor by executing and delivering to the Administrative Agent a counterpart of the Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose.

**6.13 Unrestricted Subsidiaries.** No Restricted Subsidiary may be designated as an Unrestricted Subsidiary on or following the Closing Date. (a) Any Unrestricted Subsidiary may be designated as a Restricted Subsidiary upon delivery to the Administrative Agent of written notice from the Borrower and (b) those Subsidiaries identified in the definition of Unrestricted Subsidiary may continue to be Unrestricted Subsidiaries hereunder; provided that, in respect to each of clauses (a) and (b), (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, on a Pro Forma Basis, the Total Leverage Ratio shall be equal to or less than 2.50:1.00, (iii) no Subsidiary may continue to be an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for purposes of any of the Priority Lien Documents (other than this Agreement) and (iv) each Restricted Subsidiary designated as an Unrestricted Subsidiary and its Subsidiaries has not, at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness other than (x) Non-Recourse Debt or (y) to the extent it does not constitute Non-Recourse Debt, the Wilpinjong Mandatory Offer. The designation of any Restricted Subsidiary as an Unrestricted Subsidiary constituted an Investment under Section 7.02 by the Borrower therein at the date of designation under the Existing Credit Agreement in an amount equal to the net book value of the Borrower's investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Restricted Subsidiary existing at such time.



**6.14 Preparation of Environmental Reports.** If an Event of Default caused by reason of a breach under Sections 6.08 or 5.09 with respect to compliance with Environmental Laws shall have occurred and be continuing, at the reasonable request of the Administrative Agent or the Required Lenders through the Administrative Agent, provide, in the case of the Borrower, to the Lenders within 60 days after such request, at the expense of the Borrower, an environmental or mining site assessment or audit report for the Properties which are the subject of such default prepared by an environmental or mining consulting firm reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or remedial action in connection with such Properties and the estimated cost of curing any violation or non-compliance of any Environmental Law.

**6.15 Certain Long Term Liabilities and Environmental Reserves.** To the extent required by GAAP, maintain adequate reserves for (a) 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, (b) future costs associated with retiree and health care benefits, (c) future costs associated with reclamation of disturbed acreage, removal of facilities and other closing costs in connection with closing its mining operations and (d) future costs associated with other potential environmental liabilities.

**6.16 Covenant to Give Security.**

(a) Personal Property including IP of New Guarantors. Concurrently with any Restricted Subsidiary becoming a Guarantor pursuant to Section 6.12 (or a later date to which the Administrative Agent agrees), cause any such Restricted Subsidiary to (i) duly execute and deliver to the Priority Collateral Trustee counterparts to the Security Agreement or such other document as the Administrative Agent or the Priority Collateral Trustee shall reasonably deem appropriate for such purpose, (ii) to the extent that any Capital Stock in, or owned by, such Restricted Subsidiary is required to be pledged pursuant to the Security Agreement or the Gibraltar Pledge Agreement, deliver stock certificates, if any, representing such Capital Stock accompanied by undated stock powers or instruments of transfer executed in blank, (iii) to the extent that any Intellectual Property (as defined in the Security Agreement) owned by a Loan Party is required to be pledged pursuant to the Security Agreement but has not been pledged, deliver any supplements to the IP Security Agreements reasonably requested by the Administrative Agent or the Collateral Trustee and (iv) comply with all other requirements of the Security Agreement with respect to the Collateral of such Guarantor.

(b) Real Property of New Guarantors.

(i) New Real Property Identification. With respect to any Restricted Subsidiary becoming a Guarantor pursuant to Section 6.12, concurrently with such Restricted Subsidiary becoming a Guarantor (or a later date to which the Administrative Agent agrees), furnish to the Administrative Agent a description of all Material Real Property fee owned or leased by such Restricted Subsidiary.

(ii) Material Real Property Mortgages and Flood Insurance. With respect to any Restricted Subsidiary becoming a Guarantor pursuant to Section 6.12, within the latest of (x)

90 days of such Restricted Subsidiary becoming a Guarantor and (y) a later date to which the Administrative Agent agrees, cause such Restricted Subsidiary to deliver (A) executed counterparts of one or more Mortgages on its Material Real Property in a form appropriate for recording in the applicable recording office, (B) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Building located on such Material Real Property and constituting Collateral and, if any such Building is located in special flood hazard area, (1) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto and (2) evidence of applicable flood insurance as required by Section 6.07(b)(i) if such Material Real Property constitutes Collateral, (C) legal opinions from counsel in such jurisdiction as the Material Real Property is located, each in form and substance reasonably satisfactory to Administrative Agent or the Priority Collateral Trustee, (D) to the extent required by the Administrative Agent, evidence of the filing of as-extracted UCC-1 financing statements in the appropriate jurisdiction and (E) payment by the Borrower of all mortgage recording taxes and related charges required for the recording of such Mortgages.

(iii) Consents Related to Leaseholds Concerning Material Real Property. With respect to any leasehold interest of any Restricted Subsidiary becoming a Guarantor pursuant to Section 6.12 that would constitute Material Real Property but for the need to obtain the consent of another Person (other than the Borrower or any Controlled Subsidiary) in order to grant a security interest therein, use commercially reasonable efforts to obtain such consent within the 120 day period commencing after such entity becomes a Guarantor, provided that there shall be no requirement to pay any sums to the applicable lessor other than customary legal fees and administrative expenses (it is understood, for avoidance of doubt, that, without limiting the foregoing obligations of the Borrower set forth in this Section 6.16(b)(iii), any failure to grant a security interest in any such leasehold interest as a result of a failure to obtain a consent shall not be a Default hereunder, and, for avoidance of doubt, the Borrower and its Restricted Subsidiaries shall no longer be required to use commercially reasonable efforts to obtain any such consent after such above-mentioned time period to obtain a consent has elapsed).

(c) Personal Property (including IP) Acquired by Borrower or Guarantors. Within the applicable time period set forth in the Security Agreement, shall, in the case of the Borrower, or cause any such Restricted Subsidiary otherwise, (i) to the extent that any Capital Stock in, or owned by, a Loan Party or Gibraltar Holdings is required to be pledged pursuant to the Security Agreement or the Gibraltar Pledge Agreement but has not been pledged, deliver stock certificates, if any, representing such Capital Stock accompanied by undated stock powers or instruments of transfer executed in blank to the Priority Collateral Trustee and execute and deliver to the Priority Collateral Trustee supplements to the Security Agreement, the Gibraltar Pledge Agreement or such other document as the Administrative Agent shall reasonably deem appropriate to pledge any such Capital Stock, (ii) to the extent that any Intellectual Property (as defined in the Security Agreement) owned by a Loan Party is required to be pledged pursuant to the Security Agreement but has not been pledged, deliver any supplements to the IP Security Agreements reasonably requested by the Administrative Agent and (iii) to the extent that a Lien on any asset of a Loan Party is required to be perfected pursuant to the Security Agreement but has not been perfected, take such additional actions as may be required pursuant to the Security Agreement in order to perfect the Lien of the Priority Collateral Trustee on such asset.

(d) Real Property Acquired by Borrower and Guarantors.

(i) New Real Property Identification. As of the date the Compliance Certificate referred to in Section 6.02 is required to be delivered (or a later date to which the Administrative Agent agrees), with respect to each Loan Party, notify the Administrative Agent the acquisition of (i) any Material Real Property owned or leased by such Loan Party and (ii) any Real Property owned by a Loan Party or in which a Loan Party has a leasehold interest and that is located adjacent to, contiguous with, or in close proximity to, both geographically and geologically (according to reasonable standards used in the mining industry) an active Mine or Reserve Area and the net book value thereof.

(ii) Material Real Property Mortgages and Supplements. Within the latest of (x) 90 days of the notification provided pursuant to Section 6.16(d)(i) (or a later date to which the Administrative Agent agrees), (y) 90 days after the Closing Date and (z) a later date to which the Administrative Agent agrees, cause such Loan Party to deliver the materials set forth in Section 6.16(b)(ii) with respect any such newly acquired Material Real Property, unless, in the judgment of the Administrative Agent, delivery of such materials is unnecessary to ensure the Secured Parties benefit from a perfected First Priority security interest in such Material Real Property in favor of the Priority Collateral Trustee and such flood insurance (it is understood that in lieu of any new Mortgage, mortgage supplements or any other security documents may be delivered if reasonably acceptable to the Administrative Agent).

(iii) Consents Related to Leaseholds Concerning Material Real Property. With respect to the acquisition of any leasehold interest by any Restricted Subsidiary that would constitute Material Real Property but for the need to obtain the consent of another Person (other than the Borrower or any Controlled Subsidiary) in order to grant a security interest therein, use commercially reasonable efforts to obtain such consent within the 120 day period commencing on the date of the notification provided pursuant to Section 6.16(d)(i), provided that there shall be no requirement to pay any sums to the applicable lessor other than customary legal fees and administrative expenses (it is understood, for avoidance of doubt, that, without limiting the foregoing obligations of the Borrower set forth in this Section 6.16(d)(iii), any failure to grant a security interest in any such leasehold interest as a result of a failure to obtain a consent shall not be a Default hereunder, and, for avoidance of doubt, the Borrower and its Restricted Subsidiaries shall no longer be required to use commercially reasonable efforts to obtain any such consent after such above-mentioned time period to obtain a consent has elapsed).

(e) Further Assurances. Subject to any applicable limitation in any Security Documents, upon request of the Administrative Agent, at the expense of the Borrower, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, the Security Documents, including the filing of financing statements necessary or advisable in the opinion of the Administrative Agent or the Priority Collateral Trustee to perfect any security interests created under the Security Documents. Notwithstanding anything herein or in any other Security Document to the contrary, (x) Administrative Agent is hereby authorized to deliver additional directions in writing to the Collateral Trustee from time to time (it being agreed that each such direction shall constitute an Act of Required Secured Parties under the Collateral Trust Agreement, and, by its execution

hereof, Lenders constituting Required Lenders shall be deemed to have provided written consent to each such direction) authorizing and directing the Priority Collateral Trustee to execute additional Security Documents and amendments thereto (in each case, covering additional or new property or assets, as determined in the Administrative Agent's sole discretion) and (y) no Loan Party shall be required to deliver Mortgages as to any leasehold interest held by such Loan Party in Real Property the perfection of a Lien in which requires a consent from a third party such as an Governmental Authority, landlord, fee owner or a similar party (in each case other than an Affiliate of such Loan Party) and such consent has not been received despite the fact that such Loan Party has used commercially reasonable efforts to obtain the same (x) with respect to interests held on the Closing Date, for 90 days after the Closing Date or (y) with respect to interests acquired after the Closing Date, for 90 days after the acquisition thereof.

(f) Collateral Principles. Notwithstanding anything to the contrary in any Loan Document, (i) except as contemplated by the Gibraltar Pledge Agreement or with respect to the pledge of intercompany loans (including the PIC Intercompany Note), no actions in any non-U.S. jurisdiction or required by the Requirement of Law of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. (it being understood that, except for the Gibraltar Pledge Agreement, there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction), (ii) the Administrative Agent in its discretion may grant extensions of time for the creation or perfection of security interests in, and Mortgages on, or taking other actions with respect to, particular assets where it reasonably determines in consultation with the Borrower, that the creation or perfection of security interests and Mortgages on, or taking other actions, cannot be accomplished without undue delay, burden or expense by the time or times at which it would otherwise be required by this Agreement or the Security Documents and (iii) any Liens required to be granted from time to time pursuant to Security Documents and this Agreement on assets of the Loan Parties or Gibraltar Holdings to secure to the Secured Obligations shall exclude the Excluded Assets.

(g) Junior Lien Indebtedness Guarantees and Collateral. Without limitation of (and subject to) any provision in the Collateral Trust Agreement, if the Junior Collateral Trustee or any holder of Junior Lien Indebtedness receive any additional guaranty or any additional collateral in connection with the Junior Lien Indebtedness after the Closing Date, without limitation of any Default or Event of Default that may arise as a result thereof, the Loan Parties shall, concurrently therewith, cause the same to be granted to the Administrative Agent or the Collateral Trustee, as applicable, for its own benefit and the benefit of the Secured Parties.

(h) Wilpinjong Indebtedness Guarantees and Collateral. Without limitation of (and subject to) any provision in the Wilpinjong Collateral Trust Agreement, if the Priority Collateral Trustee or any holder of Priority Lien Debt (each as defined in the Wilpinjong Collateral Trust Agreement) receive any additional guaranty or any additional collateral in connection with the Priority Lien Debt after the Closing Date, without limitation of any Default or Event of Default that may arise as a result thereof, the Loan Parties shall, concurrently therewith, cause the same to be granted to the Administrative Agent or the Collateral Trustee, as applicable, for its own benefit and the benefit of the Secured Parties.

**6.17 Maintenance of Ratings.** Use commercially reasonable efforts to maintain a public corporate family rating issued by Moody's and a public corporate credit rating issued by S&P.

**6.18 Post Closing Covenants.** Cause to be (a) on or before 3 Business Days after the Closing Date, an effective First Supplemental Indenture to the 2024 Notes Indenture, in the form attached as Exhibit 1 to the First Amendment to the Transaction Support Agreement, dated as of the Closing Date, with such other modifications that are reasonably acceptable to the Administrative Agent, and (b) delivered or performed the documents and other agreements and actions set forth on Schedule 6.18 within the time frame specified on such Schedule 6.18.

**6.19 ERISA.** Except, in each case, to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect, comply with the provisions of ERISA, the Code, and other Laws applicable to the Plans.

**6.20 Hedging Agreements and Cash Margin Postings.** Commencing on March 8, 2022 and thereafter on the 1st and 15th of each month (or if such day is not a Business Day, the next succeeding Business Day), a report regarding the status of the Borrower and any of its Restricted Subsidiaries' Hedging Agreements, as well as any outstanding cash margin postings, and any expected cash margin postings over the next two week period (which, for the avoidance of doubt, shall not be viewed as a forecast but rather an approximation).

**6.21 Variance and Cash Flow Reporting.** Commencing on April 1, 2022 and thereafter on the 1st and 15th of each month (or if such day is not a Business Day, the next succeeding Business Day) (or more frequently, to the extent that the Cash Flow Forecast and such reports are updated or provided to others on a more frequent basis), the Borrower shall deliver updated 13-week Cash Flow Forecasts to the Administrative Agent and variance reports concerning bank and cash balances by legal entity and account; provided that, it is understood and agreed that each initial Cash Flow Forecast delivered pursuant to this Section 6.21 will reflect a forecast (rather than actuals) for the week then ended (which actuals will be included in the subsequent Cash Flow Forecast delivered pursuant to this Section 6.21 in the form of a variance report showing all variances by line-item from the amounts set forth in the Cash Flow Forecast, as most recently updated, with an explanation for each line-item variance of greater than or equal to 10%).

**6.22 Indebtedness Amendments.** The Borrower shall provide the Lenders with (i) 2 Business Days (or such shorter period as is reasonably acceptable to the Administrative Agent) prior written notice of any amendment, restatement, amendment and restatement, supplement or other modification to any definitive documentation evidencing and governing any Indebtedness incurred under Section 7.03(g) and (ii) 1 Business Day (or such shorter period as is reasonably acceptable to the Administrative Agent), substantially final drafts of any such documents described in clause (i) hereto.

**6.23 Pledge of Renewable JVs.** The Borrower shall at all times ensure that all Equity Interests acquired or owned by any Loan Party in any Renewable JV shall (a) not be

[an “Excluded Asset” under this Agreement or any other Loan Document and \(b\) be “Pledged Equity Interests” required to be pledged under the Security Agreement.](#)

## ARTICLE VII. NEGATIVE COVENANTS

Until Payment in Full, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

**7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document securing the Obligations or Cash Management Obligations;
- (b) Liens existing on the Closing Date and (other than any individual Lien that secures obligations of less than \$2,000,000) set forth on Schedule 7.01 and any renewals, extensions, modifications, restatements or replacements thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except with respect to any Permitted Refinancing Increase and (iii) any renewal, extension, modification, restatement or replacement of the obligations secured or benefited thereby is permitted by Section 7.03;
- (c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 60 days or which are being contested in good faith and by appropriate proceedings;
- (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and employee health and disability benefit legislations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements;
- (f) (i) Liens (including deposits) or non-exclusive licenses to use intellectual property to secure the performance of bids, trade contracts and leases (other than Indebtedness), reclamation bonds, insurance bonds, statutory obligations, surety and appeal bonds, performance bonds, bank guarantees and letters of credit and other obligations of a like nature incurred in the ordinary course of business, (ii) Liens on assets to secure obligations under surety bonds obtained as required in connection with the entering into of federal coal leases or (iii) Liens created under or by any turnover trust;

(g) easements, rights-of-way, zoning restrictions, other restrictions and other similar encumbrances which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing attachments or judgments for the payment of money not constituting an Event of Default under Section 8.01(h) or securing appeal or surety bonds related to such attachments or judgments;

(i) Liens securing Indebtedness of the Borrower and its Restricted Subsidiaries permitted by Section 7.03(k); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, any other property which may be incorporated with or into that financed property or any after-acquired title in or on such property and proceeds of the existing collateral in accordance with the instrument creating such Lien, including replacement parts, accessories or enhancements that are affixed to any leased goods and (ii) the principal amount of Indebtedness secured by any such Lien shall at no time exceed 100% of the original purchase price of such property at the time it was acquired (it being understood that Liens of the type described in this subsection (i) incurred by a Restricted Subsidiary before such time as it became a Restricted Subsidiary are permitted under this subsection (i));

(j) Liens on property or assets acquired in a transaction permitted by Section 7.02 or of a Person which becomes a Restricted Subsidiary after the date hereof; provided that (i) such Liens existed at the time such property or assets were acquired or such entity became a Subsidiary and were not created in anticipation thereof, (ii) such Liens do not extend to any other property or assets of such Person (other than the proceeds of the property or assets initially subject to such Lien) or of the Borrower or any Restricted Subsidiary and (iii) the amount of Indebtedness secured thereby is not increased;

(k) Liens on the property of the Borrower or any of its Subsidiaries, as a tenant under a lease or sublease entered into in the ordinary course of business by such Person, in favor of the landlord under such lease or sublease, securing the tenant's performance under such lease or sublease, as such Liens are provided to the landlord under applicable law and not waived by the landlord;

(l) Liens (including those arising from precautionary UCC financing statement filings and those which are security interests for purposes of the Personal Property Securities Act of 2009 (Cth)) with respect to bailments, operating leases or consignment or retention of title arrangements entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(m) Liens securing Indebtedness permitted under Section 7.03(c), to the extent that the Indebtedness being refinanced was originally secured in accordance with this Section 7.01, provided that such Lien does not apply to any additional property or assets of the Borrower or any Restricted Subsidiary (other than property or assets within the scope of the original granting clause or the proceeds of the property or assets subject to such Lien);

- (n) Liens securing Indebtedness or other obligations of a non-Guarantor Restricted Subsidiary to the Borrower or a Guarantor;
- (o) leases, subleases, licenses and rights-of-use granted to others incurred in the ordinary course of business and that do not materially and adversely affect the use of the property encumbered thereby for its intended purpose;
- (p) (i) Liens in favor of a banking institution arising by operation of law or any contract encumbering deposits (including the right of set-off) held by such banking institutions incurred in the ordinary course of business and which are within the general parameters customary in the banking industry or (ii) contractual rights of setoff to the extent constituting Liens;
- (q) Liens on Capital Stock of any Unrestricted Subsidiary, solely to the extent such Capital Stock does not constitute Collateral;
- (r) Liens on Receivables Assets pursuant to any Permitted Securitization Programs or under any other agreement under which such receivables or rights are transferred in a manner permitted hereunder (to the extent, in each case, that any such Disposition of receivables is deemed to give rise to a Lien);
- (s) Liens in favor of an escrow agent arising under an escrow arrangement incurred in connection with the issuance of notes with respect to the proceeds of such notes and anticipated interest expenses with respect to such notes;
- (t) Liens securing Refinancing Debt or Permitted Refinancing Indebtedness of the foregoing; provided that (i) such Liens rank junior or *pari passu* with the Liens securing the Secured Obligations pursuant to the Security Documents, (ii) the rights of the holders of the Refinancing Debt or such Permitted Refinancing Indebtedness are subject to the Collateral Trust Agreement with respect to such Liens, (iii) such Liens encumber only the assets, or a subset of the assets, that secure the Secured Obligations and (iv) for the avoidance of doubt, Liens shall only be permitted under this Section 7.01(t) to the extent that the Refinancing Debt or Permitted Refinancing Indebtedness are permitted to be secured under Section 7.03;
- (u) Permitted Real Estate Encumbrances;
- (v) ~~reserved~~ Liens with respect to any Renewable L/C Obligations;
- (w) subject to the Collateral Trust Agreement, Liens on the Collateral in favor of the Collateral Trustee for the benefit of holders of Priority Lien Indebtedness securing the Priority Lien Indebtedness permitted pursuant to Section 7.03(a) and the TSA Obligations;
- (x) Liens on assets of Foreign Subsidiaries securing Indebtedness of Foreign Subsidiaries;
- (y) other Liens securing Indebtedness or obligations of the Loan Parties in an aggregate amount at any time outstanding not to exceed \$10,000,000;



(z) to the extent constituting a Lien, the Wilpinjong Mandatory Offer;

(aa) (x) Liens securing Production Payments, royalties, dedication of reserves under supply agreements or similar or related rights or interests granted, taken subject to, or otherwise imposed on properties or (y) cross charges, Liens or security arrangements entered into in respect of a Joint Venture for the benefit of a participant, manager or operator of such Joint Venture, in each case, consistent with normal practices in the mining industry;

(bb) Liens on assets pursuant to merger agreements, stock or asset purchase agreements and similar agreements in respect of the disposition of such assets; and

(cc) Liens on specific items of inventory, equipment or other goods and proceeds of any Person securing such Person's obligations in respect thereof or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods.

**7.02 Investments.** Make any Investments, except:

(a) Investments held by the Borrower or such Restricted Subsidiary in the form of cash or Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$5,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) 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 to the extent reasonably necessary in order to prevent or limit loss;

(d) Investments (including debt obligations and Capital Stock) received in satisfaction of judgments or in connection with the bankruptcy or reorganization of suppliers and customers of the Borrower and its Restricted Subsidiaries and in settlement of delinquent obligations of, and other disputes with, such customers and suppliers arising in the ordinary course of business;

(e) (i) Investments in the nature of Production Payments, royalties, dedication of reserves under supply agreements or similar or related rights or interests granted, taken subject to, or otherwise imposed on properties, (ii) cross charges, Liens or security arrangements entered into in respect of a Joint Venture for the benefit of a participant, manager or operator of such Joint Venture or (iii) payments or other arrangements whereby the Borrower or a Restricted Subsidiary provides a loan, advance payment or guarantee in return for future coal deliveries, in each case consistent with normal practices in the mining industry;

(f) Investments in existence, or made pursuant to a legally binding written commitment in existence, on the Closing Date and (other than individual Investments the amount of which is less than \$2,000,000) listed on Schedule 7.02 and extensions, renewals, modifications, restatements or replacements thereof; provided that no such extension, renewal,

modification, restatement or replacement shall increase the amount of such Investment except, in the case of a loan, by an amount equal to any Permitted Refinancing Increase;

(g) (i) promissory notes and other similar non-cash consideration received by the Borrower and its Subsidiaries in connection with Dispositions not otherwise prohibited under this Agreement and (ii) Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Borrower and its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer, (B) litigation, arbitration or other disputes or (C) the foreclosure with respect to any secured investment or other transfer of title with respect to any secured investment;

(h) Investments in any assets constituting a business unit received by the Borrower or its Subsidiaries by virtue of a Permitted Asset Swap or acquired as a Capital Expenditure;

(i) Hedging Agreements or Cash Management Obligations permitted under Section 7.03(e);

(j) Investments consisting of purchases of the Priority Lien Indebtedness to the extent not prohibited hereunder;

(k) Investments by the Borrower or any Restricted Subsidiary in Restricted Subsidiaries, and Investments by any Restricted Subsidiary in the Borrower; provided that Investments by a Loan Party in Restricted Subsidiaries that are not Loan Parties, when aggregated with Indebtedness made by any Loan Party to a non-Loan Party Restricted Subsidiary pursuant to Section 7.03(f) (other than Pledged Intercompany Indebtedness) and Disqualified Equity Interests issued by a non-Loan Party Restricted Subsidiary to a Loan Party pursuant to Section 7.03(f), shall not in the aggregate exceed the greater of \$100,000,000 and 2.5% of Consolidated Net Tangible Assets; provided further that any Investment made by any Loan Party in any non-Loan Party shall be limited to transactions in the ordinary course and consistent with past practice;

(l) an Investment in the form of the Wilpinjong Mandatory Offer;

(m) additional Investments by the Borrower or any Restricted Subsidiary in an aggregate amount not to exceed \$5,000,000;

(n) ~~reserved~~;

(n) Investments in Renewable JVs made after January 1, 2022; provided that (a) such Investments shall be in the form of cash or Cash Equivalents, including with respect to capital contributions required by the Organizational Documents of such Renewable JV, (b) no Renewable JV will at any time create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness other than Non-Recourse Debt and neither the Borrower nor any of its Restricted Subsidiaries will at any time provide any credit support of any kind for any Renewable JV; provided that, subject to the following clause (c), the Borrower or any Restricted Subsidiary may become liable for Renewable L/C Obligations, and (c) in any fiscal year (commencing with the fiscal year ending December 31, 2022) the aggregate

amount of (x) Investments made pursuant to this clause (n), plus (y) Renewable L/C Obligations issued, created, incurred, assumed or guaranteed in such fiscal year shall not exceed \$30,000,000 (with unused amounts pursuant to this clause (c) and Section 7.03(j) permitted to be carried over to succeeding fiscal years on an aggregate basis);

(o) Investments acquired as a capital contribution to the Borrower, or made in exchange for, or out of the net cash proceeds of, a substantially concurrent offering of Qualified Equity Interests of the Borrower;

(p) [reserved]

(q) (i) receivables owing to the Borrower or any Restricted Subsidiary if created or acquired in the ordinary course of business, (ii) endorsements for collection or deposit in the ordinary course of business and (iii) securities, instruments or other obligations received in compromise or settlement of debts created in the ordinary course of business, or by reason of a composition or readjustment of debts or reorganization of another Person, or in satisfaction of claims or judgments;

(r) Investments made pursuant to surety bonds, reclamation bonds, performance bonds, bid bonds, appeal bonds and related letters of credit or similar obligations, in each case, to the extent such surety bonds, reclamation bonds, performance bonds, bid bonds, appeal bonds, related letters of credit and similar obligations are permitted under this Agreement;

(s) Investments consisting of indemnification obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, reclamation bonds and completion guarantees and similar obligations under any Mining Law or Environmental Law or with respect to workers' compensation benefits, in each case entered into in the ordinary course of business, and pledges or deposits made in the ordinary course of business in support of obligations under existing coal sales contracts (and extensions or renewals thereof on similar terms);

(t) Investments arising as a result of any Permitted Securitization Program;

(u) to the extent they involve an Investment, extensions of credit or letters of support to lessors, customers, suppliers and Joint Venture partners in the ordinary course of business;

(v) to the extent they involve an Investment, purchases and acquisitions, in the ordinary course of business, of inventory, supplies, material or equipment or the licensing or contribution of intellectual property;

(w) Investments resulting from pledges and deposits permitted under Section 7.01(e).

**7.03 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness or Renewable L/C Obligations except:

(a) (x) Indebtedness arising under the Loan Documents (including any Refinancing Facility and as a result of an exercise of a Wilpinjong Mandatory Offer) and (y) other Priority Lien Indebtedness; provided that no additional Priority Lien Indebtedness may be incurred after the Closing Date other than (i) increases as a result of capitalized payment-in-kind interest, (ii)

any Permitted Refinancing Indebtedness of Priority Lien Indebtedness existing on the Closing Date or Indebtedness of the type set forth in clauses (iii) and (iv) below, (iii) Indebtedness under the 2024 Notes Indenture as a result of an exercise of a Wilpinjong Mandatory Offer, (iv) additional 2024 Notes issued solely in connection with the substantially simultaneous repurchase, retirement, repayment or exchange for Remaining 2022 Notes (such 2024 Notes, the “Additional Refinancing 2024 Notes”) in an amount not to exceed the aggregate principal amount of the 2022 Notes not tendered in the Notes Exchange Offer (as defined in the Transaction Support Agreement) as of the Closing Date (such 2022 Notes, the “Remaining 2022 Notes”), so long as such Additional Refinancing 2024 Notes (I) shall have a maturity no earlier than December 31, 2024, (II) shall have a coupon no greater than 8.50% (of which no more than 6.00% may be paid in cash) and (III) shall not contain any mandatory prepayment provisions, covenants, events of default or other terms, which are more favorable than those of the 2024 Notes outstanding on the Closing Date, (v) Priority Lien Debt incurred pursuant to clause (n) below and (vi) Guarantees of the Borrower or any Loan Party in respect of Priority Lien Debt otherwise permitted hereunder of the Borrower or any such Loan Party;

(b) Indebtedness outstanding on the Closing Date and (other than any individual obligation with respect to such Indebtedness that is less than \$2,000,000) listed on Schedule 7.03;

(c) any Permitted Refinancing Indebtedness of Indebtedness permitted under Section 7.03(b) or of Indebtedness subsequently incurred under this Section 7.03(c);

(d) Guarantees of the Borrower or any Restricted Subsidiary in respect of Indebtedness otherwise permitted hereunder of the Borrower or any such Restricted Subsidiary;

(e) Indebtedness in respect of (i) Cash Management Obligations incurred in the ordinary course of business and (ii) Hedging Agreements incurred in the ordinary course of business, consistent with prudent business practice;

(f) (i) Indebtedness of the Borrower and any Restricted Subsidiary to any Restricted Subsidiary and of any Restricted Subsidiary to the Borrower and (ii) Disqualified Equity Interests of a Restricted Subsidiary issued to the Borrower or another Restricted Subsidiary; provided that, (a) any such Indebtedness extended by any Loan Party or any non-Loan Party to a Loan Party must be subordinated to the Secured Obligations on customary terms and (b) Indebtedness of a non-Loan Party Restricted Subsidiary made by a Loan Party pursuant to this Section 7.03(f) and any Disqualified Equity Interests of a non-Loan Party Restricted Subsidiary issued to a Loan Party, together with Investments by a Loan Party in non-Loan Party Restricted Subsidiaries made pursuant to Section 7.02(k) and Investments made pursuant to Section 7.02(n)(iii), shall not in the aggregate exceed the greater of \$100,000,000 and 2.5% of Consolidated Net Tangible Assets; provided further, that notwithstanding the foregoing, the Indebtedness extended pursuant to the PIC Intercompany Loan Agreement and any other Indebtedness extended by any Loan Party to any non-Loan Party Restricted Subsidiary shall be permitted (and shall not be subject to the cap in the immediately preceding proviso) so long as such Indebtedness is evidenced by a promissory note, in form and substance reasonably satisfactory to the Administrative Agent (it being acknowledged that the PIC Intercompany Note is satisfactory to the Administrative Agent), and such promissory note shall be pledged to the Collateral Trustee as Collateral (such debt,

“Pledged Intercompany Indebtedness”); provided further that any Indebtedness extended by any Loan Party to any non-Loan Party shall be limited to transactions in the ordinary course and consistent with past practice;

(g) unsecured Indebtedness of the Loan Parties incurred after the First Amendment Effective Date in an aggregate amount not to exceed \$150,000,000 at any one time outstanding; provided that (i) the use of proceeds of such Indebtedness shall be limited to satisfying margin calls with respect to commodity hedges by funding margin accounts, (ii) at the time of any issuance thereof, no Default or Event of Default shall have occurred and be continuing or may result therefrom, (iii) such Indebtedness shall mature no earlier than 91 days after the final Maturity Date and shall not have any scheduled amortization or payments of principal prior to the maturity date of such unsecured Indebtedness or require any mandatory prepayments, redemptions or sinking fund obligations prior to the maturity date of such unsecured Indebtedness, other than (x) a customary acceleration right after an event of default thereunder and (y) prepayments made out of the proceeds of a substantially concurrent issuance of new shares of common stock or other Qualified Equity Interests of the Borrower, (iv) such Indebtedness shall continue to be unsecured and shall not be guaranteed by any Person other than a Loan Party, (v) at no time shall the documentation governing such unsecured Indebtedness include any event of default in addition to or covenant more restrictive to the Borrower or any Loan Party or their respective subsidiaries than the events of default or covenants as set forth in this Agreement (other than information covenants with respect to Hedge Agreements), (vi) the cash interest rate applicable to such outstanding Indebtedness shall not exceed 10.0% per annum (exclusive of default interest at a rate not to exceed 2.00% per annum) and no cash fee payments may be made with respect thereto (other than fees disclosed to the Administrative Agent and the Lenders prior to the First Amendment Effective Date) and (vii) no interest or fee payment, including default interest, shall be made on such Indebtedness at any time a Default or Event of Default has occurred and is continuing (provided that all such interest and fees, including default interest, may accrue and, if paid in kind, shall not be subject to the \$150,000,000 limitation set forth in this clause (g));

(h) (x) Guarantees by the Borrower or any Restricted Subsidiary of borrowings by current or former officers, managers, directors, employees or consultants in connection with the purchase of Equity Interests of the Borrower by any such person in an aggregate principal amount not to exceed \$2,000,000 at any one time outstanding and (y) to the extent constituting a Guarantee, the Wilpinjong Mandatory Offer.

(i) Indebtedness incurred in connection with any Permitted Securitization Program;

~~(j) [reserved];~~

(j) Renewable L/C Obligations; provided that in any fiscal year (commencing with the fiscal year ending December 31, 2022) the aggregate amount of (x) Investments made pursuant to Section 7.02 (n), plus (y) Renewable L/C Obligations issued, created, incurred, assumed or guaranteed in such fiscal year shall not exceed \$30,000,000 (with unused amounts pursuant to this clause (j) and Section 7.02(n), permitted to be carried over to succeeding fiscal

years on an aggregate basis); provided further that no Renewable L/C Obligations shall be permitted to be incurred under this Section 7.03 other than pursuant to this clause (j).

(k) Indebtedness of the Borrower or any Restricted Subsidiary Incurred to finance the acquisition, construction or improvement of any assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets before the acquisition thereof; provided that the aggregate principal amount at any time outstanding of any Indebtedness incurred pursuant to this clause, including all Permitted Refinancing Debt Incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause, may not exceed the greater of (a) \$100,000,000 or (b) 2.0% of Consolidated Net Tangible Assets; provided that such amount may be increased by the then-outstanding principal amount of any operating lease in existence on the Closing Date that is actually restructured to a Capital Lease after the Closing Date;

(l) Indebtedness of non-Loan Party Restricted Subsidiaries in an aggregate amount not to exceed \$50,000,000;

(m) [reserved];

(n) (i) Indebtedness of Loan Parties constituting (A) unsecured senior or senior subordinated debt securities, (B) debt securities that are secured by a Lien ranking junior to the Liens securing the Secured Obligations or (C) debt securities that are secured by a Lien ranking *pari passu* with the Liens securing the Secured Obligations in an aggregate principal amount (for all the Indebtedness incurred under clauses (A), (B) and (C) on a combined basis), which Refinances some or all of the Loans hereunder and has an aggregate principal amount which does not exceed the principal amount of the Loans hereunder which are being Refinanced except with respect to any Permitted Refinancing Increase (such Indebtedness, the “Refinancing Notes”); provided that (1) with respect to Refinancing Notes incurred under clause (n)(C) hereof, (x) the final stated maturity of such Refinancing Notes shall not be sooner than the Maturity Date, (y) the weighted average life to maturity of such Refinancing Notes is greater than or equal to the weighted average life to maturity of the Loans, and (z) such Refinancing Notes shall not be subject to any mandatory prepayment, repurchase or redemption provisions, unless the prepayment, repurchase or redemption of such Indebtedness is accompanied by the prepayment of a pro rata portion of the outstanding principal of the Loans hereunder pursuant to Section 2.05 hereof, (2) with respect to Refinancing Notes incurred under clause (n)(A) or (n)(B) hereof, (x) the final stated maturity of such Refinancing Notes shall not be sooner than 180 days after the Maturity Date, (y) the weighted average life to maturity of such Refinancing Notes is greater than the weighted average life to maturity of the Loans and any other Refinancing L/C Borrowing Facilities and (z) such Refinancing Notes do not have scheduled amortization or payments of principal and shall not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than pursuant to customary asset sale, event of loss, excess cash flow, change of control prepayment provisions and a customary acceleration right after an event of default), in each case prior to the Maturity Date at the time such Refinancing Notes are incurred, (3) no Default or Event of Default shall have occurred or be continuing at the time of occurrence of such Refinancing Notes or would result therefrom, (4) to the extent secured, (x) such Indebtedness shall not be secured by a Lien on any asset of the Borrower and its Restricted Subsidiaries that does not also secure the L/C Borrowing Facility and (y) such Indebtedness shall

be subject to the Collateral Trust Agreement, and (5) to the extent guaranteed, such Indebtedness shall not be guaranteed by a Restricted Subsidiary that is not a Guarantor of the Secured Obligations;

(o) [reserved];

(p) [reserved];

(q) additional Indebtedness of the Loan Parties in an amount not to exceed \$10,000,000 in the aggregate at any time outstanding;

(r) Indebtedness of the Borrower or any Restricted Subsidiary in connection with one or more standby or trade-related letters of credit, performance bonds, bid bonds, appeal bonds, bankers acceptances, insurance obligations, reclamation obligations, bank guarantees, surety bonds, completion guarantees or other similar bonds and obligations, including self-bonding arrangements, issued by the Borrower or a Restricted Subsidiary, in each case, in the ordinary course of business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances;

(s) Indebtedness arising from agreements of the Borrower or any Restricted Subsidiaries providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or any Subsidiary;

(t) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(u) Indebtedness of the Borrower or any Restricted Subsidiary consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply or other arrangements; and

(v) any transaction permitted under Section 7.16.

**7.04 Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of the assets (whether now owned or hereafter acquired) of the Borrower and its Restricted Subsidiaries, taken as a whole, to or in favor of any Person, except that, if no Default exists or would immediately result therefrom:

(a) any Subsidiary may merge or consolidate with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person or (ii) any one or more other Subsidiaries, provided that (A) when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person, (B) when any Restricted Subsidiary is merging with any other Subsidiary, the continuing or surviving Person (unless such surviving Person could otherwise be designated an Unrestricted Subsidiary hereunder) shall be a Restricted Subsidiary, (C) when any Foreign Subsidiary is merging with any Domestic Subsidiary, the continuing or surviving Person shall be the Domestic Subsidiary and (D) when

any Guarantor is merging with any other Subsidiary, the continuing or surviving Person shall be a Guarantor (and shall not be a Specified Subsidiary);

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided that (i) if the transferor in such a transaction is a Restricted Subsidiary, then the transferee must either be the Borrower or another Restricted Subsidiary (unless such Disposition would otherwise be permitted as an Investment in an Unrestricted Subsidiary), (ii) if the transferor is a Domestic Subsidiary, then the transferee must either be the Borrower or another Domestic Subsidiary and (iii) if the transferor is a Guarantor, then the transferee must either be the Borrower or another Guarantor (and shall not be a Specified Subsidiary);

(c) the Borrower and any Restricted Subsidiary may merge or consolidate with any other Person in a transaction in which the Borrower or the Restricted Subsidiary, as applicable, is the surviving or continuing Person; provided that, the Borrower may not merge or consolidate with a Restricted Subsidiary unless the Borrower is the surviving or continuing Person; and

(d) any Restricted Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and not materially disadvantageous to the Lenders and the assets, if any, of any Restricted Subsidiary so liquidated or dissolved are transferred (x) to another Restricted Subsidiary or the Borrower and (y) to a Guarantor (that is not a Specified Subsidiary) or the Borrower if such liquidated or dissolved Restricted Subsidiary is a Guarantor.

**7.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition (other than Dispositions permitted pursuant to Sections 7.01, 7.04 and 7.06), except:

(a) Dispositions of surplus, obsolete, used or worn out property or other property that, in the reasonable judgment of the Borrower, is no longer useful in its business (but excluding any Real Property);

(b) (i) Dispositions of inventory, equipment or accounts receivable in the ordinary course of business and (ii) Dispositions of accounts receivable in connection with a factoring facility in an aggregate outstanding principal amount not to exceed \$25,000,000 at any time entered into by a non-Loan Party Restricted Subsidiary undertaken consistent with past practice or in the ordinary course of business;

(c) Dispositions of the assets set forth on Schedule 7.05;

(d) Dispositions of cash and Cash Equivalents pursuant to transactions permitted under this Agreement (including pursuant to Section 7.02) or otherwise in the ordinary course of business;

(e) Dispositions of Receivables Assets pursuant to Permitted Securitization Programs;



(f) (A) the sale of defaulted receivables in the ordinary course of business and not as part of a Permitted Securitization Program and (B) Dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceeding;

(g) licensing, sublicensing and cross-licensing arrangements involving any technology or other intellectual property of the Borrower or any Restricted Subsidiary in the ordinary course of business or lapse or abandonment of intellectual property rights in the ordinary course of business that, in the reasonable judgment of the Borrower, is no longer useful in its business;

(h) Permitted Asset Swaps;

(i) (A) the grant in the ordinary course of business of any non-exclusive easements, permits, licenses, rights of way, surface leases or other surface rights or interests and (B) any lease, sublease or license of assets (with the Borrower or a Restricted Subsidiary as the lessor, sublessor or licensor) in the ordinary course of business;

(j) (i) transfers of condemned property as a result of the exercise of “eminent domain” or other similar policies or (ii) transfers of properties that have been subject to a casualty event or act of god;

(k) if immediately after giving effect to such Disposition, (i) no Event of Default has occurred and is continuing, (ii) the consideration received for such Disposition shall be in an amount at least equal to the fair market value thereof as reasonably determined by the Borrower in good faith and (iii) at least 75% of the consideration for such Dispositions undertaken pursuant to this Section 7.05(k) shall be paid in cash or Cash Equivalents, provided that, for purposes of this provision, each of the following shall be deemed to be cash:

(A) any securities, notes, other obligations or assets received by the Borrower or any Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents within 180 days of the receipt thereof, to the extent of the cash or Cash Equivalents received in that conversion;

(B) any liabilities of the Borrower or any Restricted Subsidiary (other than contingent liabilities) that are assumed by the transferee of any such assets and as a result of which the Borrower or such Restricted Subsidiary is released from further liability; and

(C) any Designated Non-Cash Consideration received by the Borrower or any of its Restricted Subsidiaries in such Disposition; provided that the quantity equal to

(1) the aggregate fair market value of such Designated Non-Cash Consideration, as reasonably determined by the Borrower in good faith, taken together with the fair market value at the time of receipt of all other Designated Non-Cash Consideration received pursuant to this clause (C), minus (2) the amount of Net Proceeds previously realized in cash from prior Designated Non-Cash Consideration shall not exceed \$25,000,000;

- (l) any Investment permitted pursuant to Section 7.02(m), which constitutes a Disposition;
- (m) Dispositions that do not constitute Asset Sales;
- (n) to the extent allowable under Section 1031 of the Code, or any comparable or successor provision, any like kind exchange of property for use in a Similar Business;
- (o) (i) any surrender or waiver of contractual rights or the settlement, release, or surrender of contractual rights or other litigation claims in the ordinary course of business or (ii) any settlement, discount, write off, forgiveness, or cancellation of any Indebtedness owing by any present or former directors, officers, or employees of the Borrower or any Restricted Subsidiary or any of their successors or assigns;
- (p) the unwinding or termination of any Hedging Obligations or Cash Management Obligations;
- (q) the sale of assets by the Borrower and its Restricted Subsidiaries consisting of Real Property solely to the extent that such Real Property is not necessary for the normal conduct of operations of the Borrower and its Restricted Subsidiaries; and
- (r) Dispositions between a Loan Party and a non-Loan Party Restricted Subsidiary to the extent such Disposition would be permitted by Section 7.02(k).

**7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment except that:

- (a) (i) each Subsidiary may make Restricted Payments to the Borrower, the Subsidiaries and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made or as otherwise required pursuant to its Organizational Documents and (ii) as of and following the Closing Date, (A) the Borrower and each Subsidiary may make payments and prepayments of principal or interest on account of intercompany Indebtedness owing to the Borrower or any other Loan Party and (B) each non-Loan Party Subsidiary may make payments and prepayments of principal or interest on account of intercompany Indebtedness owing to any non-Loan Party Subsidiary;
- (b) the Borrower may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of the Borrower;
- (c) the Borrower may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issuance of new shares of common stock or other Qualified Equity Interests of the Borrower;
- (d) the Borrower or any of its Subsidiaries may purchase (i) Equity Interests in any Loan Party or options with respect thereto held by directors, officers or employees of the Borrower or any Restricted Subsidiary (or their estates or authorized representatives) in connection with (A) the death, disability or termination of employment of any such director,

officer or employee or (B) any benefit or incentive plans to provide funds for the payment of any Tax or other amounts owing by such directors, officers or employees upon vesting of the Equity Interests or options provided under such plans; and (ii) Equity Interests in any Loan Party for future issuance under any employee stock plan; provided that (a) no Event of Default has occurred and is continuing at the time of such purchase and (b) for both clauses (i) and (ii), the aggregate cash consideration paid therefor in any twelve-month period shall not exceed \$5,000,000 in the aggregate;

(e) [reserved];

(f) (i) the Borrower may make regularly scheduled payments of interest on any Junior Lien Indebtedness, (ii) the Borrower and any Subsidiary may make regularly scheduled payments of interest and principal at maturity of unsecured Indebtedness and (iii) the Borrower and any Subsidiary may redeem, repurchase or otherwise acquire or retire for value any unsecured Indebtedness in anticipation of satisfying a scheduled maturity, sinking fund or amortization installment obligation, in the case of this clause (iii), due within three months of the date of such redemption, repurchase, acquisition or retirement;

(g) [reserved];

(h) the repayment, redemption, repurchase, defeasance or other acquisition or retirement for value of unsecured Indebtedness, any Subordinated Indebtedness or any Junior Lien Indebtedness (i) with the net cash proceeds of, or in exchange for, Permitted Refinancing Indebtedness or (ii) in exchange for, or out of the proceeds of, a substantially concurrent issue of new shares of common stock or other Qualified Equity Interests of the Borrower;

(i) the Borrower may make regularly scheduled payments of interest in respect of any Subordinated Indebtedness in accordance with the terms thereof and only to the extent require by and subject to the subordination provisions contained therein or pursuant to any subordination agreement;

(j) cash payments in lieu of fractional shares upon exercise of options or warrants or conversion or exchange of convertible securities, repurchases of Equity Interests deemed to occur upon the exercise of options, warrants or other convertible securities to the extent such securities represent a portion of the exercise price of such options, warrants or other convertible securities and repurchases of Equity Interests in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the Taxes payable by such director or employee upon such grant or award;

(k) [reserved];

(l) notwithstanding the foregoing, if the Borrower declares a dividend or distribution in the foregoing clauses (a) through (k), the Borrower can pay any such dividend or distribution within 60 days after the date of declaration thereof;

(m) [reserved];

(n) the repurchase, retirement or repayment for cash of any outstanding Remaining 2022 Notes (A) at the stated maturity thereof in amount equal to 100% of the principal amount of such notes and (B) in an aggregate principal amount not to exceed the sum of (i) the greater of (a) \$25,000,000 million and (b) 75% of the principal amount of the Remaining 2022 Notes outstanding immediately after the Closing Date, (ii) any net cash proceeds from an offering of Qualified Equity Interests that has closed no longer than 45 days prior to such repurchase, retirement or repayment and (iii) no earlier than 90 days prior to their stated maturity, from the net cash proceeds from an offering of Additional Refinancing 2024 Notes substantially simultaneous with such repurchase, retirement or repayment; provided that the purchase price for any 2022 Notes repurchased, retired or repaid pursuant to the baskets in clauses (i) and (ii) are (w) less than 50% of the principal amount of such notes, plus accrued and unpaid interest, if repurchased, retired or repaid more than a year prior to their stated maturity, (x) less than 75% of the principal amount of such notes, plus accrued and unpaid interest, if repurchased, retired or repaid between a year and 45 days prior to their stated maturity, or (y) no higher than 100% of the principal amount of such notes, plus accrued and unpaid interest, if repurchased, retired or repaid within 45 days prior to their stated maturity; provided further that the stated maturity of the Remaining 2022 Notes shall be no earlier than March 31, 2022;

(o) open-market repurchases of any Priority Lien Indebtedness (excluding, for the avoidance of doubt, the Remaining 2022 Notes), so long as, (a) immediately after giving pro forma effect to any such repurchase, Liquidity as of the Business Day immediately prior to such repurchase shall not be less than \$200,000,000 and (b), other than repurchases made with the Retained Excess Available Repurchase Amounts, the Borrower makes a related Debt Repurchase Mandatory Offer with respect to each repurchase permitted under this clause (o); and

(p) repurchase of the 2024 Notes by the Borrower pursuant to Issue Date Offer to Purchase (as defined in the 2024 Notes Indenture).

**7.07 Change in Nature of Business.** Engage in any material line of business other than a Similar Business; provided that Investments in Renewable JVs made and Renewable L/C Obligations issued, created, incurred, assumed or guaranteed, in each case in accordance with Section 7.02(n), shall be permitted.

**7.08 Transactions with Affiliates.** Enter into, renew or extend any transaction or arrangement, including, without limitation, any purchase, sale, lease or exchange of property or assets or the rendering of any service, with any Affiliate of the Borrower or any Restricted Subsidiary (a “Related Party Transaction”) involving an aggregate consideration in excess of \$25,000,000, unless the Related Party Transaction is (a) not prohibited by this Agreement and (b) on fair and reasonable terms that are not materially less favorable (as reasonably determined by the Borrower) to the Borrower or any of the relevant Restricted Subsidiaries than those that could be obtained in a comparable arm’s-length transaction with a Person that is not an Affiliate of the Borrower; provided that (i) any Related Party Transaction or series of Related Party Transactions with an aggregate value in excess of \$50,000,000 must first be approved by a majority of the board of directors of the Borrower who are disinterested in the subject matter of the transaction pursuant to a resolution by the board of directors of the Borrower and (ii) with respect to any Related Party Transaction or series of Related Party Transactions with an aggregate value in excess of \$100,000,000, the

Borrower must deliver to the Administrative Agent an opinion from an accounting, appraisal, or investment banking firm of national standing in the applicable jurisdiction (x) stating that its terms are not materially less favorable to the Borrower or any of the relevant Restricted Subsidiaries that would have been obtained in a comparable transaction with an unrelated Person or (ii) as to the fairness to the Borrower or any of the relevant Restricted Subsidiaries of such Related Party Transaction from a financial point of view. Notwithstanding the foregoing, the foregoing restrictions shall not apply to the following:

- Subsidiaries;
- (A) transactions between or among (i) any Loan Parties and (ii) any non-Loan Party Restricted Subsidiaries;
  - (B) the payment of reasonable and customary fees and reimbursement of expenses payable to directors of the Borrower or any of its Restricted Subsidiaries or to any Plan, Plan administrator or Plan trustee;
  - (C) loans and advances to directors, officers and employees to the extent permitted by Section 7.02;
  - (D) the arrangements with respect to the procurement of services of directors, officers, independent contractors, consultants or employees in the ordinary course of business and the payment of customary compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and reasonable reimbursement arrangements in connection therewith;
  - (E) payments to directors and officers of the Borrower and its Restricted Subsidiaries in respect of the indemnification of such Persons in such respective capacities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, pursuant to the Organizational Documents or other corporate action of the Borrower or its Restricted Subsidiaries, respectively, or pursuant to applicable law;
  - (F) (i) intercompany Investments permitted by Section 7.02(k), (ii) intercompany Indebtedness and issuances of Disqualified Equity Interests, in each case, permitted pursuant to Section 7.03(f) and (iii) Dispositions not prohibited by Section 7.05;
  - (G) Restricted Payments permitted by Section 7.06; and
  - (H) transactions arising under any other contract, agreement, instrument or other arrangement in effect on the Seventh Amendment Effective Date (as defined in the Existing Credit Agreement) and set forth on Schedule 7.08, as amended, modified or replaced from time to time so long as the amended, modified or new arrangements, taken as a whole at the time such arrangements are entered into, are not materially less favorable to the Borrower and its Restricted Subsidiaries than those in effect on the Seventh Amendment Effective Date.

**7.09 Most Favored Nations.** Enter into any additional, or modify any existing, agreements with any Person with respect to any existing or future Indebtedness of the Borrower or any of its Restricted Subsidiaries that have the effect of establishing rights or

otherwise benefiting such Person with respect to any financial maintenance covenant in a manner more favorable in any material respect to such Person than the rights and benefits established in favor of the Lenders under this Agreement, unless, in any such case, this Agreement has been amended to provide the Lenders with such rights and benefits.

**7.10 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Minimum Liquidity.** Permit Liquidity as of the end of each fiscal quarter to be less than \$125,000,000.

**7.12 Burdensome Agreements.** Enter into any Contractual Obligation that (x) limits the ability of the Borrower or any Guarantor to create, incur, assume or suffer to exist any Lien upon any of its property to secure the Obligations hereunder or (y) limits the ability of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor; provided, however, that the foregoing clause shall not apply to Contractual Obligations which:

(a) solely in the case of clause (y) of this Section 7.12, exist on the date hereof and (to the extent not otherwise permitted by this Section 7.12) are listed on Schedule 7.12 as of the Closing Date;

(b) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower;

(c) arise in connection with any Lien permitted by Section 7.01(i) to the extent such restrictions relate to the assets (and any proceeds in respect thereof) which are the subject of such Lien;

(d) represent Indebtedness permitted by Section 7.03 (other than secured Indebtedness permitted by Section 7.03(k)); provided that such restrictions (i) apply solely to Restricted Subsidiaries that are not Guarantors or (ii) are no more restrictive than the limitations (taken as a whole) set forth in the Loan Documents and do not materially impair the Borrower's ability to grant the security interests to the Collateral Trustee contemplated by the Loan Documents or pay the Obligations under the Loan Documents as and when due (as reasonably determined in good faith by the Borrower) ;

(e) [reserved];

(f) arise in connection with any Disposition permitted by Section 7.05 solely with respect to the assets that are the subject of such Disposition;

(g) are customary provisions in joint venture agreements and other similar agreements applicable solely to such joint venture or the Equity Interests therein (but excluding any such agreement related to the Gibraltar Holdings or any Specified Subsidiary);

(h) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto;

(i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary;

(j) are customary limitations (including financial maintenance covenants) existing under or by reason of leases entered into in the ordinary course of business;

(k) are restrictions on cash or other deposits imposed under contracts entered into in the ordinary course of business;

(l) are customary provisions restricting assignment of any agreements;

(m) are restrictions imposed by any agreement relating to any Permitted Securitization Program to the extent that such restrictions relate to the assets (and any proceeds in respect thereof) that are the subject of such Permitted Securitization Program; or

(n) are set forth in any agreement evidencing an amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the Contractual Obligations referred to in clauses (a) through (m) above; provided, that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Borrower, not materially less favorable to the Loan Party with respect to such limitations than those applicable pursuant to such Contractual Obligations prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

**7.13 Restrictions on Specified Subsidiaries.** (a) With respect to each Specified Subsidiary, permit such Specified Subsidiary to, (i) retain any cash other than cash (A) necessary to continue to operate in the ordinary course and comply with any Requirement of Law, as reasonably determined by it or the Borrower, or (B) where such Specified Subsidiary has taken commercially reasonable efforts to execute and deliver a deposit account control agreement perfecting the Collateral Trustee's Lien in such deposit account; (ii) consolidate with or merge with or into any Person; (iii) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than (A) the Indebtedness and obligations under this Agreement and the other Loan Documents, (B) solely with respect to Gibraltar Holdings, intercompany Indebtedness permitted hereunder and (C) to the extent otherwise permitted hereunder, the Indebtedness and obligations under the other Priority Lien Documents; (iv) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired, leased or licensed by it other than the Liens created under the Security Documents to which it is a party and, to the extent otherwise permitted hereunder, the other Priority Lien Documents; (v) sell or otherwise dispose of any Equity Interests of Gibraltar Holdings or Peabody Investments (Gibraltar) Limited, as applicable; or (vi) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons; and (b) with

respect to each Specified Subsidiary (other than Gibraltar Holdings), permit such Specified Subsidiary to, (i) engage in any business or activity or own any assets other than (A) holding 100% of the Equity Interests of Gibraltar Holdings, (B) performing its obligations and activities incidental thereto under the Loan Documents, the other Priority Lien Documents; and (C) making Restricted Payments to a Guarantor or the Borrower; (ii) convey, transfer, lease or license any of its assets to, any Person; or (iii) create or acquire any Subsidiary or make or own any Investment in any Person (other than any intercompany Investments to a Guarantor or the Borrower), in each case, after the Closing Date.

**7.14** [Reserved].

**7.15** **Fiscal Year.** Change its fiscal year-end from December 31.

**7.16** **Sale and Lease-Backs.** Become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower or such Restricted Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of its Restricted Subsidiaries), to the extent involving the sale of assets with a fair market value in excess of \$25,000,000 in the aggregate and (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to any Person (other than the Borrower or any of its Restricted Subsidiaries) in connection with such lease.

**7.17** **Amendments or Waivers of Organizational Documents.** Agree to any amendment, restatement, supplement or other modification to, or waiver of, any of its Organizational Documents as in effect on the Seventh Amendment Effective Date (as defined in the Existing Credit Agreement), in each case, to the extent the same would reasonably be expected to be material and adverse to any Secured Party (in the good faith determination of the Borrower), without obtaining the prior written consent of Required Lenders to such amendment, restatement, supplement or other modification or waiver.

## **ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES**

**8.01** **Events of Default.** Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, any L/C Borrowing or L/C Obligation, or (ii) within five days after the same becomes due, any interest on any Loan, on any L/C Borrowing or on any L/C Obligation, or any fee due hereunder, any other amount (excluding, for the avoidance of doubt, any Unreimbursed Amount) payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01(a), 6.01(b), 6.02(b), 6.03(a), 6.05, 6.11, 6.18(a) or Article VII; or



(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. The Borrower or any Restricted Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder) in each case having an aggregate principal amount of more than the Threshold Amount or any Indebtedness incurred pursuant to Section 7.03(g), beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or Guarantee was created, (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable, or (C) fails to observe or perform any agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, as a result of which default or other event, the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) shall have caused, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable; or

(f) Insolvency Proceedings, Etc. Subject to Section 8.03, any Loan Party or any of its Restricted Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any substantial part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Loan Party or Restricted Subsidiary and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Loan Party or Restricted Subsidiary or to all or any substantial part of its property is instituted without the consent of such Loan Party or Restricted Subsidiary and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. Subject to Section 8.03, (i) the Borrower or any Restricted Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar

process is issued or levied against all or any substantial part of the property of any such Borrower or Restricted Subsidiary and is not released, vacated or fully bonded within 60 days after its issue or levy; or

(h) Judgments. There is entered against the Borrower or any Restricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third party insurance), and such judgments or orders shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) ERISA. The occurrence of any of the following events that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect: (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in an actual obligation to pay money of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or

(j) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or Payment In Full, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or any Security Document ceases to create a valid Lien with the priority required thereby on the Collateral covered thereby (other than as expressly permitted thereunder or solely as a result of the acts or omissions of the Administrative Agent or Collateral Trustee (including failure to maintain possession of any stock certificates, or other instruments delivered to it under any Security Document)); or

(k) Change of Control. There occurs any Change of Control; or

(l) Subordinated Indebtedness. Any Subordinated Indebtedness or any Junior Lien Indebtedness permitted hereunder or the guarantees thereof or, in the case of Junior Lien Indebtedness, the Liens securing such Junior Lien Indebtedness, shall cease, for any reason, to be validly subordinated to the Obligations of the Loan Parties hereunder, as provided in the Collateral Trust Agreement or the indenture governing such Subordinated Indebtedness or Junior Lien Indebtedness, or any Loan Party, any Affiliate of any Loan Party, the trustee in respect of the Subordinated Indebtedness or Junior Lien Indebtedness or the holders of at least 25% in aggregate principal amount of the Subordinated Indebtedness or Junior Lien Indebtedness shall so assert; or

(m) Surety Transaction Support Agreement. (i) Any termination of the Surety Transaction Support Agreement by any Surety (as defined therein) signatory thereto; provided that such termination or terminations result in the Borrower or any of its Subsidiaries making payments or delivering collateral to such sureties beyond the collateral that such sureties are entitled to as of the Closing Date, and such payments or additional collateral are in excess of a

fair market value (or face value with respect to delivered letters of credit or guarantees) of \$50,000,000 in the aggregate; or

(ii) the Surety Transaction Support Agreement is amended, supplemented or otherwise modified in a manner materially adverse to the Borrower or any of its Subsidiaries; or

(n) **Transaction Support Agreement.** The Borrower fails to comply with any obligation under the Transaction Support Agreement that survives or arises following the Closing Date (including any obligation under any post-effective date covenant) and the default or breach continues for a period of 30 consecutive days from the date written notice is given to the Borrower by the Administrative Agent or any Lender.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans, including L/C Borrowings, and any obligation of the L/C Issuers to issue or make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Debtor Relief Laws of the United States or any other Event of Default under Section 8.01(f) or (g) hereof, the obligation of each Lender to make Loans and any obligation of any L/C Issuer to make L/C Credit Extensions shall automatically terminate, (i) the unpaid principal amount of all outstanding Loans, including L/C Borrowings, (ii) all interest and (iii) all amounts to be paid under Section 2.05(d)(ii) and Section 2.06(d)(ii) shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

**8.03 Exclusion of Immaterial Subsidiaries.** Solely for the purposes of determining whether an Event of Default has occurred under clause (f) or (g) of Section 8.01, any reference in any such clause to any Restricted Subsidiary shall be deemed not to include any Restricted Subsidiary affected by any event or circumstance referred to in any such clause that did not, as of the last day of the fiscal quarter of the Borrower most recently ended, have assets with a value in excess of 5% of the Tangible Assets or 5% of consolidated total revenues, in each case, of the Borrower and the Restricted Subsidiaries as of such date;

provided that if it is necessary to exclude more than one Restricted Subsidiary from clause (f) or (g) of Section 8.01 pursuant to this Section 8.03 in order to avoid an Event of Default thereunder, all excluded Restricted Subsidiaries shall be considered to be a single consolidated Restricted Subsidiary for purposes of determining whether the condition specified above is satisfied.

**8.04 Application of Funds.** Subject to the Collateral Trust Agreement, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Secured Obligations (including proceeds of Collateral) shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and any L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and any L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or any L/C Issuer) and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and any L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of any L/C Issuer, to Cash Collateralize that portion of the L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, less any Renewable Investment Reserve Amounts the Borrower has paid, plus any Reserve Reimbursed Amount Reductions and Reserve Reimbursed Amount Returns;

Sixth, to payment of that portion of the Obligations constituting unpaid principal of the unpaid Secured Hedging Obligations, ratably among the Hedge Banks to the Secured Hedging Agreements giving rise to such Secured Hedging Obligations in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to payment of that portion of the Obligations constituting the unpaid Secured Cash Management Obligations, ratably among the Cash Management Banks party to the Secured

Cash Management Agreements giving rise to such Secured Cash Management Obligations in proportion to the respective amounts described in this clause Seventh held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to the terms hereof, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit with the Administrative Agent as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order set forth above.

## ARTICLE IX. ADMINISTRATIVE AGENT

**9.01 Appointment and Authority.** Each of the Lenders and each L/C Issuer hereby irrevocably appoints JPMorgan Chase Bank, N.A. to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and irrevocably authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers, rights and remedies as are delegated or granted to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except with respect to Section 9.06, Section 9.10 and Section 9.12, the provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither the Borrower, nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. In performing its functions and duties hereunder, the Administrative Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any of its Subsidiaries.

**9.02 Rights as a Lender.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, the Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, the Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder, and may accept fees and other considerations from the Borrower for service in connection herewith and otherwise without any duty to account therefor to the Lenders.

**9.03 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 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, including, for the avoidance of doubt, any action that, in its opinion or the opinion of its counsel, may violate the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; 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; and
- (d) shall not be responsible or have any liability for or in connection with, or have any duty to ascertain, inquire into, monitor, maintain, update or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

Neither the Administrative Agent nor any of its officers, partners, directors, employees or agents shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.01 and 8.02) or (ii) in the absence of its own bad faith, gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or an L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document or made in any written or oral statements made in connection with the Loan Documents and the transactions contemplated thereby, (ii) the contents of any financial or other statements, instruments, certificate, report or other document delivered

hereunder or thereunder or in connection herewith or therewith, whether made by the Administrative Agent to the Lenders or the L/C Issuers or by or on behalf of any Loan Party to the Administrative Agent or any Lender or any L/C Issuer in connection with the Loan Documents and the transactions contemplated thereby, (iii) the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, (iv) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the use of proceeds of the Loans or Letters of Credit or the occurrence or possible occurrence of any Default or Event of Default or to make any disclosures with respect to the foregoing, (iv) the execution, validity, enforceability, effectiveness, genuineness, collectability or sufficiency of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmation of the amount of outstanding Loans or the component amounts thereof.

**9.04 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 applicable L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent shall be entitled to rely on and 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.

**9.05 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, indemnification and other provisions of this Article and Section 10.04 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. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Article shall apply to any such sub agent and to the Related Parties of any such sub agent, and shall apply to their respective activities as sub agent as if such sub agent and Related Parties were named herein. Notwithstanding anything

herein to the contrary, with respect to each sub agent appointed by the Administrative Agent,

(i) such sub agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub agent, and (iii) such sub agent shall only have obligations to Administrative Agent and not to any Loan Party, Lender or any other Person, and no Loan Party, Lender, L/C Issuer or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub agent.

**9.06 Resignation of Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower unless an Event of Default under Section 8.01(f) or (g) has occurred or is continuing (such approval not to be unreasonably withheld), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 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 L/C Issuers, 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 (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. 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). Upon the acceptance of a successor's appointment as the Administrative Agent, hereunder, and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Security Documents, 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). 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 Article and Section 10.04 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.

**9.07 Non-Reliance on Administrative Agent and Other Lenders .**

(a) Each Lender and L/C Issuer represents and warrants 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 L/C Issuer 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.

(b) The Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such analysis on behalf of the Lenders or L/C Issuers or to provide any Lender or L/C Issuer with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or Letters of Credit or at any time or times thereafter, and the Administrative Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders or L/C Issuers. Each Lender and L/C Issuer, by delivering its signature page to this Agreement or an Assignment and Assumption, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by the Administrative Agent, Required Lenders or Lenders, as applicable.

(c) Each Lender acknowledges that Borrower and certain Affiliates of the Loan Parties are Eligible Assignees hereunder and may purchase Loans hereunder from Lenders from time to time, subject to the restrictions set forth in the definition of "Eligible Assignee" and Sections 2.19 and 2.20.

**9.08 No Other Duties, Etc.** The Administrative Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. The Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. The Administrative Agent shall not have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon the

Administrative Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

**9.09 Administrative Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 10.04) allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.09 and 10.04. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agents under Sections 2.09 and 10.04 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of

any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

#### **9.10 Guaranty and Collateral Matters.**

(a) Each Secured Party hereby authorizes the Administrative Agent or the Priority Collateral Trustee, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral and the Security Documents, as applicable; provided that neither the Administrative Agent nor the Priority Collateral Trustee shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Secured Obligations with respect to any Secured Hedging Agreement. Subject to Section 10.01, without further written consent or authorization from any Secured Party, the Administrative Agent or the Priority Collateral Trustee, as applicable, may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Liens encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Section 10.21 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented.

(b) The Lenders and L/C Issuers irrevocably authorize the Administrative Agent to release any Guarantor from its obligations under the Guaranty in accordance with the terms of Section 10.21. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

(c) The Lenders irrevocably authorize the Priority Collateral Trustee, at its option and in its discretion, to release any Lien on any property granted to or held by the Priority Collateral Trustee under any Loan Document in accordance with the terms of Section 10.21. Upon request by the Administrative Agent or the Priority Collateral Trustee at any time, the Required Lenders will confirm in writing the Priority Collateral Trustee's authority to release its interest in particular types or items of property in accordance with this Section.

**9.11 Withholding Tax.** To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. Without limiting the provisions of Section 3.01, each Lender shall, and does hereby, indemnify the Administrative Agent, and shall make payable in respect thereof within 30 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in

circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.11. The agreements in this Section 9.11 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all other obligations.

#### **9.12 Collateral Trust Agreement, Collateral Matters and Specified Amendments.**

(a) Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 10.06) hereby authorizes and directs the Administrative Agent and the Collateral Trustee to enter into the Additional Secured Debt Designation (as defined in the Collateral Trust Agreement), each on behalf of such Lender needed to effectuate the transactions permitted by this Agreement and agrees that the Administrative Agent and the Collateral Trustee may take such actions on its behalf as is contemplated by the terms of the Collateral Trust Agreement. Without limiting the provisions of Sections 9.03 and 10.04, each Lender hereby consents to (i) JPMorgan Chase Bank, N.A. and any successor serving in the capacity of Administrative Agent and agrees not to assert any claim (including as a result of any conflict of interest) against JPMorgan Chase Bank, N.A., or any such successor, arising from the role of the Administrative Agent or other agent under the Security Documents so long as it is either acting in accordance with the terms of such documents or otherwise has not engaged in bad faith, gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction and (ii) Wilmington Trust, National Association or any such successor, arising from its role as the Collateral Trustee under the Security Documents so long as it is either acting in accordance with the terms of such documents or otherwise has not engaged in bad faith, gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. In addition, each of JPMorgan Chase Bank, N.A. and Wilmington Trust, National Association, or any such successors, shall be authorized, without the consent of any Lender, to execute or to enter into amendments of, and amendments and restatements of, the Security Documents, and any additional and replacement intercreditor agreements, in each case, in order to effect the subordination of and to provide for certain additional rights, obligations and limitations in respect of, any Liens required by the terms of this Agreement to be Liens junior to, or *pari passu* with, the Secured Obligations, that are incurred as permitted by this Agreement, and to establish certain relative rights as between the holders of the Secured Obligations and the holders of the Indebtedness secured by such Liens junior or *pari passu* with the Secured Obligations, including as contemplated by Section 6.16(g) and Section 7.01.

(b) The Lenders irrevocably authorize the Administrative Agent to enter into any amendment contemplated by Sections 2.16(e), 6.16(g), and 7.01(i) and any writing which creates a deemed amendment in connection with a Permitted Amendment or a Permitted Wilpinjong Amendment.

### **9.13 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent 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 or otherwise of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(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 with respect to 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, and will continue to be satisfied, with respect to such Lender’s entrance into, participation in, administration of and performance with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) such Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that neither the Administrative Agent nor any of its Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation

in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## ARTICLE X. MISCELLANEOUS

**10.01 Amendments, Etc.** Except as set forth in Section 2.16, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower, or any other Loan Party therefrom, shall be effective unless in writing signed by (1) the Required Lenders and the Borrower, or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent (except, in each case, as set forth in clauses (2), (3) and (4) below), (2) [reserved], (3) the Required Facility Lenders and the Borrower and acknowledged by the Administrative Agent in the case of clauses (u) and (v) of the second proviso after clause (i) below and (4) the parties to the Fee Letter in the case of clause (z) of the second proviso after clause (i) below, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any L/C Commitment of any Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) (it being understood that the waiver of, or amendment to the terms of, any mandatory prepayment shall not constitute such a postponement) or any mandatory reduction of the Aggregate Commitments hereunder without the written consent of each Lender directly affected thereby;

(c) waive, reduce or postpone the principal of, or the stated rate of interest specified herein on, any Loan, or Unreimbursed Amount or (subject to clause (z) of the second proviso to this Section 10.01) any fees or premiums or other amounts payable hereunder without the written consent of each Lender directly affected thereby; provided, however, that, without limiting the effect of clause (i) below or the provisos appearing after clause (i) below, only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate, (ii) to amend any financial covenant hereunder (or any defined term used therein) (other than Section 7.11 (or any defined term used therein), which shall be subject to the first proviso after clause (h) below) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder or (iii) to waive, reduce or postpone any scheduled prepayment;

(d) change Section 2.05(a), Section 2.05(b), Section 2.13 or Section 8.04 in a manner that would alter the pro rata sharing of payments required thereby or Section 2.19, Section 2.20

or Section 2.21 in a manner that would alter the pro rata making of offers required thereby, in each case, without the written consent of each Lender adversely affected thereby;

(e) reduce the principal amount of any reimbursement obligation in respect of Letters of Credit issued under the L/C Commitments or extend the stated expiration date of any such Letter of Credit beyond the Maturity Date (unless Cash Collateralized pursuant to the terms of Section 2.03(g)) without the written consent of each L/C Lender adversely affected thereby;

(f) change any provision of this Section 10.01 or the definitions of “Required Lenders”, “Required Facility Lenders”, “Required L/C Commitment Lenders” or “Applicable Percentage” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender under the applicable Facility affected thereby; provided, with the consent of the Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of “Required Lenders” or “Applicable Percentage” on substantially the same basis as the L/C Commitments and the L/C Borrowings are included on the Closing Date;

(g) other than as permitted by Section 9.10 and Section 10.21, release (i) all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Loan Documents and except in connection with a “credit bid” undertaken by the Administrative Agent or Collateral Trustee at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2) (a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Loan Documents (in which case only the consent of the Required Lenders will be needed for such release) or (ii) all or substantially all of the collateral covered by the Security Documents without the written consent of each Lender;

(h) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under any Loan Documents without the written consent of each Lender adversely affected thereby; or

(i) subordinate (x) the Liens securing any of the Obligations on all or substantially all of the Collateral (the “Existing Liens”) to the Liens securing any other Indebtedness or other obligations (other than Permitted Liens) or (y) any Obligations in contractual right of payment to any other Indebtedness or other obligations (other than as explicitly permitted under this Agreement) (any such other Indebtedness or other obligations to which such Liens securing any of the Obligations or such Obligations, as applicable, are subordinated, “Senior Indebtedness”), in either case of subclause (x) or (y), unless each adversely affected Lender has been offered a bona fide opportunity to fund or otherwise provide its pro rata share (based on the amount of Obligations that are adversely affected thereby held by each Lender) of the Senior Indebtedness on the same terms (other than bona fide backstop fees and reimbursement of counsel fees and other expenses in connection with the negotiation of the terms of such transaction (such fees and expenses, “Ancillary Fees”) as offered to all other providers (or their Affiliates) of the Senior Indebtedness and to the extent such adversely affected Lender decides to participate in the Senior Indebtedness, receive its pro rata share of the fees and any other similar benefit (other than Ancillary Fees) of the Senior Indebtedness afforded to the providers of the Senior Indebtedness

(or any of their Affiliates) in connection with providing the Senior Indebtedness pursuant to a written offer made to each such adversely affected Lender describing the material terms of the arrangements pursuant to which the Senior Indebtedness is to be provided, which offer shall remain open to each adversely affected Lender for a period of not less than five Business Days.

provided that for the avoidance doubt, all Lenders shall be deemed directly affected thereby with respect to any amendment described in clauses (f), (g) and (h);

and, provided further, that (t) any condition set forth in Section 4.02 as to any Extension of Credit under the L/C Facility may be waived by only the Required L/C Commitment Lenders; (u) any term or provisions of a particular Facility may be amended, waived or otherwise modified with only the consent of the Required Facility Lenders under such Facility, so long as such amendment, waiver or modification does not directly affect the Lenders under any other Facility; (v) no amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall amend, modify or waive this Agreement or the Security Agreement so as to alter the ratable treatment of Obligations and Secured Hedging Obligations (including pursuant to Section 8.04) or the definition of "Hedging Obligations," "Hedging Agreement," "Obligations," "Secured Hedging Agreement", "Secured Hedging Obligations" or "Secured Obligations" (as defined herein or in any applicable Security Documents) in each case in a manner adverse to any Hedge Bank with Secured Hedging Obligations then outstanding without the written consent of any such party; (w) no amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties of any L/C Issuer, including any modification of the Borrower Participation Procedures, under the Credit Agreement or under any other Loan Document unless in writing executed by such L/C Issuer; (x) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (y) no amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall (i) [reserved]; (ii) alter the required application of any repayments or prepayments as between Classes pursuant to Sections 2.05(a) or 2.05(b) without the consent of the Required Facility Lenders of each Class which is being allocated a lesser repayment or prepayment as a result thereof; provided, Required Lenders may waive, in whole or in part, any prepayment so long as the application, as between Classes, of any portion of such prepayment which is still required to be made is not altered; or (iii) amend, modify, terminate or waive any obligation of Lender relating to the purchase of participations in Letters of Credit issued under the L/C Commitments without the written consent of the Administrative Agent and the applicable L/C Issuer and (z) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties to the Fee Letter. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (i) the Commitment of such Lender may not be increased or extended and (ii) the principal of any Loan owed to such Lender may not be reduced without the consent of such Lender.

Notwithstanding the foregoing, the Borrower and the Administrative Agent may amend this Agreement and the other Loan Documents (and may authorize the Collateral Trustee to amend the Collateral Trust Agreement) without the consent of any Lender (a) to cure any ambiguity, omission, mistake, error, defect or inconsistency (as reasonably determined by the



Administrative Agent), so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, (b) to add a Guarantor with respect to the Loans or collateral to secure the Loans or (c) to make administrative changes that do not adversely affect the rights of any Lender (including as contemplated by Section 2.16(d)(v)) and the definition of Permitted Amendments) and (d) to make administrative changes that do not directly and adversely affect the rights of any Lender as contemplated by the definition of Permitted Wilpinjong Amendment (the occurrence of Indebtedness *pari passu* with the Obligations to be deemed not to directly and adversely affect the rights of any Lender). In addition, the Administrative Agent, without the consent of any Lender, shall be permitted to enter into (and direct the Collateral Trustee, as applicable, to enter into) any amendments, waivers, modifications or supplements to the Collateral Trust Agreement, if the Administrative Agent would have been permitted hereunder to enter into a new Collateral Trust Agreement which contained the terms set forth in such amendment, waiver, modification or supplement, at the time when such amendment, waiver, modification or supplement is entered into.

In addition, notwithstanding the foregoing, in situations not otherwise governed by Sections 2.15 and 2.16, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, and the Borrower (x) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof (collectively, the "Additional Extensions of Credit") to share ratably in the benefits of this Agreement and the other Loan Documents with the L/C Borrowing Facility and the L/C Commitment Facility and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and the Required L/C Commitment Lenders; provided, however, that no such amendment shall permit the Additional Extensions of Credit to share in preference to any Facility in the application of any mandatory prepayments or Debt Repurchase Mandatory Offers without the consent of Required Facility Lenders in respect of such Facility (without giving effect to such Extensions of Credit).

The Borrower may, by written notice to the Administrative Agent from time to time, make one or more offers to all Lenders under the applicable Facility to make one or more Permitted Amendments to such Facility pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower. Such notice shall set forth (a) the terms and conditions of the requested Permitted Amendments and (b) the date on which responses from the applicable Lenders in respect of such Permitted Amendment are required to be received (which shall not be less than three Business Days after the date of such notice). Only those Lenders that consent to such Permitted Amendment (the "Accepting Lenders") will have the maturity of their applicable Loans and Commitments extended and be entitled to the benefits provided thereby, which shall have effect notwithstanding the pro rata sharing provisions of Section 2.13. The Borrower and each Accepting Lender shall execute and deliver to the Administrative Agent such documentation as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each

Permitted Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Permitted Amendment, this Agreement shall be deemed amended, as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the terms and provisions of the Permitted Amendment with respect to the Loans and Commitments of the Accepting Lenders (including any amendments necessary to treat the Loans and Commitments of the Accepting Lenders in a manner consistent with the other Loans and Commitments under this Agreement or as contemplated by the Permitted Amendment).

The Borrower and each Lender (as defined in the Wilpinjong Term Loan Agreement) exercising a Mandatory Wilpinjong Offer shall execute and deliver to the Administrative Agent such documentation as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Wilpinjong Amendments and the terms and conditions thereof. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Permitted Wilpinjong Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Permitted Wilpinjong Amendment, this Agreement shall be deemed amended, as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the terms and provisions of the Permitted Wilpinjong Amendment.

The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender or any L/C Issuer, execute amendments, modifications, waivers or consents on behalf of such Lender or L/C Issuer. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

Any such waiver and any such amendment or modification pursuant to this Section 10.01 shall be binding upon the Borrower, the Lenders, the L/C Issuers the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Borrower, the Lenders, L/C Issuers and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default that is waived pursuant to this Section 10.01 shall be deemed to be cured and not continuing during the period of such waiver.

#### **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by telecopier (except for any notices sent to the Administrative Agent) as follows or sent by electronic communication as provided in subsection (b) below, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or the Administrative Agent to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02;

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified on Schedule 10.02 or in its Administrative Questionnaire; and

(iii) if to any L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified on Schedule 10.02 or in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when received (except that, if not received during normal business hours for the recipient, shall be deemed to have been received at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b). Notwithstanding the foregoing, (a) no notice to the Administrative Agent shall be effective until received by the Administrative Agent and (b) any such notice or other communication shall at the request of the Administrative Agent be provided to any sub agent appointed pursuant to Section 9.3(c) as designated by the Administrative Agent from time to time.

(b) Electronic Communications. Notices and other communications to the Administrative Agent or the Lenders and L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Article II if such Lender or L/C Issuers, 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 their discretion, agree to accept notices and other communications to the Administrative Agent or the Borrower hereunder by electronic communications pursuant to procedures approved by the Administrative Agent or the Borrower, 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 the Lenders and L/C Issuers 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.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY

OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE ADMINISTRATIVE AGENT IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. Each Loan

Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender, L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses have resulted from the gross negligence or willful misconduct of such Agent Party, as determined by a final non-appealable judgment of a court of competent jurisdiction; provided, however, that in no event shall the Borrower or any Agent Party have any liability to the Borrower, any Lender, L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages); provided that such waiver shall not limit any Loan Party’s reimbursement or indemnification obligations under Sections 10.04(a) or 10.4(b), respectively. Each Loan Party, each Lender, and the Administrative Agent agrees that the Administrative Agent may, but shall not be obligated to, store any electronic communication on the Platform in accordance with the Administrative Agent’s customary document retention procedures and policies.

(d) Defaults. Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(e) Change of Address, Etc. The Borrower, the Administrative Agent and any L/C Issuer may change its address, electronic mail address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, electronic mail address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and any L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(f) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Notices) purportedly given by or on behalf of the Borrower, even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

(g) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private

Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the “Public-Side Information” portion of the Platform and that may contain Private-Side Information. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Public Lender’s decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents.

**10.03 No Waiver; Cumulative Remedies.** No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall impair such right, remedy, power or privilege or be construed to be a waiver of any default or acquiescence therein; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

**10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket legal, advisory and other expenses incurred by the Administrative Agent and its respective Affiliates and the Collateral Trustee (including the reasonable and documented fees, charges and disbursements of a single counsel for the Administrative Agent, a single local counsel in each relevant jurisdiction and any special counsel reasonably deemed necessary by the Administrative Agent and a separate counsel for the Collateral Trustee), in connection with the syndication of the credit facilities provided for herein, the preparation, due diligence, negotiation, execution, delivery, administration and enforcement 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 and documented out-of-pocket expenses incurred by any L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket legal, advisory and other expenses (including the cost of any investigation or preparation) incurred by the Administrative Agent or any Lender or any L/C Issuer or Collateral Trustee (including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent or any Lender or any L/C Issuer, limited to one firm of counsel for all Indemnitees (as defined below), taken as a whole, and if necessary, by a single firm of local counsel in each appropriate jurisdiction for all such Indemnitees, taken as a whole (and, in the case of an actual or perceived conflict of interest where the Indemnified Party affected by such conflict notifies the Borrower of the existence of such conflict, of another firm of counsel for such affected Indemnitees and local

counsel for the conflicted party and a separate counsel for the Collateral Trustee), 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 and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each L/C Issuer 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 (including any Environmental Liability) and related reasonable and documented out-of-pocket fees and expenses (including the reasonable documented out-of-pocket fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee (whether or not such investigation, litigation, claim or proceeding is brought by the Borrower, the Borrower's equity holders, affiliates or creditors or an Indemnitee and whether or not any such Indemnitee is otherwise a party thereto) 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 by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration and enforcement of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the applicable L/C Issuer 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) and (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, 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 are found in a final, non-appealable judgment by a court of competent jurisdiction to

(x) have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee (or any of such Indemnitee's controlled affiliates or any of its or their respective officers, directors, employees, agents, controlling persons or members of any of the foregoing), as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) [reserved] or (z) have arisen out of or in connection with any claim, litigation, loss or proceeding not involving an act or omission of the Borrower or any of its Related Parties and that is brought by an Indemnitee against another Indemnitee (other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under this Agreement or any claims arising out of any act or omission of the Borrower or any of its Affiliates). The Borrower also agrees that no Indemnitee shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Borrower for or in connection with this Agreement or the other Loan Documents, any transactions contemplated hereby or thereby or such Indemnitees' role or services in connection herewith or therewith, except to the extent that any liability for losses, claims, demands, damages, liabilities or expenses incurred by the Borrower (i) resulted from the bad faith, gross negligence or willful

misconduct of such Indemnatee or (ii) resulted from a material breach by such Indemnatee (or any of such Indemnatee's controlled affiliates or any of its or their respective officers, directors, employees, agents, controlling persons or members of any of the foregoing) of the terms of this Agreement or the other Loan Documents (in the case of clauses (i) and (ii), as determined by a court of competent jurisdiction in a final, non-appealable judgment). This Section 10.04(b) shall not apply with respect to Taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuers 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 L/C Issuers or such Related Party, as the case may be, such Lender's Applicable Percentage (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 L/C Issuers in its capacity such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuers in connection with such capacity. In addition, to the extent that the Borrower or the other Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section or Section 7.12(a) of the Collateral Trust Agreement to be paid by the Borrower or such other Loan Party to the Collateral Trustee or any Related Party of the Collateral Trustee, each Lender severally agrees to pay to the Collateral Trustee or such Related Party such Lender's Applicable Percentage (determined as of the time the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount in connection with the Collateral Trust Agreement following a direction of an Act of Required Secured Parties (as defined in the Collateral Trust Agreement) prior to the occurrence of the earlier of the Discharge of Credit Agreement Obligations (as defined in the Collateral Trust Agreement) or the Outstanding Loan Threshold Date (as defined in the Collateral Trust Agreement); provided that such Indemnified Liability (as defined in the Collateral Trust Agreement) was incurred by or asserted against the Collateral Trustee in its capacity as such, or against any Related Party of the Collateral Trustee acting for the Collateral Trustee in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party hereto shall assert, and each hereby waives, any claim against the Borrower and its Affiliates or any Indemnatee, 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; provided that such waiver shall not limit any Loan Party's reimbursement or indemnification obligations under Sections 10.04(a) or 10.4(b), respectively. No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated

hereby or thereby, except to the extent such damages result from the gross negligence or willful misconduct of such Indemnatee, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent or any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations and Secured Hedging Obligations. The reimbursement, indemnity and contribution obligations of the Borrower under this Section 10.04 will be in addition to any liability which the Borrower may otherwise have, including pursuant to the Transaction Support Agreement, will extend upon the same terms and conditions to any affiliate of any Indemnatee and the partners, members, directors, agents, employees, and controlling persons (if any), as the case may be, of any Indemnatee and any such affiliate, and will be binding upon and inure to the benefit of any successors and assigns of the Borrower, any Indemnatee, any such affiliate, and any such Person.

**10.05 Marshalling; Payments Set Aside.** Neither the Administrative Agent nor any Lender or Collateral Trustee shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender or the Collateral Trustee enforces any security interests or exercises its right of setoff, and such payment or the proceeds of such enforcement or setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable NYFRB Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and L/C Issuers under clause (b) of the preceding sentence shall survive Payment in Full and the termination of this Agreement.

**10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder, except through a transaction permitted 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 Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section. 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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time sell, assign or transfer to one or more Eligible Assignees, upon the giving of notice to the Administrative Agent, all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it or other Obligations); provided that:

(i) except (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, which such amount is less than the applicable minimum transfer amount set forth below, or (b) in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the 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 with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, or (c) pursuant to mandatory Open Market Purchases pursuant to Section 2.21, shall not be less \$2,500,000 in the case of L/C Borrowings and L/C Commitments and shall not be less than \$100,000 in the case of L/C Borrowings, unless the Administrative Agent consents (such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met; provided, further, that no assignment of L/C Commitments or L/C Obligations shall be made without the prior written consent (such consent not to be unreasonably withheld or delayed) of the L/C Issuers;

(ii) 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 Loans or the Commitment assigned (provided that, for the avoidance of doubt, L/C Borrowings may be assigned without any proportionate part of L/C Commitments or L/C Obligations);

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500 (provided however, that (i) the Administrative Agent may in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (ii) the Administrative Agent does hereby waive such processing and recordation

fee in connection with an assignment by or to JPMorgan Chase Bank, N.A. or any Affiliate thereof) and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and such forms, certificate or other evidence, if any, as the assignee under such Assignment and Assumption may be required to deliver pursuant to Section 3.01; and

(iv) pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and related Commitments.

Subject to acceptance and recording thereof in the Register by the Administrative Agent pursuant to subsection (c) of this Section, from and after the closing date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, 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, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption 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 Section 3.01 (subject to the requirements and limitations therein, including the requirements of Section 3.01(e)), 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the closing date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the Assignment and Assumption shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations, or other compensating actions, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Applicable Percentage of all Loans and L/C Advances. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of such Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be and (iii) it will make or invest in, as

the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.06, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide). The Register shall be available for inspection by the Borrower and the L/C Issuers at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or, except pursuant to a Borrower L/C Commitment Participation pursuant to clause (j) below, 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 (including such Lender's participations in L/C Obligations) 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 L/C Issuers 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, to the extent that it has a consent right hereunder, will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a), (b), (c), (g) and (h) of the first proviso to Section 10.01 that affects such Participant (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof). Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment, provided, that in the case of Section 3.01, such Participant shall have complied with the requirements of such section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the participating Lender).

To the extent permitted by law, each Participant (other than the Borrower or any of the Borrower's Affiliates) also shall be entitled to the benefits of Section 10.08 as though it were a Lender; such Participant agrees to be subject to Section 2.13 as though it were a Lender.

Each Lender that sells a participation, acting for this purpose as a non-fiduciary agent (solely for tax purposes) of the Borrower, shall maintain a register for the recordation of the names and addresses of the Participants and principal amount of (and stated interest on) each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); provided that, other than with respect to a Borrower L/C Commitment Participation, 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 the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Treasury Regulations Section 5f.103-1(c) and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and each Loan Party shall treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary.

(e) Limitation upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. No Participant shall be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; 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; provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

(h) **Resignation as L/C Issuer.** Notwithstanding anything to the contrary contained herein, any L/C Issuer may, upon (A) 30 days' notice to the Borrower and the Lenders (or such shorter time as the applicable resigning L/C Issuer, successor L/C Issuer, Borrower and Administrative Agent may agree) and (B) the appointment of a successor L/C Issuer and satisfaction of the requirements of the penultimate sentence of this Section 10.06(h), resign as L/C Issuer. In the event of notice of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the L/C Lenders (or a Person who will become an L/C Lender) and their Affiliates a successor L/C Issuer who agrees to assume all such rights, powers, privileges and duties of the resigning L/C Issuer, including with respect to its L/C Issuance Limit; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of such L/C Issuer if the resigning L/C Issuer finds a replacement L/C Issuer that is an Eligible L/C Issuer or, if not an Eligible L/C Issuer, that is reasonably acceptable to the Borrower (such acceptance not to be unreasonably withheld or delayed) who agrees to assume all such rights, powers, privileges and duties of the resigning L/C Issuer, including with respect to its L/C Issuance Limit). If an L/C Issuer resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to Letters of Credit and all L/C Obligations with respect thereto (including the right to require the Lenders to make L/C Advances, fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c) and issue Letters of Credit pursuant to Section 2.03). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the resigning L/C Issuer, including with respect to its L/C Issuance Limit, (b) the resigning L/C Issuer shall be discharged from all of its respective duties and obligations hereunder or under the other Loan Documents, in its capacity as an L/C Issuer, and (c) the successor L/C Issuer shall issue Letters of Credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the resigning L/C Issuer and the Borrower (such acceptance not to be unreasonably withheld or delayed) to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit. In lieu of the appointment of a successor L/C Issuer pursuant to this Section 10.06(h), the Borrower may appoint one or more successor L/C Issuers to satisfy the requirements of this Section 10.06(h).

(i) Notwithstanding any other provision in the Loan Documents, any Lender may, at any time, assign all or a portion of its rights and obligations with respect to L/C Borrowings or enter into participations by a Borrower L/C Commitment Participation under this Agreement to the Borrower through Dutch auctions in accordance with Section 2.19 and open market purchases in accordance with Section 2.20.

(j) Any entry by a Lender and the Borrower or any of its Affiliates into participations of the L/C Commitment shall be pursuant to the procedures and principals set forth on Exhibit N (any such participation, a "Borrower L/C Commitment Participation"; such procedures and principals, the "Borrower Participation Procedures").

**10.07 Treatment of Certain Information; Confidentiality.** The Administrative Agent, the Lenders and L/C Issuers agrees that it will treat as confidential (to the extent clearly identified at the time of delivery as confidential) all information provided to it hereunder or under any other Loan Document by or on behalf of the Borrower or any of its Subsidiaries or Affiliates (collectively, "Information") in accordance with the

Administrative Agent's, the Lenders' and the L/C Issuers' applicable customary procedures for handling confidential information of such nature, except to the extent such Information

(a) is publicly available or becomes publicly available other than by reason of disclosure by the Administrative Agent, the Lenders or the L/C Issuers, any of their respective affiliates or representatives in violation of this Agreement or the other Loan Documents, (b) was received by the Administrative Agent, the Lenders or the L/C Issuers from a source (other than the Borrower or any of its affiliates, advisors, members, directors, employees, agents or other representatives) not known by the Administrative Agent, the Lenders and the L/C Issuers to be prohibited from disclosing such Information to such Person by a legal, contractual or fiduciary obligation to the Borrower and (c) was already in the Administrative Agent's, the Lenders' and the L/C Issuers' possession from a source other than the Borrower or any of its affiliates, advisors, members, directors, employees, agents or other representatives or is independently developed by such Person without the use of or reference to any such Information; provided, however, that nothing herein will prevent the Administrative Agent, the Lenders and the L/C Issuers from disclosing any such Information (including Information regarding Disqualified Institutions) (a) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable Law or compulsory legal process (in which case such Person agrees to inform the Borrower promptly thereof to the extent not prohibited by law), (b) upon the request or demand of any regulatory authority or any self-regulatory authority having jurisdiction over such Person or any of its affiliates, (c) to such Person's affiliates and their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other experts or agents who need to know such Information and on a confidential basis, (d) to potential and prospective Lenders, assignees, participants and any direct or indirect contractual counterparties to any swap or derivative transaction relating to the Borrower and its obligations under this Agreement (other than Disqualified Institutions), in each case, subject to such recipient's agreement (which agreement may be in writing or by "click through" agreement or other affirmative action on the part of the recipient to access such Information and acknowledge its confidentiality obligations in respect thereof pursuant to customary syndication practice) to keep such Information confidential on substantially the terms set forth in this Section 10.07, (e) to ratings agencies who have agreed to keep such Information confidential on terms no less restrictive than this Section 10.07 in any material respect or otherwise on terms acceptable to the Main Borrower, (f) for purposes of establishing a "due diligence" defense, (g) on a confidential basis, to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans or (h) disclosures 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. In addition, the Administrative Agent may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the other Loan Documents.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower, the Loan Parties and their Related Parties or their respective securities, as the case may be, (b) it has

developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with those procedures and applicable Laws, including Federal and state securities laws. All information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering, this Agreement will be syndicate-level information, which may contain material non-public information concerning the Borrower, the Loan Parties and their Related Parties or their respective securities. Accordingly, each Lender represents to the Borrower and the Administrative Agent that it has identified in its Administrative Questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable Laws, including Federal and state securities laws.

**10.08 Right of Setoff.** In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default or at maturity each Lender and L/C Issuer is hereby authorized by each Loan Party at any time or from time to time subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Loan Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender or L/C Issuer to or for the credit or the account of any Loan Party against and on account of the obligations and liabilities of any Loan Party to such Lender or L/C Issuer hereunder, including all claims of any nature or description arising out of or connected hereto, irrespective of whether or not (a) such Lender or L/C Issuer shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Article II and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Sections 2.18 and 8.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, L/C Issuer and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or L/C Issuer or their respective Affiliates may have. Each Lender and L/C Issuer 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.

**10.09 Usury Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the

outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Borrower.

**10.10 Counterparts; Integration; Effectiveness; Electronic Execution.** 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 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; provided that the provisions contained in the Transaction Support Agreement which by their terms survive the execution and effectiveness of this Agreement and the other Loan Documents shall survive and not be superseded by this Agreement and the other Loan Documents. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement and/or any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), 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. As used herein, "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

**10.11 Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof and the funding of any Borrowing. Such representations, warranties and agreements have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the



time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in Sections 3.01, 3.04, 3.05, 10.04(a), 10.04(b) and 10.08 and the agreements of Lenders set forth in Sections 2.13, 9.03 and 10.04(c) shall survive the payment of the Loans and the termination hereof.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents or any obligation hereunder or under any other Loan Document is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions or obligations of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions or obligations with valid provisions or obligations the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions or obligations. The invalidity of a provision or obligation in a particular jurisdiction shall not invalidate or render unenforceable such provision or obligation in any other jurisdiction.

**10.13 Replacement of Lenders.** If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender is at such time a Defaulting Lender or has given notice pursuant to Section 3.02 or (d) any Lender becomes a “Nonconsenting Lender” (hereinafter defined), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to (and such Lender shall) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interest, rights and obligations under this Agreement and the related Loan Documents to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Administrative Agent shall have received the assignment fee specified in Section 10.06(b) (provided however, that the Administrative Agent may in its sole discretion elect to waive such processing and recordation fee in the case of any assignment);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C 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 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws, and

(e) neither the Administrative Agent nor any Lender shall be obligated to be or to find the assignee.

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. In the event that (x) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure or waiver of any provisions of the Loan Documents or to agree to any amendment thereto and (y) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any such Lender, who does not agree to such consent, waiver or amendment and whose consent would otherwise be required for such departure, waiver or amendment, shall be deemed a “Nonconsenting Lender.” Any such replacement shall not be deemed a waiver of any rights that the Borrower shall have against the replaced Lender.

Each Lender agrees that if the Borrower exercises its option hereunder to cause an assignment by such Lender as a Nonconsenting Lender or otherwise pursuant to this Section 10.13, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.06. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs the Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.06 on behalf of a Nonconsenting Lender or Lender replaced pursuant to this Section 10.13, and any such documentation so executed by the Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 10.06.

#### **10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

(b) CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER LOAN DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH LOAN PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY

(A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (E) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE LOAN PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.02; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE LOAN PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT THE ADMINISTRATIVE AGENT, COLLATERAL TRUSTEE AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY LOAN DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.

**10.15 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 OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.15 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS

AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**10.16 USA PATRIOT Act Notice.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party, a Beneficial Ownership Certification and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the Act.

**10.17 Time of the Essence.** Time is of the essence of the Loan Documents.

**10.18 [Reserved].**

**10.19 No Advisory or Fiduciary Responsibility.** Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, any Lender or any L/C Issuer, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Borrower and their Affiliates, on the one hand, and the Administrative Agent, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each Lender and each L/C Issuer is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party, its management, stockholders, creditors or any of its affiliates or any other Person with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (B) neither any of the Administrative Agent nor any Lender nor any L/C Issuer has any obligation to the Borrower or any of its respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Lenders and the L/C Issuers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that conflict with those of the Borrower and its respective Affiliates, and the Administrative Agent has no obligation to disclose any of such interests to the Borrower or its respective Affiliates. Each Loan Party agrees that it will not claim that

any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.20 [Reserved]**

**10.21 Release of Liens and Release from Guaranty.**

(a) The Collateral Trust Agreement shall govern the release of security interests in Collateral as security for the Secured Obligations (A) after Payment in Full and the termination or expiration of all Secured Hedging Agreements (other than obligations and liabilities under Secured Hedging Agreements that have been cash collateralized or as to which other arrangements reasonably satisfactory to the applicable counterparties shall have been made) and payment of any obligations due and owing under all Secured Hedging Agreements, (B) upon any sale or other transfer by any Loan Party of any Collateral that is permitted under this Agreement (other than a sale or other transfer to a Loan Party) or upon effectiveness of any written direction by the consent to the release of the security interest created under any Security Document in any Collateral pursuant to Section 10.01, (C) [reserved], (D) upon the approval, authorization or ratification in writing by the Required Lenders (or such other percentage of the Lenders whose consent is required by Section 10.01) with respect to the release of such Collateral and (E) upon a Guarantor no longer being a Guarantor by virtue of the definition thereof or a transaction permitted hereunder, with respect to the Collateral owned by such Guarantor. After either (v) Payment in Full and the termination or expiration of all Secured Hedging Agreements (other than obligations and liabilities under Secured Hedging Agreements that have been cash collateralized or as to which other arrangements reasonably satisfactory to the applicable counterparties shall have been made) and payment of any obligations due and owing under all Secured Hedging Agreements, (w) upon any sale or other transfer of a Loan Party that is permitted under this Agreement (other than a sale or other transfer to a Loan Party), (x) [reserved], (y) upon the approval, authorization or ratification in writing by the Required Lenders (or such other percentage of the Lenders whose consent is required by Section 10.01) with respect to the release of any Guarantor under the terms of the Guaranty or (z) upon a Guarantor no longer being a Guarantor by virtue of the definition thereof or a transaction permitted hereunder, each applicable Guarantor (or, in the case of clause (w) above, the applicable Guarantor so sold or transferred) shall automatically be released from the Guaranty, all without delivery of any instrument or performance of any act by any Person; provided that any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, in connection with any termination or release pursuant to this Section 10.21, the Administrative Agent and/or Collateral Trustee shall be, and are hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to execute and deliver, and shall promptly execute and deliver to the applicable Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release (including (1) UCC termination statements and (2) in the case of a release of Mortgages, a partial release) and return to the Borrower, the possessory Collateral that is in the possession of the Collateral Trustee and is the subject of such release.

(c) Any execution and delivery of documents, or the taking of any other action, by the Administrative Agent and/or Collateral Trustee pursuant to this Section 10.21 shall be without recourse to or warranty by the Administrative Agent or Collateral Trustee.

**10.22 Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

**10.23 Independent Nature of Lenders' Rights.** Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**10.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or

other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

**10.25 [Reserved].**

**10.26 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

As used in this Section 10.26, the following terms have the following meanings:

- (a) “BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.
- (b) “Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

(c) “Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(d) “QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).



PEABODY ENERGY CORPORATION,  
as Borrower

By: \_\_ Name:  
Title:

[Signature Page to Credit Agreement](#)

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_ Name:  
Title:

Signature Page to Credit Agreement

LENDERS:

[\_\_\_],  
as a Lender

By:\_\_\_ Name:\_\_\_ Title:\_\_\_

Signature Page to Credit Agreement

L/C ISSUERS:

[\_\_\_],  
as an L/C Issuer

By:\_\_\_ Name:\_\_\_ Title:\_\_\_

Signature Page to Credit Agreement

**Annex B Schedule 2.01(a) L/C Commitments**

<b>L/C Commitment Lender</b>	<b>Commitment (USD)</b>	<b>Applicable Percentage</b>
Bank of Montreal, Chicago Branch	42,661,887.03	13.888888889%
Credit Suisse AG, Cayman Islands Branch	42,661,887.03	13.888888889%
Deutsche Bank AG, New York Branch	42,661,887.03	13.888888889%
Goldman Sachs Bank USA	42,661,887.03	13.888888889%
JPMorgan Chase Bank, N.A.	42,661,887.03	13.888888889%
Regions Bank	42,661,887.03	13.888888889%
Bank of America, N.A.	28,441,258.02	9.259259259%
Commerce Bank	22,753,006.41	7.407407407%

**PEABODY ENERGY CORPORATION**  
**LIST OF SUBSIDIARIES**

<b>Name of Subsidiary</b>	<b>Jurisdiction of Formation</b>
9 East Shipping Australia Pty Ltd	Australia
9 East Shipping Limited	United Kingdom
9 East Shipping US, LLC	Delaware
American Land Development, LLC	Delaware
American Land Holdings of Colorado, LLC	Delaware
American Land Holdings of Illinois, LLC	Delaware
American Land Holdings of Indiana, LLC	Delaware
American Land Holdings of Kentucky, LLC	Delaware
Big Ridge, Inc.	Illinois
Big Sky Coal Company	Delaware
Bowen Basin Coal Joint Venture*	Australia
BTU International B.V.	Netherlands
BTU Western Resources, Inc.	Delaware
Burton Coal Pty Ltd	Australia
Carbones Peabody de Venezuela, S.A.	Venezuela
Cardinal Gasification Center, LLC	Illinois
Complejo Siderurgico Del Lago, C.A.	Venezuela
Conservancy Resources, LLC	Delaware
Coppabella and Moorvale Joint Venture*	Australia
Desarrollos Venshelf IV, CA	Venezuela
El Segundo Coal Company, LLC	Delaware
Excel Equities International Pty Ltd	Australia
Excelven Pty Ltd	British Virgin Islands
Hayden Gulch Terminal, LLC	Delaware
Helensburgh Coal Pty Ltd	Australia
Hillside Recreational Lands, LLC	Delaware
Kayenta Mobile Home Park, Inc.	Delaware
Kentucky United Coal, LLC	Indiana
Metropolitan Collieries Pty Ltd	Australia
Middlemount Coal Pty Ltd	Australia
Middlemount Mine Management Pty Ltd	Australia
Millennium Coal Pty Ltd	Australia
Moffat County Mining, LLC	Delaware
Moorvale West Joint Venture*	Australia
New Mexico Coal Resources, LLC	Delaware
NGS Acquisition Corp., LLC	Delaware
North Goonyella Coal Mines Pty Ltd	Australia
North Wambo Pty Ltd	Australia
P&L Receivables Company, LLC	Delaware
Peabody (Bowen) Pty Ltd	Australia
Peabody (Burton Coal) Pty Ltd	Australia

Peabody (Kogan Creek) Pty Ltd	Australia
Peabody America, LLC	Delaware
Peabody Arclar Mining, LLC	Indiana
Peabody Asset Holdings, LLC	Delaware
Peabody Australia Holdco Pty Ltd	Australia
Peabody Australia Mining Pty Ltd	Australia
Peabody BB Interests Pty Ltd	Australia
Peabody Bear Run Mining, LLC	Delaware
Peabody Bear Run Services, LLC	Delaware
Peabody Bistrotel Pty Ltd	Australia
Peabody Caballo Mining, LLC	Delaware
Peabody Cardinal Gasification, LLC	Delaware
Peabody China, LLC	Delaware
Peabody CHPP Pty Ltd	Australia
Peabody Coal Venezuela Ltd.	Bermuda
Peabody COALSALES Pacific Pty Ltd	Australia
Peabody COALSALES, LLC	Delaware
Peabody COALTRADE Asia Private Ltd.	Singapore
Peabody COALTRADE India Private Limited	India
Peabody COALTRADE International Ltd	United Kingdom
Peabody COALTRADE, LLC	Delaware
Peabody Colorado Operations, LLC	Delaware
Peabody Colorado Services, LLC	Delaware
Peabody Coppabella Pty Ltd	Australia
Peabody Coulterville Mining, LLC	Delaware
Peabody Custom Mining Pty Ltd	Australia
Peabody Development Company, LLC	Delaware
Peabody Electricity, LLC	Delaware
Peabody Employment Services, LLC	Delaware
Peabody Energy (Gibraltar) Limited	Gibraltar
Peabody Energy Australia Coal Pty Limited	Australia
Peabody Energy Australia PCI (C&M Equipment) Pty Ltd	Australia
Peabody Energy Australia PCI (C&M Management) Pty Ltd	Australia
Peabody Energy Australia PCI Equipment Pty Ltd	Australia
Peabody Energy Australia PCI Financing Pty Ltd	Australia
Peabody Energy Australia PCI Mine Management Pty Ltd	Australia
Peabody Energy Australia PCI Pty Ltd	Australia
Peabody Energy Australia PCI Rush Pty Ltd	Australia
Peabody Energy Australia Pty Ltd	Australia
Peabody Energy Finance Pty Ltd	Australia
Peabody Gateway North Mining, LLC	Delaware
Peabody Gateway Services, LLC	Delaware
Peabody Global Funding, LLC	Delaware
Peabody Global Holdings, LLC	Delaware
Peabody Global Services Pte. Ltd.	Singapore
Peabody Holding Company, LLC	Delaware
Peabody IC Funding Corp.	Delaware

Peabody Illinois Services, LLC	Delaware
Peabody Indiana Services, LLC	Delaware
Peabody International (Gibraltar) Limited	Gibraltar
Peabody International Holdings, LLC	Delaware
Peabody International Investments, Inc.	Delaware
Peabody International Services, Inc.	Delaware
Peabody Investment & Development Business Services Beijing Co. Ltd	China
Peabody Investments (Gibraltar) Limited	Gibraltar
Peabody Investments Corp.	Delaware
Peabody MCC (Gibraltar) Limited	Gibraltar
Peabody Midwest Management Services, LLC	Delaware
Peabody Midwest Mining, LLC	Indiana
Peabody Midwest Operations, LLC	Delaware
Peabody Midwest Services, LLC	Delaware
Peabody Mongolia, LLC	Delaware
Peabody Monto Coal Pty Ltd	Australia
Peabody Moorvale Pty Ltd	Australia
Peabody Moorvale West Pty Ltd	Australia
Peabody Natural Gas, LLC	Delaware
Peabody Natural Resources Company	Delaware
Peabody New Mexico Services, LLC	Delaware
Peabody Olive Downs Pty Ltd	Australia
Peabody Operations Holding, LLC	Delaware
Peabody Pastoral Holdings Pty Ltd	Australia
Peabody Powder River Mining, LLC	Delaware
Peabody Powder River Operations, LLC	Delaware
Peabody Powder River Services, LLC	Delaware
Peabody Rocky Mountain Management Services, LLC	Delaware
Peabody Rocky Mountain Services, LLC	Delaware
Peabody Sage Creek Mining, LLC	Delaware
Peabody School Creek Mining, LLC	Delaware
Peabody Services Holding, LLC	Delaware
Peabody Southeast Mining, LLC	Delaware
Peabody Twentymile Mining, LLC	Delaware
Peabody Venezuela Coal Corp.	Delaware
Peabody Venture Fund, LLC	Delaware
Peabody West Burton Pty Ltd	Australia
Peabody West Rolleston Pty Ltd	Australia
Peabody West Walker Pty Ltd	Australia
Peabody Western Coal Company	Delaware
Peabody Wild Boar Mining, LLC	Delaware
Peabody Wild Boar Services, LLC	Delaware
Peabody Williams Fork Mining, LLC	Delaware
Peabody Wyoming Services, LLC	Delaware
Peabody-Waterside Development, LLC	Delaware
PEC Equipment Company, LLC	Delaware
PIC Acquisition Corp.	Delaware



PIC AU Holdings Corporation	Delaware
PIC AU Holdings, LLC	Delaware
PT Peabody Coaltrade Indonesia	Indonesia
PT Peabody Mining Services	Indonesia
R3 Renewables Holding, LLC	Delaware
R3 Renewables LLC – Joint Venture *	Delaware
R3R Employer Holdings LLC	Delaware
R3R Employer LLC – Joint Venture *	Delaware
R3 Renewables Land Holdings, LLC – Joint Venture *	Delaware
R3 Renewables Development Holdings LLC – Joint Venture *	Delaware
R3 Bear Run LLC – Joint Venture *	Delaware
R3 Friendsville LLC – Joint Venture *	Delaware
R3 Gateway LLC – Joint Venture *	Delaware
R3 Wild Board LLC – Joint Venture *	Delaware
Ribfield Pty Ltd	Australia
Sage Creek Holdings, LLC	Delaware
Sage Creek Land & Reserves, LLC	Delaware
Seneca Coal Company, LLC	Delaware
Seneca Property, LLC	Delaware
Shoshone Coal Corporation	Delaware
Sterling Centennial Missouri Insurance Corporation	Missouri
Transportes Coal Sea de Venezuela, CA	Venezuela
Twentymile Coal, LLC	Delaware
United Minerals Company, LLC	Indiana
Wambo Coal Pty Ltd	Australia
Wambo Coal Terminal Pty Ltd	Australia
West Rolleston Joint Venture*	Australia
West Walker Joint Venture*	Australia
West/North Burton Joint Venture*	Australia
Wilpinjong Coal Pty Ltd	Australia

\*Unincorporated joint venture.

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-217107) pertaining to the Peabody Energy Corporation 2017 Incentive Plan, and
- (2) Registration Statement (Form S-3 No. 333-254765) of Peabody Energy Corporation;

of our reports dated February 24, 2023, with respect to the consolidated financial statements and schedule of Peabody Energy Corporation and the effectiveness of internal control over financial reporting of Peabody Energy Corporation included in this Annual Report (Form 10-K) of Peabody Energy Corporation for the year ended December 31, 2022.

/s/ Ernst & Young, LLP

St. Louis, Missouri  
February 24, 2023

**CONSENT of QUALIFIED PERSON**

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Karen Lohkamp, Senior Geologist of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY NORTH ANTELOPE ROCHELLE MINE", with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

I am an employee of the Company and a co-author of the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to the Form 10-K. This consent pertains to the following Sections of the Technical Report Summary. I certify that I have read the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to as well as the references to the Technical Report Summary within the Form 10-K and that it fairly and accurately represents the information in the Technical Report Summary sections for which I am responsible.

- Section 2 Introduction
- Section 3 Property Description
- Section 4 Accessibility, Climate, Local Resources
- Section 5 History
- Section 6 Geological and Hydrological Setting, Mineralization, and Deposit
- Section 7 Exploration
- Section 8 Sample Preparation, Analyses, and Security
- Section 9 Data Verification
- Section 10 Mineral Processing and Metallurgical Testing
- Section 11 Mineral Resource Estimates
- Section 21 Other Relevant Data and Information
- Section 24 References
- Section 25 Reliance on Information Provided by the Registrant
- Corresponding Subsections of Section 1: Executive Summary
- Corresponding Subsections of Section 22: Interpretation and Conclusions
- Corresponding Subsections of Section 23: Recommendations

Signature:       /s/ Karen Lohkamp      

Date: February 24, 2023

Karen Lohkamp  
Sr. Geologist

## CONSENT of QUALIFIED PERSON

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Clayton Kyle, Sr. Manager Technical Services of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY NORTH ANTELOPE ROCHELLE MINE" with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

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- Section 15 Infrastructure
- Section 16 Market Studies and Material Contracts
- Section 17 Environmental Studies, Permitting, and Plans, Negotiations, or Agreements with Local Individuals or Groups
- Section 18 Capital and Operating Costs
- Section 19 Economic Analysis
- Section 20 Adjacent Properties
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- Section 24 References
- Section 25 Reliance on Information Provided by the Registrant
- Corresponding Subsections of Section 1: Executive Summary
- Corresponding Subsections of Section 22: Interpretation and Conclusions
- Corresponding Subsections of Section 23: Recommendations

Signature: /s/ Clayton Kyle

Date: February 24, 2023

Clayton Kyle  
Sr. Manager Technical Services

**CONSENT of QUALIFIED PERSON**

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Mike Shetley, Senior Geologist of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY SHOAL CREEK MINE", with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

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- Corresponding Subsections of Section 23: Recommendations

Signature:       /s/ Mike Shetley      

Date: February 24, 2023

Mike Shetley  
Sr. Geologist

## CONSENT of QUALIFIED PERSON

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Hui Hu, Director Geology and Engineering Support of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY SHOAL CREEK MINE", with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

I am an employee of the Company and a co-author of the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to the Form 10-K. This consent pertains to the following Sections of the Technical Report Summary. I certify that I have read the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to as well as the references to the Technical Report Summary within the Form 10-K and that it fairly and accurately represents the information in the Technical Report Summary sections for which I am responsible.

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- Corresponding Subsections of Section 23: Recommendations

Signature: /s/ Hui Hu

Date: February 24, 2023

Hui Hu  
Director Geology and Engineering Support

**CONSENT of QUALIFIED PERSON**

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Emma Ewart, Senior Geologist of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY WILPINJONG MINE", with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

I am an employee of the Company and a co-author of the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to the Form 10-K. This consent pertains to the following Sections of the Technical Report Summary. I certify that I have read the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to as well as the references to the Technical Report Summary within the Form 10-K and that it fairly and accurately represents the information in the Technical Report Summary sections for which I am responsible.

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Signature:     /s/ Emma Ewart    

Date: February 24, 2023

Emma Ewart  
Sr. Geologist

## CONSENT of QUALIFIED PERSON

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Brian Neilsen, Director Engineering of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY WILPINJONG MINE" with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
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I am an employee of the Company and a co-author of the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to the Form 10-K. This consent pertains to the following Sections of the Technical Report Summary. I certify that I have read the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to as well as the references to the Technical Report Summary within the Form 10-K and that it fairly and accurately represents the information in the Technical Report Summary sections for which I am responsible.

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- Corresponding Subsections of Section 23: Recommendations

Signature: /s/ Brian Neilsen

Date: February 24, 2023

Brian Neilsen  
Director Engineering



**CONSENT of QUALIFIED PERSON**

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, James Lawell, Senior Geologist of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY COPPABELLA-MOORVALE JOINT VENTURE (CMJV)", with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

I am an employee of the Company and a co-author of the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to the Form 10-K. This consent pertains to the following Sections of the Technical Report Summary. I certify that I have read the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to as well as the references to the Technical Report Summary within the Form 10-K and that it fairly and accurately represents the information in the Technical Report Summary sections for which I am responsible.

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- Section 3 Property Description
- Section 4 Accessibility, Climate, Local Resources
- Section 5 History
- Section 6 Geological Setting, Mineralization, and Deposit
- Section 7 Exploration
- Section 8 Sample Preparation, Analyses, and Security
- Section 9 Data Verification
- Section 10 Mineral Processing and Metallurgical Testing
- Section 11 Mineral Resource Estimates
- Section 21 Other Relevant Data and Information
- Section 24 References
- Section 25 Reliance on Information Provided by the Registrant
- Corresponding Subsections of Section 1: Executive Summary
- Corresponding Subsections of Section 22: Interpretation and Conclusions
- Corresponding Subsections of Section 23: Recommendations

Signature:     /s/ James Lawell    

Date: February 24, 2023

James Lawell  
Sr. Geologist

## CONSENT of QUALIFIED PERSON

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Duwayne Rossouw, Mine Geologist of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY COPPABELLA-MOORVALE JOINT VENTURE (CMJV)", with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

I am an employee of the Company and a co-author of the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to the Form 10-K. This consent pertains to the following Sections of the Technical Report Summary. I certify that I have read the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to as well as the references to the Technical Report Summary within the Form 10-K and that it fairly and accurately represents the information in the Technical Report Summary sections for which I am responsible.

- Section 2 Introduction
- Section 3 Property Description
- Section 4 Accessibility, Climate, Local Resources
- Section 5 History
- Section 6 Geological Setting, Mineralization, and Deposit
- Section 7 Exploration
- Section 8 Sample Preparation, Analyses, and Security
- Section 9 Data Verification
- Section 10 Mineral Processing and Metallurgical Testing
- Section 11 Mineral Resource Estimates
- Section 21 Other Relevant Data and Information
- Section 24 References
- Section 25 Reliance on Information Provided by the Registrant
- Corresponding Subsections of Section 1: Executive Summary
- Corresponding Subsections of Section 22: Interpretation and Conclusions
- Corresponding Subsections of Section 23: Recommendations

Signature: /s/ Duwayne Rossouw

Date: February 24, 2023

Duwayne Rossouw  
Mine Geologist

## CONSENT of QUALIFIED PERSON

Re: Annual Report on Form 10-K of Peabody Energy Corporation (the "Company")

I, Brian Neilsen, Director Engineering of Peabody Energy Corporation, in connection with the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (together with any amendment or supplement thereto, the "Form 10-K"), consent to:

- the public filing by the Company and use of the Technical Report Summary titled, "TECHNICAL REPORT SUMMARY COPPABELLA-MOORVALE JOINT VENTURE (CMJV)" with an effective date of "December 31, 2021", and that was prepared in accordance with Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission, as an exhibit (including by incorporation by reference) to and referenced in the Form 10-K;
- the use of and references to my name, including my status as an expert or "qualified person" (as defined in Subpart 1300 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission), in connection with the Form 10-K and any such Technical Report Summary; and
- any extracts from or a summary of the Technical Report Summary in the Form 10-K and the use of any information derived, summarized, quoted or referenced from the Technical Report Summary, or portions thereof, that was prepared by me, that I supervised the preparation of, and/or that was reviewed and approved by me, that is included or incorporated by reference in the Form 10-K.

I am an employee of the Company and a co-author of the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to the Form 10-K. This consent pertains to the following Sections of the Technical Report Summary. I certify that I have read the Technical Report Summary to be filed (including by incorporation by reference) as an exhibit to as well as the references to the Technical Report Summary within the Form 10-K and that it fairly and accurately represents the information in the Technical Report Summary sections for which I am responsible.

- Section 2 Introduction
- Section 3 Property Description
- Section 4 Accessibility, Climate, Local Resources
- Section 5 History
- Section 12 Mineral Reserve Estimates
- Section 13 Mining Methods
- Section 14 Processing and Recovery Methods
- Section 15 Infrastructure
- Section 16 Market Studies and Material Contracts
- Section 17 Environmental Studies, Permitting, and Plans, Negotiations, or Agreements with Local Individuals or Groups
- Section 18 Capital and Operating Costs
- Section 19 Economic Analysis
- Section 20 Adjacent Properties
- Section 21 Other Relevant Data and Information
- Section 24 References
- Section 25 Reliance on Information Provided by the Registrant
- Corresponding Subsections of Section 1: Executive Summary
- Corresponding Subsections of Section 22: Interpretation and Conclusions
- Corresponding Subsections of Section 23: Recommendations

Signature:     /s/ Brian Neilsen    

Date: February 24, 2023

Brian Neilsen  
Director Engineering

## CERTIFICATION

I, James C. Grech, certify that:

1. I have reviewed this Annual Report on Form 10-K of Peabody Energy Corporation ("the registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2023

/s/ James C. Grech

James C. Grech

President and Chief Executive Officer

## CERTIFICATION

I, Mark A. Spurbeck, certify that:

1. I have reviewed this Annual Report on Form 10-K of Peabody Energy Corporation ("the registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2023

/s/ Mark A. Spurbeck

Mark A. Spurbeck

Executive Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002  
(18 U.S.C. SECTION 1350)**

I, James C. Grech, President and Chief Executive Officer of Peabody Energy Corporation, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Annual Report on Form 10-K for the annual period ended December 31, 2022 (the "Annual Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of Peabody Energy Corporation.

Dated: February 24, 2023

/s/ James C. Grech

\_\_\_\_\_  
James C. Grech  
President and Chief Executive Officer

**CERTIFICATION PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002  
(18 U.S.C. SECTION 1350)**

I, Mark A. Spurbeck, Executive Vice President and Chief Financial Officer of Peabody Energy Corporation, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Annual Report on Form 10-K for the annual period ended December 31, 2022 (the "Annual Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of Peabody Energy Corporation.

Dated: February 24, 2023

/s/ Mark A. Spurbeck

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Mark A. Spurbeck

Executive Vice President and Chief Financial Officer

### Mine Safety Disclosures

The following disclosures are provided pursuant to Securities and Exchange Commission (SEC) regulations, which require certain disclosures by companies required to file periodic reports under the Securities Exchange Act of 1934, as amended, that operate coal mines regulated under the Federal Mine Safety and Health Act of 1977 (the Mine Act). The disclosures reflect United States (U.S.) mining operations only, as these requirements do not apply to our mines operated outside the U.S.

**Mine Safety Information.** Whenever the Mine Safety and Health Administration (MSHA) believes that a violation of the Mine Act, any health or safety standard, or any regulation has occurred, it may issue a violation which describes the associated condition or practice and designates a timeframe within which the operator must abate the violation. In some situations, such as when MSHA believes that conditions pose a hazard to miners, MSHA may issue an order removing miners from the area of the mine affected by the condition until hazards are corrected. Whenever MSHA issues a citation or order, it generally proposes a civil penalty, or fine, as a result of the violation that the operator is ordered to pay. Citations and orders can be contested and appealed and, as part of that process, are often reduced in severity and amount, and are sometimes vacated. The number of citations, orders and proposed assessments vary depending on the size and type (underground or surface) of the company and mine. Since MSHA is a branch of the U.S. Department of Labor, its jurisdiction applies only to our U.S. mines. As such, the mine safety disclosures that follow contain no information for our Australian mines.

The table that follows reflects citations and orders issued to us by MSHA during the year ended December 31, 2022, as reflected in our systems. The table includes only those mines that were issued orders or citations during the period presented and, commensurate with SEC regulations, does not reflect orders or citations issued to independent contractors working at our mines. Due to timing and other factors, our data may not agree with the mine data retrieval system maintained by MSHA. The proposed assessments for the year ended December 31, 2022 were taken from the MSHA system as of February 17, 2023.

Additional information about MSHA references used in the table is as follows:

- **Section 104 S&S Violations:** The total number of violations received from MSHA under section 104(a) of the Mine Act that could significantly and substantially contribute to a serious injury if left unabated.
- **Section 104(b) Orders:** The total number of orders issued by MSHA under section 104(b) of the Mine Act, which represents a failure to abate a citation under section 104(a) within the period of time prescribed by MSHA. This results in an order of immediate withdrawal from the area of the mine affected by the condition until MSHA determines that the violation has been abated.
- **Section 104(d) Citations and Orders:** The total number of citations and orders issued by MSHA under section 104(d) of the Mine Act for unwarrantable failure to comply with mandatory health or safety standards.
- **Section 104(e) Notices:** The total number of notices issued by MSHA under section 104(e) of the Mine Act for a pattern of violations that could contribute to mine health or safety hazards.
- **Section 110(b)(2) Violations:** The total number of flagrant violations issued by MSHA under section 110(b)(2) of the Mine Act.
- **Section 107(a) Orders:** The total number of orders issued by MSHA under section 107(a) of the Mine Act for situations in which MSHA determined an imminent danger existed.
- **Proposed MSHA Assessments:** The total dollar value of proposed assessments from MSHA.
- **Fatalities:** The total number of mining-related fatalities.



# Year Ended December 31, 2022

Mine <sup>(1)</sup>	Section 104 S&S Violations	Section 104(b) Orders	Section 104(d) Citations and Orders	Section 104(e) Pattern of Violations	Section 110(b)(2) Violations <sup>(2)</sup>	Section 107(a) Orders	(\$) Proposed MSHA Assessments (In thousands)	Fatalities
<b>Seaborne Metallurgical Mining</b>								
Shoal Creek Mine	233	3	25	—	—	—	892.5	—
<b>Powder River Basin Mining</b>								
Caballo	8	—	—	—	—	—	20.4	—
North Antelope Rochelle	32	—	—	—	—	1	86.0	—
Rawhide	2	—	—	—	—	—	9.5	—
<b>Other U.S. Thermal Mining</b>								
Bear Run	8	—	1	—	—	—	24.4	—
Columbia Maintenance Services	—	—	—	—	—	—	0.3	—
El Segundo	3	—	—	—	—	—	2.7	1 <sup>(3)</sup>
Francisco Preparation Plant (Francisco Mine)	—	—	—	—	—	—	0.1	—
Francisco Underground	36	—	—	—	—	—	53.1	—
Gateway North	58	2	3	—	—	—	182.4	—
Gateway Preparation Plant	—	—	—	—	—	—	1.1	—
Kayenta	3	—	—	—	—	—	2.4	—
Lee Ranch	1	—	—	—	—	—	0.5	—
Somerville Central	1	—	—	—	—	—	0.5	—
Twentymile (Foidel Creek Mine)	12	—	—	—	—	—	65.1	—
Wild Boar	—	—	—	—	—	—	1.0	—
Willow Lake Prep Plant	—	—	—	—	—	—	0.4	—

<sup>(1)</sup> The definition of "mine" under section 3 of the Mine Act includes the mine, as well as other items used in, or to be used in, or resulting from, the work of extracting coal, such as land, structures, facilities, equipment, machines, tools and coal preparation facilities. Also, there are instances where the mine name per the MSHA system differs from the mine name utilized by us. Where applicable, we have parenthetically listed the name of the mine per the MSHA system. Also, all U.S. mines are listed alphabetically within each of our mining segments.

<sup>(2)</sup> Due to an administrative error, the Company reported Section 110(b)(2) violations in prior filings of Exhibit 95 during 2022. The Company was not issued any Section 110(b)(2) violations during 2022, and the underlying error has been corrected.

<sup>(3)</sup> On August 23, 2022, a contractor was fatally injured at the El Segundo Mine.

**Pending Legal Actions.** The Federal Mine Safety and Health Review Commission (the Commission) is an independent adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Mine Act. These cases may involve, among other questions, challenges by operators to citations, orders and penalties they have received from MSHA, or complaints of discrimination by miners under section 105 of the Mine Act. The following is a brief description of the types of legal actions that may be brought before the Commission.

- **Contests of Citations and Orders:** A contest proceeding may be filed with the Commission by operators, miners or miners' representatives to challenge the issuance of a citation or order issued by MSHA, including citations related to disputed provisions of operators' emergency response plans.
- **Contests of Proposed Penalties (Petitions for Assessment of Penalties):** A contest of a proposed penalty is an administrative proceeding before the Commission challenging a civil penalty that MSHA has proposed for the violation. Such proceedings may also involve appeals of judges' decisions or orders to the Commission on proposed penalties, including petitions for discretionary review and review by the Commission on its own motion.
- **Complaints for Compensation:** A complaint for compensation may be filed with the Commission by miners entitled to compensation when a mine is closed by certain withdrawal orders issued by MSHA. The purpose of the proceeding is to determine the amount of compensation, if any, due miners idled by the orders.
- **Complaints of Discharge, Discrimination or Interference:** A discrimination proceeding is a case that involves a miner's allegation that he or she has suffered a wrong by the operator because he or she engaged in some type of activity protected under the Mine Act, such as making a safety complaint. This category includes temporary reinstatement proceedings, which involve cases in which a miner has filed a complaint with MSHA stating he or she has suffered discrimination and the miner has lost his or her position.
- **Applications for Temporary Relief:** An application for temporary relief from any modification or termination of any order or from any order issued under certain subparts of section 104 of the Mine Act may be filed with the Commission at any time before such order becomes final.

The table that follows presents information by mine regarding pending legal actions before the Commission at December 31, 2022. Each legal action is assigned a docket number by the Commission and may have as its subject matter one or more citations, orders, penalties or complaints.

Mine <sup>(1)</sup>	Pending Legal Actions							Legal Actions Initiated During the Year Ended December 31, 2022	Legal Actions Resolved During the Year Ended December 31, 2022
	Number of Pending Legal Actions as of December 31, 2022	Pre-Penalty Contests of Citations/Orders	Contests of Penalty Assessment <sup>(2)</sup>	Complaints for Compensation	Complaints of Discharge, Discrimination or Interference	Applications for Temporary Relief			
<b>Seaborne Metallurgical Mining</b>									
Shoal Creek Mine	9	—	9	—	—	—		20	16
<b>Powder River Basin Mining</b>									
North Antelope Rochelle	2	—	2	—	—	—		2	—
<b>Other U.S. Thermal Mining</b>									
Bear Run	1	—	1	—	—	—		2	1
El Segundo	1	1	—	—	—	—		1	—
Francisco Underground	2	—	2	—	—	—		1	3
Gateway North	2	—	2	—	—	—		3	1
Twentymile (Foidel Creek)	—	—	—	—	—	—		—	1

<sup>(1)</sup> The definition of "mine" under section 3 of the Mine Act includes the mine, as well as other items used in, or to be used in, or resulting from, the work of extracting coal, such as land, structures, facilities, equipment, machines, tools and coal preparation facilities. Also, there are instances where the mine name per the MSHA system differs from the mine name utilized by us. Where applicable, we have parenthetically listed the name of the mine per the MSHA system. Also, all U.S. mines are listed alphabetically within each of our mining segments.

<sup>(2)</sup> Contests included a total of 2 appeals of judge's decisions or orders to the Commission as of December 31, 2022.