

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

Form 10-Q

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2023
OR
 TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission File Number 001-31303

Black Hills Corporation

Incorporated in South Dakota IRS Identification Number 46-0458824

7001 Mount Rushmore Road
Rapid City, South Dakota 57702
Registrant's telephone number (605) 721-1700

Former name, former address, and former fiscal year if changed since last report
NONE

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 during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes No

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

Large Accelerated Filer	<input checked="" type="checkbox"/>	Accelerated Filer	<input type="checkbox"/>
Non-accelerated Filer	<input type="checkbox"/>	Smaller Reporting Company	<input type="checkbox"/>
		Emerging Growth Company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the Registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock of \$1.00 par value	BKH	New York Stock Exchange

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the latest practicable date.

Class	Outstanding at July 31, 2023
Common stock, \$1.00 par value	67,110,952 shares

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GLOSSARY OF TERMS AND ABBREVIATIONS

The following terms and abbreviations appear in the text of this report and have the definitions described below:

AFUDC	Allowance for Funds Used During Construction
AOCI	Accumulated Other Comprehensive Income (Loss)
Arkansas Gas	Black Hills Energy Arkansas, Inc., an indirect, wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas services to customers in Arkansas (doing business as Black Hills Energy).
ATM	At-the-market equity offering program
Availability	The availability factor of a power plant is the percentage of the time that it is available to provide energy.
BHC	Black Hills Corporation; the Company
Black Hills Colorado IPP	Black Hills Colorado IPP, LLC a 50.1% owned subsidiary of Black Hills Electric Generation
Black Hills Electric Generation	Black Hills Electric Generation, LLC, a direct, wholly-owned subsidiary of Black Hills Non-regulated Holdings, providing wholesale electric capacity and energy primarily to our affiliate utilities.
Black Hills Electric Parent Holdings	Black Hills Electric Utility Holdings, LLC., a direct, wholly-owned subsidiary of Black Hills Corporation
Black Hills Energy	The name used to conduct the business of our utility companies
Black Hills Energy Services	Black Hills Energy Services Company, an indirect, wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas commodity supply for the Choice Gas Programs (doing business as Black Hills Energy)
Black Hills Non-regulated Holdings	Black Hills Non-regulated Holdings, LLC, a direct, wholly-owned subsidiary of Black Hills Corporation
Black Hills Utility Holdings	Black Hills Utility Holdings, Inc., a direct, wholly-owned subsidiary of Black Hills Corporation (doing business as Black Hills Energy)
Black Hills Wyoming	Black Hills Wyoming, LLC, a direct, wholly-owned subsidiary of Black Hills Electric Generation
Cheyenne Light	Cheyenne Light, Fuel and Power Company, a direct, wholly-owned subsidiary of Black Hills Corporation, providing electric service in the Cheyenne, Wyoming area (doing business as Black Hills Energy).
Choice Gas Program	Regulator-approved programs in Wyoming and Nebraska that allow certain utility customers to select their natural gas commodity supplier, providing for the unbundling of the commodity service from the distribution delivery service.
Clean Energy Plan	2030 Ready Plan that establishes a roadmap and preferred resource portfolio for Colorado Electric to cost-effectively achieve the State of Colorado's requirement calling upon electric utilities to reduce GHG emissions by a minimum of 80% from 2005 levels by 2030. The preferred resource portfolio calls for the addition of 149 MW of wind, 258 MW of solar and 50 MW of battery storage to Colorado Electric's system. The final mix of resources will be determined by the results of a competitive solicitation that started in July 2023. Colorado legislation allows electric utilities to own up to 50% of the renewable generation assets added to comply with the Clean Energy Plan.
Colorado Electric	Black Hills Colorado Electric, LLC, a direct, wholly-owned subsidiary of Black Hills Electric Parent Holdings, providing electric services to customers in Colorado (doing business as Black Hills Energy).
Colorado Gas	Black Hills Colorado Gas, Inc., an indirect, wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas services to customers in Colorado (doing business as Black Hills Energy).
Common Use System	The Common Use System is a jointly operated transmission system we participated in with Basin Electric Power Cooperative and Powder River Energy Corporation. The Common Use System provides transmission service over these utilities' combined 230-kilovolt (kV) and limited 69-kV transmission facilities within areas of southwestern South Dakota and northeastern Wyoming.
Consolidated Indebtedness to Capitalization Ratio	Any indebtedness outstanding at such time, divided by capital at such time. Capital being consolidated net worth (excluding non-controlling interest) plus consolidated indebtedness (including letters of credit and certain guarantees issued) as defined within the current Revolving Credit Facility.
Cooling Degree Day	A cooling degree day is equivalent to each degree that the average of the high and low temperatures for a day is above 65 degrees. The warmer the climate, the greater the number of cooling degree days. Cooling degree days are used in the utility industry to measure the relative warmth and to compare relative temperatures between one geographic area and another. Normal degree days are based on the National Weather Service data for selected locations.

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CP Program	Commercial Paper Program
CPUC	Colorado Public Utilities Commission
DRSPP	Dividend Reinvestment and Stock Purchase Plan
Dth	Dekatherm. A unit of energy equal to 10 therms or approximately one million British thermal units (MMBtu)
FASB	Financial Accounting Standards Board
Fitch	Fitch Ratings Inc.
GAAP	Accounting principles generally accepted in the United States of America
Heating Degree Day	A heating degree day is equivalent to each degree that the average of the high and the low temperatures for a day is below 65 degrees. The colder the climate, the greater the number of heating degree days. Heating degree days are used in the utility industry to measure the relative coldness and to compare relative temperatures between one geographic area and another. Normal degree days are based on the National Weather Service data for selected locations.
HomeServe	We offer HomeServe products to our natural gas residential customers interested in purchasing additional home repair service plans.
Integrated Generation	Non-regulated power generation and mining businesses that are vertically integrated within our Electric Utilities segment.
Iowa Gas	Black Hills Iowa Gas Utility Company, LLC, a direct, wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas services to customers in Iowa (doing business as Black Hills Energy).
IPP	Independent Power Producer
IRS	United States Internal Revenue Service
Kansas Gas	Black Hills Kansas Gas Utility Company, LLC, a direct, wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas services to customers in Kansas (doing business as Black Hills Energy).
kV	Kilovolt
LIBOR	London Interbank Offered Rate
MEAN	Municipal Energy Agency of Nebraska
MMBtu	Million British thermal units
Moody's	Moody's Investors Service, Inc.
MW	Megawatts
MWh	Megawatt-hours
N/A	Not applicable
Nebraska Gas	Black Hills Nebraska Gas, LLC, an indirect, wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas services to customers in Nebraska (doing business as Black Hills Energy).
Northern Iowa Windpower	Northern Iowa Windpower, LLC, a 87.1 MW wind farm located near Joice, Iowa, previously owned by Black Hills Electric Generation. In March 2023, Black Hills Electric Generation completed the sale of Northern Iowa Windpower assets to a third-party.
OCI	Other Comprehensive Income
PPA	Power Purchase Agreement
PTC	Production Tax Credit
Revolving Credit Facility	Our \$750 million credit facility used to fund working capital needs, letters of credit and other corporate purposes, which was amended on May 9, 2023 and will terminate on July 19, 2026.
RMNG	Rocky Mountain Natural Gas LLC, an indirect, wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas transmission and wholesale services in western Colorado (doing business as Black Hills Energy).
SEC	United States Securities and Exchange Commission
Service Guard Comfort Plan	Appliance protection plan that provides home appliance repair services through on-going monthly service agreements to residential utility customers.
S&P	S&P Global Ratings, a division of S&P Global Inc.
SOFR	Secured Overnight Financing Rate
South Dakota Electric	Black Hills Power, Inc., a direct, wholly-owned subsidiary of Black Hills Corporation, providing electric service to customers in Montana, South Dakota and Wyoming (doing business as Black Hills Energy).
SSIR	System Safety and Integrity Rider
Tech Services	Non-regulated product lines delivered by our Utilities that 1) provide electrical system construction services to large industrial customers of our electric utilities, and 2) serve gas transportation customers throughout its service territory by constructing and maintaining customer-owned gas infrastructure facilities, typically through one-time contracts.
Utilities	Black Hills' Electric and Gas Utilities

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Wind Capacity Factor	Measures the amount of electricity a wind turbine produces in a given time period relative to its maximum potential.
Winter Storm Uri	February 2021 winter weather event that caused extreme cold temperatures in the central United States and led to unprecedented fluctuations in customer demand and market pricing for natural gas and energy.
WPSC	Wyoming Public Service Commission
Wyodak Plant	The 362 MW mine-mouth, coal-fired generating facility near Gillette, Wyoming, jointly owned by PacifiCorp (80%) and South Dakota Electric (20%). Our WRDC mine supplies all of the fuel for the facility.
Wyoming Electric	Cheyenne Light, Fuel and Power Company, a direct, wholly-owned subsidiary of Black Hills Corporation, providing electric service to customers in the Cheyenne, Wyoming area (doing business as Black Hills Energy).
Wyoming Gas	Black Hills Wyoming Gas, LLC, an indirect and wholly-owned subsidiary of Black Hills Utility Holdings, providing natural gas services to customers in Wyoming (doing business as Black Hills Energy).

FORWARD-LOOKING INFORMATION

This Quarterly Report on Form 10-Q includes “forward-looking statements” as defined by the SEC. Forward-looking statements are all statements other than statements of historical fact, including without limitation those statements that are identified by the words “anticipates,” “estimates,” “expects,” “intends,” “plans,” “predicts” and similar expressions, and include statements concerning plans, objectives, goals, strategies, future events or performance, and underlying assumptions and other statements that are other than statements of historical facts. We make these forward-looking statements in reliance on the safe harbor protections provided under the Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on assumptions which we believe are reasonable based on current expectations and projections about future events and industry conditions and trends affecting our business. However, whether actual results and developments will conform to our expectations and predictions is subject to a number of risks and uncertainties that, among other things, could cause actual results to differ materially from those contained in the forward-looking statements, including without limitation, the risk factors described in Item 1A of Part I of our 2022 Annual Report on Form 10-K, Part II, [Item 1A](#) of this Quarterly Report on Form 10-Q and other reports that we file with the SEC from time to time, and the following:

- Our ability to obtain adequate cost recovery for our utility operations through regulatory proceedings and favorable rulings on periodic applications to recover costs for capital additions, plant retirements and decommissioning, fuel, transmission, purchased power, and other operating costs and the timing in which new rates would go into effect;
- Our ability to complete our capital program in a cost-effective and timely manner;
- Our ability to execute on our strategy;
- Our ability to successfully execute our financing plans;
- The effects of changing interest rates;
- Our ability to achieve our greenhouse gas emissions intensity reduction goals;
- Board of Directors’ approval of any future quarterly dividends;
- The impact of future governmental regulation;
- Our ability to overcome the impacts of supply chain disruptions on availability and cost of materials;
- The effects of inflation and volatile energy prices; and
- Other factors discussed from time to time in our filings with the SEC.

New factors that could cause actual results to differ materially from those described in forward-looking statements emerge from time-to-time, and it is not possible for us to predict all such factors, or the extent to which any such factor or combination of factors may cause actual results to differ from those contained in any forward-looking statement. We assume no obligation to update publicly any such forward-looking statements, whether as a result of new information, future events or otherwise.

PART I. FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS

BLACK HILLS CORPORATION
CONSOLIDATED STATEMENTS OF INCOME

(unaudited)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands, except per share amounts)			
Revenue	\$ 411,283	\$ 474,195	\$ 1,332,442	\$ 1,297,765
Operating expenses:				
Fuel, purchased power and cost of natural gas sold	121,245	188,171	647,512	625,097
Operations and maintenance	145,767	132,968	286,755	269,100
Depreciation, depletion and amortization	64,714	64,128	126,357	124,591
Taxes - property and production	16,041	16,539	33,419	33,235
Total operating expenses	347,767	401,806	1,094,043	1,052,023
Operating income	63,516	72,389	238,399	245,742
Other income (expense):				
Interest expense incurred net of amounts capitalized	(43,267)	(39,053)	(87,332)	(77,874)
Interest income	1,746	289	2,307	565
Other income (expense), net	(1,540)	1,563	(866)	2,267
Total other income (expense)	(43,061)	(37,201)	(85,891)	(75,042)
Income before income taxes	20,455	35,188	152,508	170,700
Income tax benefit (expense)	6,089	658	(8,584)	(13,830)
Net income	26,544	35,846	143,924	156,870
Net income attributable to non-controlling interest	(3,491)	(2,431)	(6,787)	(5,929)
Net income available for common stock	\$ 23,053	\$ 33,415	\$ 137,137	\$ 150,941
Earnings per share of common stock:				
Earnings per share, Basic	\$ 0.35	\$ 0.52	\$ 2.07	\$ 2.33
Earnings per share, Diluted	\$ 0.35	\$ 0.52	\$ 2.06	\$ 2.33
Weighted average common shares outstanding:				
Basic	66,591	64,721	66,315	64,643
Diluted	66,684	64,883	66,419	64,822

The accompanying [Condensed Notes to Consolidated Financial Statements](#) are an integral part of these Consolidated Financial Statements.

BLACK HILLS CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

(unaudited)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Net income	\$ 26,544	\$ 35,846	\$ 143,924	\$ 156,870
Other comprehensive income (loss), net of tax:				
Reclassification adjustments of benefit plan liability - prior service cost (net of tax of \$--, \$8, \$-- and \$14, respectively)	-	(14)	-	(32)
Reclassification adjustments of benefit plan liability - net loss (net of tax of \$(27), \$(68), \$(43) and \$(113), respectively)	16	119	44	262
Derivative instruments designated as cash flow hedges:				
Reclassification of net realized (gains) losses on settled/amortized interest rate swaps (net of tax of \$(177), \$(238), \$(327) and \$(415), respectively)	536	475	1,099	1,011
Net unrealized gains (losses) on commodity derivatives (net of tax of \$(35), \$734, \$233 and \$394, respectively)	112	(2,314)	(743)	(1,267)
Reclassification of net realized (gains) losses on settled commodity derivatives (net of tax of \$(118), \$319, \$(584) and \$871, respectively)	371	(1,004)	1,855	(2,706)
Other comprehensive income, net of tax	1,035	(2,738)	2,255	(2,732)
Comprehensive income	27,579	33,108	146,179	154,138
Less: comprehensive income attributable to non-controlling interest	(3,491)	(2,431)	(6,787)	(5,929)
Comprehensive income available for common stock	\$ 24,088	\$ 30,677	\$ 139,392	\$ 148,209

See [Note 9](#) for additional disclosures.

The accompanying [Condensed Notes to Consolidated Financial Statements](#) are an integral part of these Consolidated Financial Statements.

BLACK HILLS CORPORATION
CONSOLIDATED BALANCE SHEETS

(unaudited)

	As of	
	June 30, 2023	December 31, 2022
	(in thousands)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 152,581	\$ 21,430
Restricted cash and equivalents	5,966	5,555
Accounts receivable, net	260,350	508,192
Materials, supplies and fuel	136,534	207,421
Derivative assets, current	303	582
Income tax receivable, net	18,222	17,637
Regulatory assets, current	198,443	260,312
Other current assets	29,929	50,579
Total current assets	802,328	1,071,708
Property, plant and equipment	8,590,796	8,374,790
Less: accumulated depreciation and depletion	(1,671,303)	(1,576,842)
Total property, plant and equipment, net	6,919,493	6,797,948
Other assets:		
Goodwill	1,299,454	1,299,454
Intangible assets, net	9,002	9,589
Regulatory assets, non-current	325,228	392,669
Other assets, non-current	53,590	46,862
Total other assets, non-current	1,687,274	1,748,574
TOTAL ASSETS	\$ 9,409,095	\$ 9,618,230

The accompanying [Condensed Notes to Consolidated Financial Statements](#) are an integral part of these Consolidated Financial Statements.

BLACK HILLS CORPORATION
CONSOLIDATED BALANCE SHEETS
(Continued)

(unaudited)	As of	
	June 30, 2023	December 31, 2022
	(in thousands)	
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable	\$ 133,300	\$ 310,020
Accrued liabilities	217,259	243,457
Derivative liabilities, current	322	6,600
Regulatory liabilities, current	101,979	46,013
Notes payable	-	535,600
Current maturities of long-term debt	525,000	525,000
Total current liabilities	977,860	1,666,690
Long-term debt, net of current maturities	3,955,745	3,607,340
Deferred credits and other liabilities:		
Deferred income tax liabilities, net	528,627	508,941
Regulatory liabilities, non-current	469,509	472,560
Benefit plan liabilities	118,841	116,742
Other deferred credits and other liabilities	155,746	156,062
Total deferred credits and other liabilities	1,272,723	1,254,305
Commitments, contingencies and guarantees (Note 3)		
Equity:		
Stockholder's equity -		
Common stock \$1 par value; 100,000,000 shares authorized; issued 67,115,403 and 66,140,396 shares, respectively	67,115	66,140
Additional paid-in capital	1,941,234	1,882,653
Retained earnings	1,118,145	1,064,122
Treasury stock, at cost - 48,623 and 36,726 shares, respectively	(3,167)	(2,435)
Accumulated other comprehensive income (loss)	(13,312)	(15,567)
Total stockholders' equity	3,110,015	2,994,913
Non-controlling interest	92,752	94,982
Total equity	3,202,767	3,089,895
TOTAL LIABILITIES AND TOTAL EQUITY	\$ 9,409,095	\$ 9,618,230

The accompanying [Condensed Notes to Consolidated Financial Statements](#) are an integral part of these Consolidated Financial Statements.

BLACK HILLS CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS

(unaudited)	Six Months Ended June 30,	
	2023	2022
	(in thousands)	
Operating activities:		
Net income	\$ 143,924	\$ 156,870
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation, depletion and amortization	126,357	124,591
Deferred financing cost amortization	4,853	4,953
Stock compensation	4,311	3,834
Deferred income taxes	9,203	13,860
Employee benefit plans	5,898	1,383
Other adjustments, net	(6,754)	(9,489)
Changes in certain operating assets and liabilities:		
Materials, supplies and fuel	73,022	(6,993)
Accounts receivable and other current assets	266,820	55,641
Accounts payable and other current liabilities	(201,389)	(24,130)
Regulatory assets	186,699	128,315
Other operating activities, net	(7,873)	(6,805)
Net cash provided by operating activities	605,071	442,030
Investing activities:		
Property, plant and equipment additions	(261,739)	(293,803)
Other investing activities	16,367	2,418
Net cash (used in) investing activities	(245,372)	(291,385)
Financing activities:		
Dividends paid on common stock	(83,114)	(77,136)
Common stock issued	54,689	20,095
Net borrowings (payments) of Revolving Credit Facility and CP Program	(535,600)	(85,130)
Long-term debt - issuance	350,000	-
Distributions to non-controlling interests	(9,017)	(8,604)
Other financing activities	(5,095)	1,682
Net cash (used in) financing activities	(228,137)	(149,093)
Net change in cash, restricted cash and cash equivalents	131,562	1,552
Cash, restricted cash and cash equivalents beginning of period	26,985	13,810
Cash, restricted cash and cash equivalents end of period	\$ 158,547	\$ 15,362
Supplemental cash flow information:		
Cash (paid) refunded during the period:		
Interest (net of amounts capitalized)	\$ (75,507)	\$ (72,791)
Income taxes	34	752
Non-cash investing and financing activities:		
Accrued property, plant and equipment purchases at June 30,	50,081	49,229

The accompanying [Condensed Notes to Consolidated Financial Statements](#) are an integral part of these Consolidated Financial Statements.

BLACK HILLS CORPORATION
CONSOLIDATED STATEMENTS OF EQUITY

(unaudited)	Common Stock		Treasury Stock		Additional Paid in Capital	Retained Earnings	AOCI	Non- controlling Interest	Total
(in thousands except share amounts)	Shares	Value	Shares	Value					
December 31, 2022	66,140,39				1,882,65	1,064,12			3,089,89
	6	\$ 66,140	36,726	\$ (2,435)	\$ 3	\$ 2	\$ (15,567)	\$ 94,982	\$ 5
Net income	-	-	-	-	-	114,084	-	3,296	117,380
Other comprehensive income, net of tax	-	-	-	-	-	-	1,220	-	1,220
Dividends on common stock (\$0.625 per share)	-	-	-	-	-	(41,362)	-	-	(41,362)
Share-based compensation	84,735	85	4,388	(262)	1,886	-	-	-	1,709
Issuance of common stock	445,578	446	-	-	27,273	-	-	-	27,719
Issuance costs	-	-	-	-	(336)	-	-	-	(336)
Distributions to non-controlling interest	-	-	-	-	-	-	-	(4,494)	(4,494)
	66,670,70					1,136,84			3,191,73
March 31, 2023	9	\$ 66,671	41,114	\$ (2,697)	\$ 1,911,476	\$ 4	\$ (14,347)	\$ 93,784	\$ 1
Net income	-	-	-	-	-	23,053	-	3,491	26,544
Other comprehensive income, net of tax	-	-	-	-	-	-	1,035	-	1,035
Dividends on common stock (\$0.625 per share)	-	-	-	-	-	(41,752)	-	-	(41,752)
Share-based compensation	8,492	8	7,509	(470)	2,888	-	-	-	2,426
Issuance of common stock	436,202	436	-	-	27,274	-	-	-	27,710
Issuance costs	-	-	-	-	(404)	-	-	-	(404)
Distributions to non-controlling interest	-	-	-	-	-	-	-	(4,523)	(4,523)
	67,115,40				1,941,23				3,202,76
June 30, 2023	3	\$ 67,115	48,623	\$ (3,167)	\$ 4	\$ 1,118,145	\$ (13,312)	\$ 92,752	\$ 7

(unaudited)	Common Stock		Treasury Stock		Additional Paid in Capital	Retained Earnings	AOCI	Non- controlling Interest	Total
(in thousands except share amounts)	Shares	Value	Shares	Value					
December 31, 2021	64,793,09				1,783,43				2,887,12
	5	\$ 64,793	54,078	\$ (3,509)	\$ 6	\$ 962,458	\$ (20,084)	\$ 100,029	\$ 3
Net income	-	-	-	-	-	117,526	-	3,498	121,024
Other comprehensive income, net of tax	-	-	-	-	-	-	6	-	6
Dividends on common stock (\$0.595 per share)	-	-	-	-	-	(38,533)	-	-	(38,533)
Share-based compensation	425	-	(34,393)	2,222	(191)	-	-	-	2,031
Issuance of common stock	55,707	56	-	-	3,776	-	-	-	3,832
Issuance costs	-	-	-	-	(41)	-	-	-	(41)
Distributions to non-controlling interest	-	-	-	-	-	-	-	(4,420)	(4,420)
	64,849,22				1,786,98	1,041,45			2,971,02
March 31, 2022	7	\$ 64,849	19,685	\$ (1,287)	\$ 0	\$ 1	\$ (20,078)	\$ 99,107	\$ 2
Net income	-	-	-	-	-	33,415	-	2,431	35,846
Other comprehensive income, net of tax	-	-	-	-	-	-	(2,738)	-	(2,738)
Dividends on common stock (\$0.595 per share)	-	-	-	-	-	(38,603)	-	-	(38,603)
Share-based compensation	39,066	39	4,006	(255)	5,370	-	-	-	5,154
Issuance of common stock	216,885	217	-	-	16,353	-	-	-	16,570
Issuance costs	-	-	-	-	(266)	-	-	-	(266)
Distributions to non-controlling interest	-	-	-	-	-	-	-	(4,184)	(4,184)
	65,105,17				1,808,43	1,036,26			2,982,80
June 30, 2022	8	\$ 65,105	23,691	\$ (1,542)	\$ 7	\$ 3	\$ (22,816)	\$ 97,354	\$ 1

BLACK HILLS CORPORATIONCondensed Notes to Consolidated Financial Statements
(unaudited)(Reference is made to Notes to Consolidated Financial Statements
included in the Company's 2022 Annual Report on Form 10-K)**(1) Management's Statement**

The unaudited Consolidated Financial Statements included herein have been prepared by Black Hills Corporation (together with our subsidiaries the "Company", "us", "we" or "our"), pursuant to the rules and regulations of the SEC. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations; however, we believe that the footnotes adequately disclose the information presented. These Consolidated Financial Statements should be read in conjunction with the consolidated financial statements and the notes included in our 2022 Annual Report on Form 10-K.

Use of Estimates and Basis of Presentation

The information furnished in the accompanying Consolidated Financial Statements reflects certain estimates required and all adjustments, including accruals, which are, in the opinion of management, necessary for a fair presentation of the June 30, 2023, December 31, 2022 and June 30, 2022 financial information. Certain lines of business in which we operate are highly seasonal, and our interim results of operations are not necessarily indicative of the results of operations to be expected for an entire year.

(2) Regulatory Matters

We had the following regulatory assets and liabilities (in thousands):

	As of June 30, 2023	As of December 31, 2022
Regulatory assets		
Winter Storm Uri	\$ 233,299	\$ 347,980
Deferred energy and fuel cost adjustments	68,708	72,580
Deferred gas cost adjustments	8,777	12,147
Gas price derivatives	-	8,793
Deferred taxes on AFUDC	7,305	7,333
Employee benefit plans and related deferred taxes	88,203	89,259
Environmental	1,346	1,343
Loss on reacquired debt	18,315	19,213
Deferred taxes on flow through accounting	74,165	69,529
Decommissioning costs	2,406	3,472
Other regulatory assets	21,147	21,332
Total regulatory assets	523,671	652,981
Less current regulatory assets	(198,443)	(260,312)
Regulatory assets, non-current	\$ 325,228	\$ 392,669
Regulatory liabilities		
Deferred energy and gas costs	\$ 99,649	\$ 41,722
Employee benefit plan costs and related deferred taxes	33,065	34,258
Cost of removal	178,668	175,614
Excess deferred income taxes	250,728	254,833
Other regulatory liabilities	9,378	12,146
Total regulatory liabilities	571,488	518,573
Less current regulatory liabilities	(101,979)	(46,013)
Regulatory liabilities, non-current	\$ 469,509	\$ 472,560

Regulatory Activity

Except as discussed below, there have been no other significant changes to our Regulatory Matters from those previously disclosed in Note 2 of the Notes to the Consolidated Financial Statements in our 2022 Annual Report on Form 10-K.

Colorado Gas

RMNG Rate Review

On July 12, 2023, the CPUC approved a settlement agreement for RMNG's rate review filed on October 7, 2022. The agreement is expected to generate \$8.2 million in new annual revenue and establishes a weighted average cost of capital of 6.93% with a capital structure that reflects an equity range of 50% to 52%, a debt range of 50% to 48% and a return on equity range of 9.5% to 9.7%. The settlement also shifts \$8.3 million of SSIR revenues to base rates and terminates the SSIR. New rates were effective July 15, 2023.

Colorado Gas Rate Review

On May 9, 2023, Colorado Gas filed a rate review with the CPUC seeking recovery of significant infrastructure investments in its 10,000-mile natural gas pipeline system. The rate review requests \$27 million in new annual revenue with a capital structure of 51% equity and 49% debt and a return on equity of 10.49%. The request seeks to finalize rates in the first quarter of 2024.

Wyoming Gas

On May 18, 2023, Wyoming Gas filed a rate review with the WPSC seeking recovery of significant infrastructure investments in its 6,400-mile natural gas pipeline system. The rate review requests \$19 million in new annual revenue with a capital structure of 52% equity and 48% debt and a return on equity of 10.49%. Additionally, Wyoming Gas is seeking renewal of the Wyoming Integrity Rider. The request seeks to finalize rates in the first quarter of 2024.

Wyoming Electric

On June 1, 2022, Wyoming Electric filed a rate review with the WPSC seeking recovery of significant infrastructure investments in its 1,330-mile electric distribution and 59-mile electric transmission systems. On January 26, 2023, the WPSC approved a settlement agreement with intervening parties for a general rate increase. The settlement is expected to generate \$8.7 million in new annual revenue with a capital structure of 52% equity and 48% debt and a return on equity of 9.75%. New rates were effective March 1, 2023. The agreement also includes approval of a new rider that will be filed annually to recover transmission investments and expenses.

(3) Commitments, Contingencies and Guarantees

There have been no significant changes to commitments, contingencies and guarantees from those previously disclosed in Note 3 of our Notes to the Consolidated Financial Statements in our 2022 Annual Report on Form 10-K.

(4) Revenue

The following tables depict the disaggregation of revenue, including intercompany revenue, from contracts with customers by customer type and timing of revenue recognition for each of the reportable segments for the three and six months ended June 30, 2023 and 2022. Sales tax and other similar taxes are excluded from revenues.

Three Months Ended June 30, 2023	Electric Utilities	Gas Utilities	Inter-segment Revenues	Total
<u>Customer types:</u>				
Retail	\$ 156,372	\$ 174,781	\$ -	\$ 331,153
Transportation	-	35,913	(115)	35,798
Wholesale	5,739	-	-	5,739
Market - off-system sales	8,364	43	-	8,407
Transmission/Other	19,231	9,203	(4,395)	24,039
Revenue from contracts with customers	\$ 189,706	\$ 219,940	\$ (4,510)	\$ 405,136
Other revenues	3,367	2,780	-	6,147
Total revenues	\$ 193,073	\$ 222,720	\$ (4,510)	\$ 411,283
<u>Timing of revenue recognition:</u>				
Services transferred at a point in time	\$ 7,844	\$ -	\$ -	\$ 7,844
Services transferred over time	181,862	219,940	(4,510)	397,292
Revenue from contracts with customers	\$ 189,706	\$ 219,940	\$ (4,510)	\$ 405,136

Three Months Ended June 30, 2022	Electric Utilities	Gas Utilities	Inter-segment Revenues	Total
Customer types:				
Retail	\$ 169,032	\$ 229,074	\$ -	398,106
Transportation	-	34,667	(100)	34,567
Wholesale	8,428	-	-	8,428
Market - off-system sales	8,666	178	-	8,844
Transmission/Other	15,183	9,344	(4,148)	20,379
Revenue from contracts with customers	\$ 201,309	\$ 273,263	\$ (4,248)	\$ 470,324
Other revenues	3,070	906	(105)	3,871
Total revenues	\$ 204,379	\$ 274,169	\$ (4,353)	\$ 474,195

Timing of revenue recognition:

Services transferred at a point in time	\$ 6,671	\$ -	\$ -	6,671
Services transferred over time	194,638	273,263	(4,248)	463,653
Revenue from contracts with customers	\$ 201,309	\$ 273,263	\$ (4,248)	\$ 470,324

Six Months Ended June 30, 2023	Electric Utilities	Gas Utilities	Inter-segment Revenues	Total
Customer types:				
	(in thousands)			
Retail	\$ 331,275	\$ 810,326	\$ -	1,141,601
Transportation	-	88,756	(230)	88,526
Wholesale	15,137	-	-	15,137
Market - off-system sales	24,488	324	-	24,812
Transmission/Other	36,635	19,226	(8,746)	47,115
Revenue from contracts with customers	\$ 407,535	\$ 918,632	\$ (8,976)	\$ 1,317,191
Other revenues	4,247	11,004	-	15,251
Total revenues	\$ 411,782	\$ 929,636	\$ (8,976)	\$ 1,332,442

Timing of revenue recognition:

Services transferred at a point in time	\$ 16,501	\$ -	\$ -	16,501
Services transferred over time	391,034	918,632	(8,976)	1,300,690
Revenue from contracts with customers	\$ 407,535	\$ 918,632	\$ (8,976)	\$ 1,317,191

Six Months Ended June 30, 2022	Electric Utilities	Gas Utilities	Inter-segment Revenues	Total
Customer types:				
	(in thousands)			
Retail	\$ 341,838	\$ 790,087	\$ -	1,131,925
Transportation	-	84,190	(199)	83,991
Wholesale	18,703	-	-	18,703
Market - off-system sales	15,820	416	-	16,236
Transmission/Other	30,616	18,919	(8,297)	41,238
Revenue from contracts with customers	\$ 406,977	\$ 893,612	\$ (8,496)	\$ 1,292,093
Other revenues	3,940	1,949	(217)	5,672
Total revenues	\$ 410,917	\$ 895,561	\$ (8,713)	\$ 1,297,765

Timing of revenue recognition:

Services transferred at a point in time	\$ 13,784	\$ -	\$ -	13,784
Services transferred over time	393,193	893,612	(8,496)	1,278,309
Revenue from contracts with customers	\$ 406,977	\$ 893,612	\$ (8,496)	\$ 1,292,093

(5) Financing**Shelf Registration Statement**

We maintain an effective shelf registration statement with the SEC under which we may issue, from time to time, an unspecified amount of senior debt securities, subordinated debt securities, common stock, preferred stock, warrants and other securities. In anticipation of the approaching expiration of our previous shelf registration statement on Form S-3 originally filed on August 4, 2020 (Registration No. 333-240320), we filed a new shelf registration statement on Form S-3 on June 16, 2023 (Registration No. 333-272739).

Short-term DebtRevolving Credit Facility and CP Program

On May 9, 2023, we amended and restated our corporate Revolving Credit Facility, which replaced LIBOR as a benchmark interest rate with the SOFR. The adoption of SOFR as a benchmark interest rate was in advance of the scheduled elimination of LIBOR as a benchmark interest rate on June 30, 2023. No other significant terms or conditions, including borrowing capacity, credit spreads or financial covenants were modified under these amendments and restatements.

Our Revolving Credit Facility and CP Program, which are classified as Notes payable on the Consolidated Balance Sheets, had the following borrowings, outstanding letters of credit, and available capacity (dollars in thousands) as of:

	June 30, 2023		December 31, 2022	
Amount outstanding	\$	—	\$	535,600
Letters of credit ^(a)	\$	2,751	\$	24,626
Available capacity	\$	747,249	\$	189,774
Weighted average interest rates		N/A		4.88%

(a) Letters of credit are off-balance sheet commitments that reduce the borrowing capacity available on our corporate Revolving Credit Facility.

Revolving Credit Facility and CP Program borrowing activity was as follows (dollars in thousands):

	Six Months Ended June 30,			
	2023		2022	
Maximum amount outstanding (based on daily outstanding balances)	\$	548,700	\$	429,000
Average amount outstanding (based on daily outstanding balances)	\$	164,719	\$	326,172
Weighted average interest rates		4.91%		0.82%

Long-term Debt

On March 7, 2023, we completed a public debt offering of \$350 million, 5.95% five year senior unsecured notes due March 15, 2028. The proceeds from the offering, which were net of \$4.2 million of deferred financing costs, were used to repay notes outstanding under our CP Program and for other general corporate purposes.

Debt CovenantsRevolving Credit Facility

We were in compliance with all of our Revolving Credit Facility covenants as of June 30, 2023. We are required to maintain a Consolidated Indebtedness to Capitalization Ratio not to exceed 0.65 to 1.00. Subject to applicable cure periods, a violation of this covenant would constitute an event of default that entitles the lenders to terminate their remaining commitments and accelerate all principal and interest outstanding. As of June 30, 2023, our Consolidated Indebtedness to Capitalization Ratio was 0.59 to 1.00.

Wyoming Electric

Wyoming Electric was in compliance with all covenants within its financing agreements as of June 30, 2023. Wyoming Electric is required to maintain a debt to capitalization ratio of no more than 0.60 to 1.00. As of June 30, 2023, Wyoming Electric's debt to capitalization ratio was 0.52 to 1.00.

EquityAt-the-Market Equity Offering Program

As previously disclosed, on August 4, 2020, we entered into an Amended and Restated Equity Distribution Sales Agreement ("Previous Sales Agreement") to sell shares of common stock up to an aggregate of \$400 million, from time to time, through our ATM program utilizing our shelf registration statement. In conjunction with the new shelf registration statement filing discussed above, we entered into a new Equity Distribution Sales Agreement ("Sales Agreement") on June 16, 2023. We also terminated the Previous Sales Agreement on June 16, 2023. The Sales Agreement is similar to the Previous Sales Agreement and allows us to sell shares of common stock up to an aggregate of \$400 million through our ATM program.

ATM activity was as follows (net proceeds and issuance costs in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
<u>August 4, 2020 ATM Program</u>				
Proceeds, (net of issuance costs of \$(0.2), \$(0.2), \$(0.5) and \$(0.2), respectively)	\$ 21.0	\$ 16.4	\$ 48.5	\$ 20.2
Number of shares issued	329,647	216,885	775,225	272,592
<u>June 16, 2023 ATM Program</u>				
Proceeds, (net of issuance costs of \$(0.1), \$0, \$(0.1) and \$0, respectively)	\$ 6.4	\$ -	\$ 6.4	\$ -
Number of shares issued	106,555	-	106,555	-
<u>Total activity under both ATM Programs</u>				
Proceeds, (net of issuance costs of \$(0.3), \$(0.2), \$(0.6) and \$(0.2), respectively)	\$ 27.4	\$ 16.4	\$ 54.9	\$ 20.2
Number of shares issued	436,202	216,885	881,780	272,592
Average price per share	\$ 63.53	\$ 76.39	\$ 62.86	\$ 74.84

As of June 30, 2023, there were 46,696 shares issued under the June 16, 2023 ATM Program, but not settled.

Shareholder Dividend Reinvestment and Stock Purchase Plan

Effective as of July 7, 2023, we terminated our DRSP. On July 10, 2023, we filed a post-effective amendment to amend the Registration Statement on Form S-3 (File No. 333-240319) filed with the SEC on August 4, 2020. The filing of this post-effective amendment de-registered all shares of common stock that were issuable under the DRSP but not sold as of July 7, 2023. With the termination of the DRSP, a direct stock purchase plan is being offered which will allow shareholders to continue making share transactions. This plan is sponsored and administered solely by EQ Shareowner Services, our transfer agent.

(6) Earnings Per Share

A reconciliation of share amounts used to compute earnings per share in the accompanying Consolidated Statements of Income was as follows (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income available for common stock	\$ 23,053	\$ 33,415	\$ 137,137	\$ 150,941
Weighted average shares - basic	66,591	64,721	66,315	64,643
Dilutive effect of:				
Equity compensation	93	162	104	179
Weighted average shares - diluted	66,684	64,883	66,419	64,822
Earnings per share of common stock:				
Earnings per share, Basic	\$ 0.35	\$ 0.52	\$ 2.07	\$ 2.33
Earnings per share, Diluted	\$ 0.35	\$ 0.52	\$ 2.06	\$ 2.33

The following securities were excluded from the diluted earnings per share computation because of their anti-dilutive nature (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Equity compensation	76	-	47	-
Restricted stock	1	-	-	1
Anti-dilutive shares	77	-	47	1

(7) Risk Management and Derivatives

Market and Credit Risk Disclosures

Our activities in the energy industry expose us to a number of risks in the normal operations of our businesses. Depending on the activity, we are exposed to varying degrees of market risk and credit risk. Valuation methodologies for our derivatives are detailed within Note 1 of the Notes to the Consolidated Financial Statements in our 2022 Annual Report on Form 10-K.

Market Risk

Market risk is the potential loss that may occur as a result of an adverse change in market price, rate or supply. We are exposed but not limited to, the following market risks:

- Commodity price risk associated with our retail natural gas and wholesale electric power marketing activities and our fuel procurement for several of our gas-fired generation assets, which include market fluctuations due to unpredictable factors such as weather, geopolitical events, pandemics, market speculation, recession, inflation, pipeline constraints, and other factors that may impact natural gas and electric supply and demand; and
- Interest rate risk associated with future debt, including reduced access to liquidity during periods of extreme capital markets volatility.

Credit Risk

Credit risk is the risk of financial loss resulting from non-performance of contractual obligations by a counterparty.

We attempt to mitigate our credit exposure by conducting business primarily with high credit quality entities, setting tenor and credit limits commensurate with counterparty financial strength, obtaining master netting agreements and mitigating credit exposure with less creditworthy counterparties through parental guarantees, cash collateral requirements, letters of credit and other security agreements.

We perform ongoing credit evaluations of our customers and adjust credit limits based upon payment history and the customers' current creditworthiness, as determined by review of their current credit information. We maintain a provision for estimated credit losses based upon historical experience, changes in current market conditions, expected losses and any specific customer collection issue that is identified.

Derivatives and Hedging Activity

Our derivative and hedging activities included in the accompanying Consolidated Balance Sheets, Consolidated Statements of Income and Consolidated Statements of Comprehensive Income are detailed below and in [Note 8](#).

The operations of our Utilities, including natural gas sold by our Gas Utilities and natural gas used by our Electric Utilities' generation plants or those plants under PPAs where our Electric Utilities must provide the generation fuel (tolling agreements), expose our utility customers to natural gas price volatility. Therefore, as allowed or required by state utility commissions, we enter into commission approved hedging programs utilizing natural gas futures, options, over-the-counter swaps and basis swaps to reduce our customers' underlying exposure to these fluctuations. These transactions are considered derivatives, and in accordance with accounting standards for derivatives and hedging, mark-to-market adjustments are recorded as Derivative assets or Derivative liabilities on the accompanying Consolidated Balance Sheets, net of balance sheet offsetting as permitted by GAAP.

For our regulated Utilities' hedging plans, unrealized and realized gains and losses, as well as option premiums and commissions on these transactions, are recorded as Regulatory assets or Regulatory liabilities in the accompanying Consolidated Balance Sheets in accordance with the state regulatory commission guidelines. When the related costs are recovered through our rates, the hedging activity is recognized in the Consolidated Statements of Income.

We use wholesale power purchase and sale contracts to manage purchased power costs and load requirements associated with serving our electric customers. Periodically, certain wholesale energy contracts are considered derivative instruments due to not qualifying for the normal purchase and normal sales exception to derivative accounting. Changes in the fair value of these commodity derivatives are recognized in the Consolidated Statements of Income.

To support our Choice Gas Program customers, we buy, sell and deliver natural gas at competitive prices by managing commodity price risk. As a result of these activities, this area of our business is exposed to risks associated with changes in the market price of natural gas. We manage our exposure to such risks using over-the-counter and exchange traded options and swaps with counterparties in anticipation of forecasted purchases and sales during time frames ranging from July 2023 through October 2025. A portion of our over-the-counter swaps have been designated as cash flow hedges to mitigate the commodity price risk associated with deliveries under fixed price forward contracts to deliver gas to our Choice Gas Program customers. The gain or loss on these designated derivatives is reported in AOCI in the accompanying Consolidated Balance Sheets and reclassified into earnings in the same period that the underlying hedged item is recognized in earnings. Effectiveness of our hedging position is evaluated at least quarterly.

The contract or notional amounts and terms of the electric and natural gas derivative commodity instruments held at our Utilities are composed of both long and short positions. We had the following net long positions as of:

	June 30, 2023		December 31, 2022	
	Notional Amounts (MMBtus)	Maximum Term (months) ^(a)	Notional Amounts (MMBtus)	Maximum Term (months) ^(a)
Natural gas futures purchased	80,000	8	630,000	3
Natural gas options purchased, net	120,000	9	1,790,000	3
Natural gas basis swaps purchased	80,000	8	900,000	3
Natural gas over-the-counter swaps, net ^(b)	6,580,000	27	4,460,000	24
Natural gas physical contracts, net ^(c)	1,813,165	9	17,864,412	12

(a) Term reflects the maximum forward period hedged.

(b) As of June 30, 2023, 3,151,300 MMBtus of natural gas over-the-counter swaps purchases were designated as cash flow hedges.

(c) Volumes exclude derivative contracts that qualify for the normal purchases and normal sales exception permitted by GAAP.

We have certain derivative contracts which contain credit provisions. These credit provisions may require the Company to post collateral when credit exposure to the Company is in excess of a negotiated line of unsecured credit. At June 30, 2023, the Company posted \$0.6 million related to such provisions, which is included in Other current assets on the Consolidated Balance Sheets.

Derivatives by Balance Sheet Classification

As required by accounting standards for derivatives and hedges, fair values within the following tables are presented on a gross basis aside from the netting of asset and liability positions. Netting of positions is permitted in accordance with accounting standards for offsetting and under terms of our master netting agreements that allow us to settle positive and negative positions.

The following table presents the fair value and balance sheet classification of our derivative instruments (in thousands) as of:

	Balance Sheet Location	June 30, 2023	December 31, 2022
Derivatives designated as hedges:			
Asset derivative instruments:			
Current commodity derivatives	Derivative assets, current	\$ 408	\$ 118
Noncurrent commodity derivatives	Other assets, non-current	-	198
Liability derivative instruments:			
Current commodity derivatives	Derivative liabilities, current	-	(1,703)
Noncurrent commodity derivatives	Other assets, non-current	(64)	-
Total derivatives designated as hedges		\$ 344	\$ (1,387)
Derivatives not designated as hedges:			
Asset derivative instruments:			
Current commodity derivatives	Derivative assets, current	\$ (105)	\$ 464
Noncurrent commodity derivatives	Other assets, non-current	-	337
Liability derivative instruments:			
Current commodity derivatives	Derivative liabilities, current	(322)	(4,897)
Noncurrent commodity derivatives	Other deferred credits and other liabilities	(84)	(18)
Total derivatives not designated as hedges		\$ (511)	\$ (4,114)

Derivatives Designated as Hedge Instruments

The impacts of cash flow hedges on our Consolidated Statements of Comprehensive Income and Consolidated Statements of Income are presented below for the three and six months ended June 30, 2023 and 2022. Note that this presentation does not reflect the gains or losses arising from the underlying physical transactions; therefore, it is not indicative of the economic profit or loss we realized when the underlying physical and financial transactions were settled.

Derivatives in Cash Flow Hedging Relationships	Three Months Ended June 30,		Income Statement Location	Three Months Ended June 30,	
	2023	2022		2023	2022
	Amount of Gain/(Loss) Recognized in OCI (in thousands)			Amount of Gain/(Loss) Reclassified from AOCI into Income (in thousands)	
Interest rate swaps	\$ 713	\$ 713	Interest expense	\$ (713)	\$ (713)
Commodity derivatives	636	(4,371)	Fuel, purchased power and cost of natural gas sold	(489)	1,323
Total	\$ 1,349	\$ (3,658)		\$ (1,202)	\$ 610

Derivatives in Cash Flow Hedging Relationships	Six Months Ended June 30,		Income Statement Location	Six Months Ended June 30,	
	2023	2022		2023	2022
	Amount of Gain/(Loss) Recognized in OCI (in thousands)			Amount of Gain/(Loss) Reclassified from AOCI into Income (in thousands)	
Interest rate swaps	\$ 1,426	\$ 1,426	Interest expense	\$ (1,426)	\$ (1,426)
Commodity derivatives	1,463	(5,238)	Fuel, purchased power and cost of natural gas sold	(2,439)	3,577
Total	\$ 2,889	\$ (3,812)		\$ (3,865)	\$ 2,151

As of June 30, 2023, \$2.9 million of net losses related to our interest rate swaps and commodity derivatives are expected to be reclassified from AOCI into earnings within the next 12 months. As market prices fluctuate, estimated and actual realized gains or losses will change during future periods.

Derivatives Not Designated as Hedge Instruments

The following table summarizes the impacts of derivative instruments not designated as hedge instruments on our Consolidated Statements of Income for the three and six months ended June 30, 2023 and 2022. Note that this presentation does not reflect the expected gains or losses arising from the underlying physical transactions; therefore, it is not indicative of the economic profit or loss we realized when the underlying physical and financial transactions were settled.

Derivatives Not Designated as Hedging Instruments	Location of Gain/(Loss) on Derivatives Recognized in Income	Three Months Ended June 30,	
		2023	2022
		Amount of Gain/(Loss) on Derivatives Recognized in Income	
Commodity derivatives	Fuel, purchased power and cost of natural gas sold	\$ 394	\$ (2,332)
		\$ 394	\$ (2,332)

Derivatives Not Designated as Hedging Instruments	Location of Gain/(Loss) on Derivatives Recognized in Income	Six Months Ended June 30,	
		2023	2022
		Amount of Gain/(Loss) on Derivatives Recognized in Income	
Commodity derivatives	Fuel, purchased power and cost of natural gas sold	\$ (2,700)	\$ 1,162
		\$ (2,700)	\$ 1,162

As discussed above, financial instruments used in our regulated Gas Utilities are not designated as cash flow hedges. However, there is no earnings impact because the unrealized gains and losses arising from the use of these financial instruments are recorded as Regulatory assets or Regulatory liabilities. The net unrealized gains included in our Regulatory liability accounts related to these financial instruments in our Gas Utilities were \$0.1 million as of June 30, 2023. The net unrealized losses included in our Regulatory asset accounts related to these financial instruments were \$8.8 million as of December 31, 2022. For our Electric Utilities, the unrealized gains and losses arising from these derivatives are recognized in the Consolidated Statements of Income.

(8) Fair Value Measurements

We use the following fair value hierarchy for determining inputs for our financial instruments. Our assets and liabilities for financial instruments are classified and disclosed in one of the following fair value categories:

Level 1 — Unadjusted quoted prices available in active markets that are accessible at the measurement date for identical unrestricted assets or liabilities. Level 1 instruments primarily consist of highly liquid and actively traded financial instruments with quoted pricing information on an ongoing basis.

Level 2 — Pricing inputs include quoted prices for identical or similar assets and liabilities in active markets other than quoted prices in Level 1, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability and inputs that are derived principally from or corroborated by observable market data by correlation or other means.

Level 3 — Pricing inputs are generally less observable from objective sources. These inputs reflect management's best estimate of fair value using its own assumptions about the assumptions a market participant would use in pricing the asset or liability.

Assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. Our assessment of the significance of a particular input to the fair value measurement requires judgment and may affect the placement within the fair value hierarchy levels. We record transfers, if necessary, between levels at the end of the reporting period for all of our financial instruments.

Transfers into Level 3, if any, occur when significant inputs used to value the derivative instruments become less observable, such as a significant decrease in the frequency and volume in which the instrument is traded, negatively impacting the availability of observable pricing inputs. Transfers out of Level 3, if any, occur when the significant inputs become more observable, such as when the time between the valuation date and the delivery date of a transaction becomes shorter, positively impacting the availability of observable pricing inputs.

Recurring Fair Value Measurements

Derivatives

The commodity contracts for our Utilities segments are valued using the market approach and include forward strip pricing at liquid delivery points, exchange-traded futures, options, basis swaps and over-the-counter swaps and options (Level 2) for wholesale electric energy and natural gas contracts. For exchange-traded futures, options and basis swap assets and liabilities, fair value was derived using broker quotes validated by the exchange settlement pricing for the applicable contract. For over-the-counter instruments, the fair value is obtained by utilizing a nationally recognized service that obtains observable inputs to compute the fair value, which we validate by comparing our valuation with the counterparty. The fair value of these swaps includes a credit valuation adjustment based on the credit spreads of the counterparties when we are in an unrealized gain position or on our own credit spread when we are in an unrealized loss position. For additional information, see Note 1 of our Notes to the Consolidated Financial Statements in our 2022 Annual Report on Form 10-K.

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The following tables set forth, by level within the fair value hierarchy, our gross assets and gross liabilities and related offsetting of cash collateral and contractual netting rights as permitted by GAAP that were accounted for at fair value on a recurring basis for derivative instruments.

	As of June 30, 2023				
	Level 1	Level 2	Level 3	Cash Collateral and Counterparty Netting ^(a)	Total
	(in thousands)				
Assets:					
Commodity derivatives - Gas Utilities	\$ -	\$ 1,054	\$ -	\$ (751)	\$ 303
Total	\$ -	\$ 1,054	\$ -	\$ (751)	\$ 303
Liabilities:					
Commodity derivatives - Gas Utilities	\$ -	\$ 495	\$ -	\$ (25)	\$ 470
Total	\$ -	\$ 495	\$ -	\$ (25)	\$ 470

(a) As of June 30, 2023, \$0.8 million of our commodity derivative assets and none of our commodity derivative liabilities, as well as related gross collateral amounts, were subject to master netting agreements.

	As of December 31, 2022				
	Level 1	Level 2	Level 3	Cash Collateral and Counterparty Netting ^(a)	Total
	(in thousands)				
Assets:					
Commodity derivatives - Gas Utilities	\$ -	\$ 5,407	\$ -	\$ (4,290)	\$ 1,117
Total	\$ -	\$ 5,407	\$ -	\$ (4,290)	\$ 1,117
Liabilities:					
Commodity derivatives - Gas Utilities	\$ -	\$ 11,455	\$ -	\$ (4,837)	\$ 6,618
Total	\$ -	\$ 11,455	\$ -	\$ (4,837)	\$ 6,618

(a) As of December 31, 2022, \$4.3 million of our commodity derivative assets and \$4.8 million of our commodity derivative liabilities, as well as related gross collateral amounts, were subject to master netting agreements.

Pension and Postretirement Plan Assets

Fair value measurements also apply to the valuation of our pension and postretirement plan assets. Current accounting guidance requires employers to annually disclose information about the fair value measurements of their assets of a defined benefit pension or other postretirement plan. The fair value of these assets is presented in Note 13 to the Consolidated Financial Statements included in our 2022 Annual Report on Form 10-K.

Other Fair Value Measures

The carrying amount of cash and cash equivalents, restricted cash and equivalents and short-term borrowings approximates fair value due to their liquid or short-term nature. Cash, cash equivalents and restricted cash are classified in Level 1 in the fair value hierarchy. Notes payable consist of commercial paper borrowings and are not traded on an exchange; therefore, they are classified as Level 2 in the fair value hierarchy.

The following table presents the carrying amounts and fair values of financial instruments not recorded at fair value on the Consolidated Balance Sheets (in thousands) as of:

	June 30, 2023		December 31, 2022	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Long-term debt, including current maturities ^(a)	\$ 4,480,745	\$ 4,152,130	\$ 4,132,340	\$ 3,760,848

(a) Long-term debt is valued based on observable inputs available either directly or indirectly for similar liabilities in active markets and therefore is classified in Level 2 in the fair value hierarchy. Carrying amount of long-term debt is net of deferred financing costs.

(9) Other Comprehensive Income

We record deferred gains (losses) in AOCI related to interest rate swaps designated as cash flow hedges, commodity contracts designated as cash flow hedges and the amortization of components of our defined benefit plans. Deferred gains (losses) for our commodity contracts designated as cash flow hedges are recognized in earnings upon settlement, while deferred gains (losses) related to our interest rate swaps are recognized in earnings as they are amortized.

The following table details reclassifications out of AOCI and into Net income. The amounts in parentheses below indicate decreases to Net income in the Consolidated Statements of Income for the period, net of tax (in thousands):

	Location on the Consolidated Statements of Income	Amount Reclassified from AOCI		Amount Reclassified from AOCI	
		Three Months Ended June 30,		Six Months Ended June 30,	
		2023	2022	2023	2022
Gains and (losses) on cash flow hedges:					
Interest rate swaps	Interest expense	\$ (713)	\$ (713)	\$ (1,426)	\$ (1,426)
Commodity contracts	Fuel, purchased power and cost of natural gas sold	(489)	1,323	(2,439)	3,577
		\$ (1,202)	\$ 610	\$ (3,865)	\$ 2,151
Income tax	Income tax expense	295	(81)	911	(456)
Total reclassification adjustments related to cash flow hedges, net of tax		\$ (907)	\$ 529	\$ (2,954)	\$ 1,695
Amortization of components of defined benefit plans:					
Prior service cost	Operations and maintenance	\$ -	\$ 22	\$ -	\$ 46
Actuarial gain (loss)	Operations and maintenance	(43)	(187)	(87)	(375)
		\$ (43)	\$ (165)	\$ (87)	\$ (329)
Income tax	Income tax expense	27	60	43	99
Total reclassification adjustments related to defined benefit plans, net of tax		\$ (16)	\$ (105)	\$ (44)	\$ (230)
Total reclassifications		\$ (923)	\$ 424	\$ (2,998)	\$ 1,465

Balances by classification included within AOCI, net of tax on the accompanying Consolidated Balance Sheets were as follows (in thousands):

	Derivatives Designated as Cash Flow Hedges				Total
	Interest Rate Swaps	Commodity Derivatives	Employee Benefit Plans		
As of December 31, 2022	\$ (8,255)	\$ (1,200)	\$ (6,112)	\$	(15,567)
Other comprehensive income (loss) before reclassifications	-	(743)	-		(743)
Amounts reclassified from AOCI	1,099	1,855	44		2,998
As of June 30, 2023	\$ (7,156)	\$ (88)	\$ (6,068)	\$	(13,312)

	Derivatives Designated as Cash Flow Hedges				Total
	Interest Rate Swaps	Commodity Derivatives	Employee Benefit Plans		
As of December 31, 2021	\$ (10,384)	\$ 1,476	\$ (11,176)	\$	(20,084)
Other comprehensive income (loss) before reclassifications	-	(1,267)	-		(1,267)
Amounts reclassified from AOCI	1,011	(2,706)	230		(1,465)
As of June 30, 2022	\$ (9,373)	\$ (2,497)	\$ (10,946)	\$	(22,816)

(10) Employee Benefit Plans
Components of Net Periodic Expense

The components of net periodic expense were as follows (in thousands):

Three Months Ended June 30,	Defined Benefit Pension Plan		Supplemental Non-qualified Defined Benefit Plans		Non-pension Defined Benefit Postretirement Healthcare Plan	
	2023	2022	2023	2022	2023	2022
Service cost	\$ 614	\$ 982	\$ 770	\$ (1,355)	\$ 381	\$ 492
Interest cost	4,381	2,704	369	209	594	321
Expected return on plan assets	(4,672)	(4,630)	-	-	(55)	(31)
Net amortization of prior service costs	(17)	(17)	-	-	10	(73)
Recognized net actuarial loss	498	1,523	8	69	(3)	16
Net periodic expense (benefit)	\$ 804	\$ 562	\$ 1,147	\$ (1,077)	\$ 927	\$ 725

Six Months Ended June 30,	Defined Benefit Pension Plan		Supplemental Non-qualified Defined Benefit Plans		Non-pension Defined Benefit Postretirement Healthcare Plan	
	2023	2022	2023	2022	2023	2022
Service cost	\$ 1,228	\$ 1,964	\$ 1,684	\$ (1,747)	\$ 762	\$ 984
Interest cost	8,761	5,409	738	417	1,188	642
Expected return on plan assets	(9,344)	(9,261)	-	-	(111)	(62)
Net amortization of prior service costs	(34)	(34)	-	-	20	(145)
Recognized net actuarial loss (gain)	996	3,046	16	138	(6)	32
Net periodic expense (benefit)	\$ 1,607	\$ 1,124	\$ 2,438	\$ (1,192)	\$ 1,853	\$ 1,451

Plan Contributions

Contributions to the Defined Benefit Pension Plan are cash contributions made directly to the Pension Plan Trust account. Contributions to the Postretirement Healthcare and Supplemental Plans are made in the form of benefit payments. Contributions made in the first six months of 2023 and anticipated contributions for 2023 and 2024 are as follows (in thousands):

	Contributions Made Six Months Ended June 30, 2023	Additional Contributions Anticipated for 2023	Contributions Anticipated for 2024
Defined Benefit Pension Plan	\$ -	\$ -	\$ -
Non-pension Defined Benefit Postretirement Healthcare Plan	\$ 2,460	\$ 2,460	\$ 4,808
Supplemental Non-qualified Defined Benefit and Defined Contribution Plans	\$ 1,116	\$ 1,116	\$ 2,417

(11) Income Taxes

IRS Revenue Procedure 2023-15

On April 14, 2023, the IRS released Revenue Procedure 2023-15 “Amounts paid to improve tangible property.” The Revenue Procedure provides a safe harbor method of accounting that taxpayers may use to determine whether expenses to repair, maintain, replace, or improve natural gas transmission and distribution property must be capitalized. We are currently assessing the Revenue Procedure to determine its impact on our tax repairs deduction.

Income Tax Benefit (Expense) and Effective Tax Rates

Three Months Ended June 30, 2023 Compared to the Three Months Ended June 30, 2022

Income tax benefit for the three months ended June 30, 2023 was \$6.1 million compared to \$0.7 million reported for the same period in 2022. For the three months ended June 30, 2023, the effective tax rate was (29.8)% compared to (1.9)% for the same period in 2022. The lower effective tax rate was primarily due to a \$8.2 million tax benefit from a Nebraska income tax rate decrease compared to a \$3.8 million benefit from a similar Nebraska tax rate decrease in 2022 and \$2.3 million of lower wind PTCs driven by the March 2023 sale of Northern Iowa Windpower assets.

Six Months Ended June 30, 2023 Compared to the Six Months Ended June 30, 2022

Income tax (expense) for the six months ended June 30, 2023 was \$(8.6) million compared to \$(13.8) million reported for the same period in 2022. For the six months ended June 30, 2023, the effective tax rate was 5.6% compared to 8.1% for the same period in 2022. The lower effective tax rate was primarily due to a \$8.2 million tax benefit from a Nebraska income tax rate decrease compared to a \$3.8 million benefit from a similar Nebraska tax rate decrease in 2022 and \$3.0 million of lower wind PTCs driven by the March 2023 sale of Northern Iowa Windpower assets.

(12) Business Segment Information

Our Chief Executive Officer, who is considered to be our CODM, reviews financial information presented on an operating segment basis for purposes of making decisions, allocating resources and assessing financial performance. Our CODM assesses the performance of our operating segments based on operating income.

We conduct our business operations through two operating segments: Electric Utilities and Gas Utilities. Certain unallocated corporate expenses that support our operating segments are presented as Corporate and Other. Our operating segments are equivalent to our reportable segments.

Segment information was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenues:				
Electric Utilities				
External Customers	\$ 190,212	\$ 201,450	\$ 406,105	\$ 405,059
Inter-segment	2,861	2,929	5,677	5,858
Total Electric Utilities Revenue	193,073	204,379	411,782	410,917
Gas Utilities				
External Customers	221,071	272,745	926,337	892,706
Inter-segment	1,649	1,424	3,299	2,855
Total Gas Utilities Revenue	222,720	274,169	929,636	895,561
Inter-segment eliminations	(4,510)	(4,353)	(8,976)	(8,713)
Total Revenues	\$ 411,283	\$ 474,195	\$ 1,332,442	\$ 1,297,765
Operating income (loss):				
Electric Utilities	\$ 46,619	\$ 45,226	\$ 107,679	\$ 95,972
Gas Utilities	17,725	28,195	132,350	151,735
Corporate and Other	(828)	(1,032)	(1,630)	(1,965)
Total Operating Income	\$ 63,516	\$ 72,389	\$ 238,399	\$ 245,742

Total assets (net of inter-segment eliminations) as of:	June 30, 2023	December 31, 2022
Electric Utilities	\$ 3,914,037	\$ 3,929,721
Gas Utilities	5,252,521	5,578,282
Corporate and Other	242,537	110,227
Total assets	<u>\$ 9,409,095</u>	<u>\$ 9,618,230</u>

(13) Selected Balance Sheet Information

Accounts Receivable and Allowance for Credit Losses

Following is a summary of Accounts receivable, net included in the accompanying Consolidated Balance Sheets (in thousands) as of:

	June 30, 2023	December 31, 2022
Billed Accounts Receivable	\$ 192,444	\$ 267,571
Unbilled Revenue	71,097	243,574
Less: Allowance for Credit Losses	(3,191)	(2,953)
Account Receivable, net	<u>\$ 260,350</u>	<u>\$ 508,192</u>

Changes to allowance for credit losses for the six months ended June 30, 2023 and 2022, respectively, were as follows (in thousands):

	Balance at Beginning of Year	Additions Charged to Costs and Expenses	Recoveries and Other Additions	Write-offs and Other Deductions	Balance at June 30,
2023	\$ 2,953	\$ 4,278	\$ 1,444	\$ (5,484)	\$ 3,191
2022	\$ 2,113	\$ 4,239	\$ 1,266	\$ (4,425)	\$ 3,193

Materials, Supplies and Fuel

The following amounts by major classification are included in Materials, supplies and fuel on the accompanying Consolidated Balance Sheets (in thousands) as of:

	June 30, 2023	December 31, 2022
Materials and supplies	\$ 101,854	\$ 99,734
Fuel - Electric Utilities	7,757	3,115
Natural gas in storage	26,923	104,572
Total materials, supplies and fuel	<u>\$ 136,534</u>	<u>\$ 207,421</u>

Accrued Liabilities

The following amounts by major classification are included in Accrued liabilities on the accompanying Consolidated Balance Sheets (in thousands) as of:

	June 30, 2023	December 31, 2022
Accrued employee compensation, benefits and withholdings	\$ 62,031	\$ 62,890
Accrued property taxes	40,298	52,430
Customer deposits and prepayments	42,730	47,655
Accrued interest	40,715	33,798
Other (none of which is individually significant)	31,485	46,684
Total accrued liabilities	<u>\$ 217,259</u>	<u>\$ 243,457</u>

(14) Subsequent Events

Except as described in Notes 2 and 5, there have been no events subsequent to June 30, 2023, which would require recognition in the consolidated financial statements or disclosures.

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

The following discussions should be read in conjunction with the Notes contained herein and Management's Discussion and Analysis of Financial Condition and Results of Operations appearing in the 2022 Form 10-K.

Executive Summary

We are a customer-focused energy solutions provider with a mission of *Improving Life with Energy* for more than 1.3 million customers and 800+ communities we serve. Our vision to be the *Energy Partner of Choice* directs our strategy to invest in the safety, sustainability and growth of our eight-state service territory, including Arkansas, Colorado, Iowa, Kansas, Montana, Nebraska, South Dakota and Wyoming, and to meet our essential objective of providing safe, reliable and cost-effective electricity and natural gas.

We conduct our business operations through two operating segments: Electric Utilities and Gas Utilities. Certain unallocated corporate expenses that support our operating segments are presented as Corporate and Other. We conduct our utility operations under the name Black Hills Energy predominantly in rural areas of the Rocky Mountains and Midwestern states. We consider ourselves a domestic electric and natural gas utility company.

We have provided energy and served customers for 139 years, since the 1883 gold rush days in Deadwood, South Dakota. Throughout our history, the common thread that unites the past to the present is our commitment to serve our customers and communities. By being responsive and service focused, we can help our customers and communities thrive while meeting rapidly changing customer expectations.

Recent Developments

Business Segment Recent Developments

Electric Utilities

- See [Note 2](#) of the Condensed Notes to Consolidated Financial Statements for recent rate review activity for Wyoming Electric.
- On July 31, 2023, Colorado Electric issued a request for proposals for 400 MW of new resources to be in service between 2026 and 2029 to achieve objectives in its Clean Energy Plan. In March 2023, the CPUC approved a unanimous settlement for Colorado Electric's Clean Energy Plan filed May 25, 2022. The Clean Energy Plan supports Colorado Electric's voluntary election to reduce carbon emissions 80% from 2005 levels by 2030.
- On July 24, 2023, Wyoming Electric set a new all-time and summer peak load of 312 MW, surpassing the previous peak of 294 MW set on July 21, 2022.

Gas Utilities

- See [Note 2](#) of the Condensed Notes to Consolidated Financial Statements for recent rate review activity for Colorado Gas, RMNG and Wyoming Gas.

Corporate and Other

- On June 16, 2023, we filed a new shelf registration statement with the SEC and entered into a new Equity Distribution Sales Agreement. The new Equity Distribution Sales Agreement is similar to our prior agreement and allows us to sell shares of common stock up to an aggregate of \$400 million through our ATM program utilizing our shelf registration statement. See [Note 5](#) of the Condensed Notes to Consolidated Financial Statements for further information.
- On March 7, 2023, we completed a public debt offering of \$350 million, 5.95% 5-year senior unsecured notes due March 15, 2028. The proceeds from the offering were used to repay notes outstanding under our commercial paper program and for other general corporate purposes. See [Note 5](#) of the Condensed Notes to Consolidated Financial Statements for further information.

Results of Operations

Certain lines of business in which we operate are highly seasonal, and revenue from, and certain expenses for, such operations may fluctuate significantly among quarterly periods. Demand for electricity and natural gas is sensitive to seasonal cooling, heating and industrial load requirements. In particular, the normal peak usage season for our Electric Utilities is June through August while the normal peak usage season for our Gas Utilities is November through March. Significant earnings variances can be expected between the Gas Utilities segment's peak and off-peak seasons. Due to this seasonal nature, our results of operations for the three and six months ended June 30, 2023 and 2022, and our financial condition as of June 30, 2023 and December 31, 2022, are not necessarily indicative of the results of operations and financial condition to be expected as of or for any other period or for the entire year.

Segment information does not include inter-segment eliminations and all amounts are presented on a pre-tax basis unless otherwise indicated. Minor differences in amounts may result due to rounding.

Consolidated Summary and Overview

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands, except per share amounts)			
Operating income (loss):				
Electric Utilities	\$ 46,619	\$ 45,226	\$ 107,679	\$ 95,972
Gas Utilities	17,725	28,195	132,350	151,735
Corporate and Other	(828)	(1,032)	(1,630)	(1,965)
Operating income	63,516	72,389	238,399	245,742
Interest expense, net	(41,521)	(38,764)	(85,025)	(77,309)
Other income (expense), net	(1,540)	1,563	(866)	2,267
Income tax benefit (expense)	6,089	658	(8,584)	(13,830)
Net income	26,544	35,846	143,924	156,870
Net income attributable to non-controlling interest	(3,491)	(2,431)	(6,787)	(5,929)
Net income available for common stock	\$ 23,053	\$ 33,415	\$ 137,137	\$ 150,941
Total earnings per share of common stock, Diluted	\$ 0.35	\$ 0.52	\$ 2.06	\$ 2.33

Three Months Ended June 30, 2023 Compared to the Three Months Ended June 30, 2022:

The variance to the prior year included the following:

- Electric Utilities' operating income increased \$1.4 million primarily due to new rates and rider recovery and increased transmission services and off-system excess energy sales mostly offset by higher operating expenses and unfavorable weather.
- Gas Utilities' operating income decreased \$10.5 million primarily due to higher operating expenses and a prior year one-time true-up of carrying costs accrued on Winter Storm Uri regulatory assets partially offset by new rates and rider recovery and favorable mark-to-market adjustments on wholesale commodity contracts;
- Interest expense increased \$2.8 million due to higher interest rates;
- Other expense increased \$3.1 million primarily due to higher costs for our non-qualified benefit plans driven by market performance and higher non-service benefit plan costs driven by higher discount rates;
- Income tax benefit increased \$5.4 million driven by lower pre-tax income and a lower effective tax rate primarily due to a tax benefit from a Nebraska income tax rate decrease partially offset by a benefit from a similar Nebraska tax rate decrease in 2022 and lower wind PTCs driven by the March 2023 sale of Northern Iowa Windpower assets; and
- Net income attributable to non-controlling interest increased \$1.1 million due to higher net income from Black Hills Colorado IPP primarily driven by increased fired-engine hours.

Six Months Ended June 30, 2023 Compared to the Six Months Ended June 30, 2022:

The variance to the prior year included the following:

- Electric Utilities' operating income increased \$11.7 million primarily due to new rates and rider recovery, a one-time gain on the planned sale of Northern Iowa Windpower assets, and increased transmission services and off-system excess energy sales partially offset by higher operating expenses and unfavorable weather.
- Gas Utilities' operating income decreased \$19.4 million primarily due to higher operating expenses, a prior year one-time true-up of carrying costs accrued on Winter Storm Uri regulatory assets, unfavorable mark-to-market adjustments on wholesale commodity contracts and unfavorable weather partially offset by new rates and rider recovery and retail customer growth and demand;
- Interest expense increased \$7.7 million due to higher interest rates;
- Other expense, net increased \$3.1 million primarily due to higher costs for our non-qualified benefit plans driven by market performance and higher non-service benefit plan costs driven by higher discount rates; and
- Income tax benefit increased \$5.2 million driven by lower pre-tax income and a lower effective tax rate primarily due to a tax benefit from a Nebraska income tax rate decrease partially offset by a benefit from a similar Nebraska tax rate decrease in 2022 and lower wind PTCs driven by the March 2023 sale of Northern Iowa Windpower assets.

Segment Operating Results

A discussion of operating results from our business segments follows.

Non-GAAP Financial Measures

The following discussion includes financial information prepared in accordance with GAAP, as well as another financial measure, Electric and Gas Utility margin, that is considered a "non-GAAP financial measure." Generally, a non-GAAP financial measure is a numerical measure of a company's financial performance, financial position or cash flows that excludes (or includes) amounts that are included in (or excluded from) the most directly comparable measure calculated and presented in accordance with GAAP. Electric and Gas Utility margin (revenue less cost of sales) is a non-GAAP financial measure due to the exclusion of operation and maintenance expenses, depreciation and amortization expenses, and property and production taxes from the measure.

Electric Utility margin is calculated as operating revenue less cost of fuel and purchased power. Gas Utility margin is calculated as operating revenue less cost of natural gas sold. Our Electric and Gas Utility margin is impacted by the fluctuations in power and natural gas purchases and other fuel supply costs. However, while these fluctuating costs impact Electric and Gas Utility margin as a percentage of revenue, they only impact total Electric and Gas Utility margin if the costs cannot be passed through to our customers.

Our Electric and Gas Utility margin measure may not be comparable to other companies' Electric and Gas Utility margin measures. Furthermore, this measure is not intended to replace operating income as determined in accordance with GAAP as an indicator of operating performance.

Electric Utilities

Operating results for the Electric Utilities were as follows (in thousands):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	Variance	2023	2022	Variance
Revenue:						
Electric - regulated	\$ 182,822	\$ 194,197	\$ (11,375)	\$ 389,523	\$ 389,921	\$ (398)
Other - non-regulated	10,251	10,182	69	22,259	20,995	1,264
Total revenue	193,073	204,379	(11,306)	411,782	410,917	865
Cost of fuel and purchased power:						
Electric - regulated	36,038	55,723	(19,685)	90,688	107,202	(16,514)
Other - non-regulated	366	909	(543)	1,132	1,840	(708)
Total cost of fuel and purchased power	36,404	56,632	(20,228)	91,820	109,042	(17,222)
Electric Utility margin (non-GAAP)	156,669	147,747	8,922	319,962	301,875	18,087
Operations and maintenance	74,219	69,000	5,219	141,373	138,669	2,704
Depreciation and amortization	35,831	33,521	2,310	70,910	67,234	3,676
Total operating expenses	110,050	102,521	7,529	212,283	205,903	6,380
Operating income	\$ 46,619	\$ 45,226	\$ 1,393	\$ 107,679	\$ 95,972	\$ 11,707

Three Months Ended June 30, 2023, Compared to the Three Months Ended June 30, 2022:

Electric Utility margin increased as a result of the following:

	(in millions)	
Transmission services and off-system excess energy sales	\$	4.2
New rates and rider recovery		4.2
Integrated Generation ^(a)		2.9
Weather		(2.4)
	\$	8.9

(a) Primarily driven by favorable mining volumes due to a prior year planned outage and increased Black Hills Colorado IPP fired-engine hours.

Operations and maintenance expense increased primarily due to \$3.8 million of higher generation expenses driven by planned outages and higher materials costs and \$1.9 million of higher employee-related expenses.

Depreciation and amortization increased primarily due to a higher asset base driven by current year and prior year capital expenditures.

Six Months Ended June 30, 2023, Compared to the Six Months Ended June 30, 2022:

Electric Utility margin increased as a result of the following:

	(in millions)	
New rates and rider recovery	\$	9.2
Transmission services and off-system excess energy sales		6.5
Integrated Generation ^(a)		5.2
Weather		(2.2)
Other		(0.6)
	\$	18.1

(a) Primarily driven by favorable mining volumes due to a prior year planned outage, mining contract pricing and increased Black Hills Colorado IPP fired-engine hours.

Operations and maintenance expense increased primarily due to \$6.2 million of higher mining and generation expenses driven by planned outages and higher fuel and materials costs and \$5.4 million of higher employee-related expenses partially offset by a one-time \$7.7 million gain on the planned sale of Northern Iowa Windpower assets. Other favorable variances, none of which were individually significant, comprised the remainder of the difference when compared to the same period in the prior year.

Depreciation and amortization increased primarily due to a higher asset base driven by current year and prior year capital expenditures.

Operating Statistics

	Revenue (in thousands)				Quantities Sold (MWh)			
	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	2023	2022	2023	2022
Residential	\$ 47,375	\$ 52,853	\$ 107,172	\$ 115,102	302,879	323,775	696,749	715,357
Commercial	63,530	68,756	125,602	133,109	498,239	509,830	1,009,029	1,000,248
Industrial	34,519	38,190	73,467	73,598	502,146	464,928	958,088	928,696
Municipal	4,204	4,992	8,471	9,567	37,571	40,240	73,337	75,545
Subtotal Retail Revenue - Electric	149,628	164,791	314,712	331,377	1,340,835	1,338,773	2,737,203	2,719,846
Contract Wholesale	3,206	4,339	8,610	10,262	118,344	150,645	263,135	332,852
Off-system/Power Marketing Wholesale	5,959	8,666	22,083	15,820	123,258	144,425	380,114	304,866
Other ^(a)	24,029	16,400	44,118	32,463	-	-	-	-
Total Regulated	182,822	194,197	389,523	389,921	1,582,437	1,633,843	3,380,452	3,357,564
Non-Regulated ^(b)	10,251	10,182	22,259	20,995	22,848	72,770	77,194	161,864
Total Revenue and Quantities Sold	\$ 193,073	\$ 204,379	\$ 411,782	\$ 410,917	1,605,285	1,706,613	3,457,646	3,519,428
Other Uses, Losses or Generation, net ^(c)					109,628	98,323	247,933	211,609
Total Energy					1,714,913	1,804,936	3,705,579	3,731,037

(a) Primarily related to transmission revenues from the Common Use System.

(b) Includes Integrated Generation and non-regulated services to our retail customers under the Service Guard Comfort Plan and Tech Services.

(c) Includes company uses and line losses.

	Revenue (in thousands)				Quantities Sold (MWh)			
	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	2023	2022	2023	2022
Colorado Electric	\$ 62,338	\$ 71,197	\$ 136,133	\$ 146,642	536,754	568,890	1,141,298	1,188,478
South Dakota Electric	70,950	76,195	157,563	154,792	545,224	600,172	1,254,044	1,244,395
Wyoming Electric	49,939	47,146	96,610	89,235	500,459	464,781	985,110	924,691
Integrated Generation	9,846	9,841	21,476	20,248	22,848	72,770	77,194	161,864
Total Revenue and Quantities Sold	\$ 193,073	\$ 204,379	\$ 411,782	\$ 410,917	1,605,285	1,706,613	3,457,646	3,519,428

Quantities Generated and Purchased by Fuel Type (MWh)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Generated:				
Coal		620,952	589,438	1,295,899
Natural Gas and Oil		451,237	262,157	952,303
Wind		150,622	244,456	381,346
Total Generated		1,222,811	1,096,051	2,629,548
Purchased:				
Coal, Natural Gas, Oil and Other Market Purchases		421,037	608,045	910,853
Wind		71,065	100,840	165,178
Total Purchased		492,102	708,885	1,076,031
Total Generated and Purchased		1,714,913	1,804,936	3,705,579

Quantities Generated and Purchased (MWh)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Generated:				
Colorado Electric	120,374	112,117	280,575	197,548
South Dakota Electric	447,492	367,936	1,011,536	823,541
Wyoming Electric	215,169	225,720	445,731	430,318
Integrated Generation	439,776	390,278	891,706	858,072
Total Generated	1,222,811	1,096,051	2,629,548	2,309,479
Purchased:				
Colorado Electric	128,359	255,969	325,983	556,366
South Dakota Electric	104,333	248,625	261,305	445,688
Wyoming Electric	246,165	185,932	455,958	376,737
Integrated Generation	13,245	18,359	32,785	42,767
Total Purchased	492,102	708,885	1,076,031	1,421,558
Total Generated and Purchased	1,714,913	1,804,936	3,705,579	3,731,037

Degree Days	Three Months Ended June 30,				Six Months Ended June 30,			
	2023		2022		2023		2022	
	Actual	Variance from Normal	Actual	Variance from Normal	Actual	Variance from Normal	Actual	Variance from Normal
Heating Degree Days:								
Colorado Electric	588	(5)%	556	(5)%	3,339	6%	3,271	5%
South Dakota Electric	1,035	(5)%	1,221	13%	4,481	3%	4,469	3%
Wyoming Electric	1,081	(9)%	1,159	(3)%	4,382	5%	4,291	2%
Combined ^(a)	840	(6)%	904	3%	3,940	4%	3,885	4%
Cooling Degree Days:								
Colorado Electric	131	(56)%	333	24%	131	(56)%	333	24%
South Dakota Electric	36	(67)%	107	15%	36	(67)%	107	15%
Wyoming Electric	14	(82)%	121	102%	14	(82)%	121	102%
Combined ^(a)	75	(60)%	213	28%	75	(60)%	213	28%

(a) Degree days are calculated based on a weighted average of total customers by state.

Contracted generating facilities availability by fuel type ^(a)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Coal ^(b)	92.0%	82.1%	92.4%	86.3%
Natural gas and diesel oil	93.5%	95.1%	93.9%	95.2%
Wind	93.0%	93.8%	93.4%	94.7%
Total Availability	93.0%	91.4%	93.4%	92.7%
Wind Capacity Factor	34.4%	39.8%	41.2%	40.9%

(a) Availability and Wind Capacity Factor are calculated using a weighted average based on capacity of our generating fleet.

(b) 2022 included planned outages at Neil Simpson II and Wyodak Plant.

Gas Utilities

Operating results for the Gas Utilities were as follows (in thousands):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	Variance	2023	2022	Variance
Revenue:						
Natural gas - regulated	\$ 206,763	\$ 258,349	\$ (51,586)	\$ 881,536	\$ 854,807	\$ 26,729
Other - non-regulated	15,957	15,821	136	48,100	40,755	7,345
Total revenue	222,720	274,169	(51,450)	929,636	895,561	34,074
Cost of natural gas sold:						
Natural gas - regulated	81,540	126,704	(45,164)	535,646	510,416	25,230
Other - non-regulated	3,415	5,040	(1,625)	20,275	6,055	14,220
Total cost of natural gas sold	84,955	131,744	(46,789)	555,921	516,471	39,450
Gas Utility margin (non-GAAP)	137,765	142,425	(4,660)	373,715	379,090	(5,375)
Operations and maintenance	91,223	83,689	7,534	186,050	170,130	15,920
Depreciation and amortization	28,817	30,541	(1,724)	55,315	57,225	(1,910)
Total operating expenses	120,040	114,230	5,810	241,365	227,355	14,010
Operating income	\$ 17,725	\$ 28,195	\$ (10,470)	\$ 132,350	\$ 151,735	\$ (19,385)

Three Months Ended June 30, 2023, Compared to the Three Months Ended June 30, 2022:

Gas Utility margin decreased as a result of the following:

	(in millions)	
Prior year true-up of Winter Storm Uri carrying costs ^(a)	\$	(10.3)
Weather		(0.7)
Mark-to-market on non-utility natural gas commodity contracts		3.0
New rates and rider recovery		2.6
Residential growth and usage		0.8
Other		(0.1)
	\$	(4.7)

(a) In certain jurisdictions, we have commission approval to recover carrying costs on Winter Storm Uri regulatory assets which offset increased interest expense. During the second quarter of 2022, we accrued a one-time, \$10.3 million true-up of these carrying costs to reflect commission authorized rates.

Operations and maintenance expense increased primarily due to \$6.0 million of higher employee-related expenses and \$0.5 million of higher materials and outside services expenses.

Depreciation and amortization was comparable to the same period in the prior year.

Six Months Ended June 30, 2023, Compared to the Six Months Ended June 30, 2022:

Gas Utility margin decreased as a result of the following:

	(in millions)	
Prior year true-up of Winter Storm Uri carrying costs ^(a)	\$	(10.3)
Mark-to-market on non-utility natural gas commodity contracts		(4.0)
Weather		(2.9)
New rates and rider recovery		7.8
Non-residential retail growth and demand		2.9
Residential growth and usage		1.6
Other		(0.5)
	\$	(5.4)

(a) In certain jurisdictions, we have commission approval to recover carrying costs on Winter Storm Uri regulatory assets which offset increased interest expense. During the second quarter of 2022, we accrued a one-time, \$10.3 million true-up of these carrying costs to reflect commission authorized rates.

Operations and maintenance expense increased primarily due to \$11.9 million of higher employee-related expenses and \$3.1 million of higher materials and outside services expenses.

Depreciation and amortization was comparable to the same period in the prior year.

Operating Statistics

	Revenue (in thousands)				Quantities Sold and Transported (Dth)			
	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	2023	2022	2023	2022
Residential	\$ 116,577	\$ 143,127	\$ 545,153	\$ 519,171	7,596,797	8,523,755	37,532,381	40,338,005
Commercial	44,278	61,182	226,801	219,824	4,058,186	4,499,245	18,062,258	19,130,948
Industrial	7,109	16,875	16,308	26,113	1,408,612	2,150,532	2,447,045	3,315,115
Other	2,804	2,300	4,248	5,072	-	-	-	-
Total Distribution	170,768	223,483	792,510	770,179	13,063,595	15,173,532	58,041,684	62,784,068
Transportation and Transmission	35,995	34,865	89,026	84,627	34,226,643	37,623,610	81,406,183	82,668,813
Total Regulated	206,763	258,349	881,536	854,807	47,290,238	52,797,142	139,447,867	145,452,881
Non-regulated Services ^(a)	15,957	15,821	48,100	40,755	-	-	-	-
Total Revenue and Quantities Sold	\$ 222,720	\$ 274,169	\$ 929,636	\$ 895,561	47,290,238	52,797,142	139,447,867	145,452,881

(a) Includes Black Hills Energy Services and non-regulated services under the Service Guard Comfort Plan, Tech Services and HomeServe.

	Revenue (in thousands)				Quantities Sold and Transported (Dth)			
	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022	2023	2022	2023	2022
Arkansas Gas	\$ 35,231	\$ 51,815	\$ 161,868	\$ 179,624	5,250,053	5,445,450	16,725,803	18,373,186
Colorado Gas	51,463	50,328	196,349	170,381	5,639,570	6,365,777	19,694,864	19,784,461
Iowa Gas	23,896	42,050	149,353	162,629	7,111,510	8,178,613	21,402,918	23,554,795
Kansas Gas	23,533	35,482	95,754	94,333	7,123,557	8,762,807	18,297,059	19,751,874
Nebraska Gas	57,614	62,337	222,564	196,571	15,724,842	16,714,480	42,805,632	44,050,254
Wyoming Gas	30,983	32,157	103,748	92,023	6,440,706	7,330,015	20,521,591	19,938,311
Total Revenue and Quantities Sold	\$ 222,720	\$ 274,169	\$ 929,636	\$ 895,561	47,290,238	52,797,142	139,447,867	145,452,881

	Three Months Ended June 30,				Six Months Ended June 30,			
	2023		2022		2023		2022	
	Actual	Variance from Normal	Actual	Variance from Normal	Actual	Variance from Normal	Actual	Variance from Normal
Heating Degree Days								
Arkansas Gas ^(a)	278	(15)%	271	(18)%	1,944	(18)%	2,370	(3)%
Colorado Gas	900	2%	817	(14)%	3,987	8%	3,763	(3)%
Iowa Gas	583	(20)%	803	17%	3,830	(9)%	4,382	8%
Kansas Gas ^(a)	370	(18)%	436	(2)%	2,743	(6)%	3,020	4%
Nebraska Gas	516	(21)%	679	7%	3,570	(4)%	3,720	1%
Wyoming Gas	1,149	(3)%	1,326	9%	4,773	14%	4,598	4%
Combined ^(b)	674	(10)%	768	2%	3,870	1%	3,933	2%

(a) Arkansas Gas and Kansas Gas have weather normalization mechanisms that mitigate the weather impact on gross margins.

(b) The combined heating degree days are calculated based on a weighted average of total customers by state excluding Kansas Gas due to its weather normalization mechanism. Arkansas Gas is partially excluded based on the weather normalization mechanism in effect from November through April.

Corporate and Other

Corporate and Other operating results were as follows (in thousands):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	Variance	2023	2022	Variance
Operating (loss)	\$ (828)	\$ (1,032)	\$ 204	\$ (1,630)	\$ (1,965)	\$ 335

Three Months Ended June 30, 2023, Compared to the Three Months Ended June 30, 2022:

Operating loss was comparable to the same period in the prior year.

Six Months Ended June 30, 2023, Compared to the Six Months Ended June 30, 2022:

Operating loss was comparable to the same period in the prior year.

Consolidated Interest Expense, Other Income and Income Tax Expense

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	Variance	2023	2022	Variance
	(in thousands)					
Interest expense, net	\$ (41,521)	\$ (38,764)	\$ (2,757)	\$ (85,025)	\$ (77,309)	\$ (7,716)
Other income (expense), net	(1,540)	1,563	(3,103)	(866)	2,267	(3,133)
Income tax benefit (expense)	6,089	658	5,431	(8,584)	(13,830)	5,246

Three Months Ended June 30, 2023, Compared to the Three Months Ended June 30, 2022:

Interest expense, net

The increase in Interest expense, net was due to higher interest rates.

Other income (expense), net

Other expense, net increased due to higher costs for our non-qualified benefit plans which were driven by market performance and higher non-service benefit plan costs primarily driven by higher discount rates.

Income tax benefit

Income tax benefit increased primarily due to lower pre-tax income and a lower effective tax rate. For the three months ended June 30, 2023, the effective tax rate was (29.8)% compared to (1.9)% for the same period in 2022. See [Note 11](#) of the Condensed Notes to Consolidated Financial Statements for discussion of effective tax rate variances.

Six Months Ended June 30, 2023, Compared to the Six Months Ended June 30, 2022:

Interest expense, net

The increase in Interest expense, net was due to higher interest rates.

Other income (expense), net

Other expense, net increased primarily due to higher costs for our non-qualified benefit plans which were driven by market performance and higher non-service benefit plan costs driven by higher discount rates.

Income tax (expense)

Income tax (expense) decreased primarily due to lower pre-tax income and a lower effective tax rate. For the six months ended June 30, 2023, the effective tax rate was 5.6% compared to 8.1% for the same period in 2022. See [Note 11](#) of the Condensed Notes to Consolidated Financial Statements for discussion of effective tax rate variances.

Liquidity and Capital Resources

There have been no material changes in Liquidity and Capital Resources from those reported in Item 7 of our 2022 Annual Report on Form 10-K except as described below.

CASH FLOW ACTIVITIES

The following tables summarize our cash flows for the six months ended June 30, 2023, (in thousands):

Operating Activities:

	Six Months Ended June 30,		
	2023	2022	Variance
Cash earnings (net income plus non-cash adjustments)	\$ 287,792	\$ 296,002	\$ (8,210)
Changes in certain operating assets and liabilities:			
Accounts receivable and other current assets	339,842	48,648	291,194
Accounts payable and accrued liabilities	(201,389)	(24,130)	(177,259)
Regulatory assets and liabilities	186,699	128,315	58,384
	<u>325,152</u>	<u>152,833</u>	<u>172,319</u>
Other operating activities	(7,873)	(6,805)	(1,068)
Net cash provided by operating activities	<u>\$ 605,071</u>	<u>\$ 442,030</u>	<u>\$ 163,041</u>

Six Months Ended June 30, 2023, Compared to the Six Months Ended June 30, 2022

Net cash provided by operating activities was \$163.0 million higher than the same period in 2022. The variance to the prior year was primarily attributable to:

- Cash earnings (net income plus non-cash adjustments) were \$8.2 million lower for the six months ended June 30, 2023 compared to the same period in the prior year primarily due to higher operating expenses and higher interest expense.
- Net inflows from changes in certain operating assets and liabilities were \$172.3 million higher, primarily attributable to:
 - o Cash inflows increased by \$291.2 million as a result of changes in accounts receivable and other current assets primarily driven by higher collections on pass-through revenues and lower natural gas in storage inventories driven by fluctuations in commodity prices and timing of injections and withdrawals;
 - o Cash outflows increased by \$177.3 million as a result of decreases in accounts payable and accrued liabilities primarily driven by fluctuations in commodity prices, payment timing of natural gas and power purchases and changes in other working capital requirements; and
 - o Cash inflows increased by \$58.4 million as a result of changes in our regulatory assets and liabilities primarily due to higher recoveries of deferred gas and fuel cost adjustments driven by fluctuations in commodity prices and higher recoveries of Winter Storm Uri incremental and carrying costs from customers.
- Cash outflows increased by \$1.1 million for other operating activities.

Investing Activities:

	Six Months Ended June 30,		
	2023	2022	Variance
Capital expenditures	\$ (261,739)	\$ (293,803)	\$ 32,064
Other investing activities	16,367	2,418	13,949
Net cash (used in) investing activities	\$ (245,372)	\$ (291,385)	\$ 46,013

Six Months Ended June 30, 2023, Compared to the Six Months Ended June 30, 2022

Net cash used in investing activities was \$46.0 million lower than the same period in 2022. The variance to the prior year was primarily attributable to:

- Cash outflows decreased by \$32.1 million as a result of lower capital expenditures which were driven by lower programmatic safety, reliability and integrity spending at our Gas and Electric Utilities; and
- Cash inflows increased by \$13.9 million for other investing activities primarily due to proceeds from the sale of Northern Iowa Windpower assets.

Financing Activities:

	Six Months Ended June 30,		
	2023	2022	Variance
Dividends paid on common stock	\$ (83,114)	\$ (77,136)	\$ (5,978)
Common stock issued	54,689	20,095	34,594
Short-term and long-term debt (repayments), net	(185,600)	(85,130)	(100,470)
Distributions to non-controlling interests	(9,017)	(8,604)	(413)
Other financing activities	(5,095)	1,682	(6,777)
Net cash (used in) financing activities	\$ (228,137)	\$ (149,093)	\$ (79,044)

Six Months Ended June 30, 2023, Compared to the Six Months Ended June 30, 2022

Net cash used in financing activities was \$79.0 million higher than the same period in 2022. The variance to the prior year was primarily attributable to:

- Cash outflows increased \$100.5 million due to short-term debt repayments in excess of short-term and long-term borrowings;
- Cash inflows increased \$34.6 million due to higher issuances of common stock;
- Cash outflows increased \$6.0 million due to increased dividends paid on common stock; and
- Cash outflows increased by \$6.8 million for other financing activities primarily due to financing costs in the March 7, 2023 debt offering.

CAPITAL RESOURCES**Shelf Registration Statement**

See [Recent Developments](#) above and [Note 5](#) of the Condensed Notes to Consolidated Financial Statements for recent updates on our shelf registration.

Short-term Debt

See [Note 5](#) of the Condensed Notes to Consolidated Financial Statements for information on our Revolving Credit Facility and CP Program.

Long-term Debt

See [Recent Developments](#) above and [Note 5](#) of the Condensed Notes to Consolidated Financial Statements for recent updates on our long-term debt.

Covenant Requirements

The Revolving Credit Facility and Wyoming Electric's financing agreements contain covenant requirements. We were in compliance with these covenants as of June 30, 2023. See [Note 5](#) of the Condensed Notes to Consolidated Financial Statements for more information.

Equity

See [Recent Developments](#) above and [Note 5](#) of the Condensed Notes to Consolidated Financial Statements for recent updates regarding equity.

Future Financing Plans

We will continue to assess debt and equity needs to support our capital investment plans and other strategic objectives. We plan to fund our capital plan and strategic objectives by using cash generated from operating activities and various financing alternatives, which could include our Revolving Credit Facility, our CP Program, the issuance of common stock under our ATM program or in an opportunistic block trade. We plan to re-finance a portion of our \$525 million, 4.25%, senior unsecured notes due November 30, 2023, at or before maturity date.

CREDIT RATINGS

After assessing the current operating performance, liquidity and credit ratings of the Company, management believes that the Company will have access to the capital markets at prevailing market rates for companies with comparable credit ratings.

The following table represents the credit ratings and outlook and risk profile of BHC at June 30, 2023:

Rating Agency	Senior Unsecured Rating	Outlook
S&P ^(a)	BBB+	Stable
Moody's ^(b)	Baa2	Stable
Fitch ^(c)	BBB+	Stable

(a) On February 17, 2023, S&P reported BBB+ rating and maintained a Stable outlook.

(b) On December 20, 2022, Moody's reported Baa2 rating and maintained a Stable outlook.

(c) On October 6, 2022, Fitch reported BBB+ rating and maintained a Stable outlook.

The following table represents the credit ratings of South Dakota Electric at June 30, 2023:

Rating Agency	Senior Secured Rating
S&P ^(a)	A
Fitch ^(b)	A

(a) On February 17, 2023, S&P reported A rating.

(b) On October 6, 2022, Fitch reported A rating.

CAPITAL REQUIREMENTS

Capital Expenditures

Capital Expenditures by Segment (in millions)	Actual		Forecasted			
	Six Months Ended June 30, 2023 ^(a)	2023 ^(b)	2024	2025	2026	2027
Electric Utilities	\$ 100	\$ 212	\$ 348	\$ 268	\$ 184	\$ 163
Gas Utilities	153	386	452	412	393	444
Corporate and Other	3	17	19	20	19	18
Incremental Projects ^(c)	-	-	-	-	104	75
	\$ 256	\$ 615	\$ 819	\$ 700	\$ 700	\$ 700

(a) Includes accruals for property, plant and equipment as disclosed in supplemental cash flow information in the [Consolidated Statements of Cash Flows](#) in the Consolidated Financial Statements.

(b) Includes actual capital expenditures for the six months ended June 30, 2023.

(c) These represent projects that are being evaluated by our segments for timing, cost and other factors.

Dividends

Dividends paid on our common stock totaled \$83.1 million for the six months ended June 30, 2023, or \$0.625 per share per quarter. On July 24, 2023, our board of directors declared a quarterly dividend of \$0.625 per share payable September 1, 2023, equivalent to an annual dividend of \$2.50 per share. The amount of any future cash dividends to be declared and paid, if any, will depend upon, among other things, our financial condition, funds from operations, the level of our capital expenditures, restrictions under our Revolving Credit Facility and our future business prospects.

Funding Status of Employee Benefit Plans

Based on the fair value of assets and estimated discount rate used to value benefit obligations as of June 30, 2023, we estimate the unfunded status of our employee benefit plans to be approximately \$30 million compared to \$35 million at December 31, 2022. We have implemented various de-risking strategies including lump sum buyouts, the purchase of annuities and the reduction of return-seeking assets over time to a more liability-hedged portfolio. As a result, recent capital markets volatility had a limited impact to our funded status and does not require interim re-measurement of our pension plan assets or defined benefit obligations.

Critical Accounting Estimates

A summary of our critical accounting estimates is included in our 2022 Annual Report on Form 10-K. There were no material changes made as of June 30, 2023.

New Accounting Pronouncements

Other than the pronouncements reported in our 2022 Annual Report on Form 10-K and those discussed in [Note 1](#) of the Condensed Notes to Consolidated Financial Statements, there have been no new accounting pronouncements that are expected to have a material effect on our financial position, results of operations or cash flows.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes to our quantitative and qualitative disclosures about market risk previously disclosed in Item 7A of our 2022 Annual Report on Form 10-K.

ITEM 4. CONTROLS AND PROCEDURES

Our Chief Executive Officer and Chief Financial Officer evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of June 30, 2023. Based on their evaluation, they have concluded that our disclosure controls and procedures were effective at June 30, 2023.

Our disclosure controls and procedures are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

During the quarter ended June 30, 2023, there have been no changes in our internal controls over financial reporting that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For information regarding legal proceedings, see Note 3 in Item 8 of our 2022 Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

There are no material changes to the risk factors previously disclosed in Item 1A of Part I in our 2022 Annual Report on Form 10-K.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The following table contains monthly information about our acquisitions of equity securities for the three months ended June 30, 2023:

Period	Total Number of Shares Purchased ^(a)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares That May Yet Be Purchased Under the Plans or Programs
April 1, 2023 - April 30, 2023	1	\$ 63.12	-	-
May 1, 2023 - May 31, 2023	755	66.14	-	-
June 1, 2023 - June 30, 2023	2	60.48	-	-
Total	758	\$ 66.12	-	-

(a) Shares were acquired under the share withholding provisions of the Amended and Restated 2015 Omnibus Incentive Plan for payment of taxes associated with the vesting of various equity compensation plans.

ITEM 4. MINE SAFETY DISCLOSURES

Information concerning mine safety violations or other regulatory matters required by Sections 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is included in [Exhibit 95](#).

ITEM 5. OTHER INFORMATION

None of our directors or officers adopted, modified, or terminated a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement during the three months ended June 30, 2023.

ITEM 6. EXHIBITS

Exhibits filed herewithin are designated by an asterisk (*). All exhibits not so designated are incorporated by reference to a prior filing, as indicated.

Exhibit Number	Description
3.2	Amended and Restated Bylaws of Black Hills Corporation dated April 24, 2023 (filed as Exhibit 3.2 to the Registrant's Form 8-K filed May 3, 2023).
10.1*	First Amendment to Fourth Amended and Restated Credit Agreement dated as of May 9, 2023 (relating to \$750 million Revolving Credit Facility), among Black Hills Corporation, as Borrower, the financial institutions party thereto, as Banks, and U.S. Bank, National Association, as Administrative Agent.
10.2	Equity Distribution Sales Agreement dated June 16, 2023 among Black Hills Corporation and the several Agents named therein (filed as Exhibit 1.1 to the Registrant's Form 8-K filed on June 20, 2023).
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a - 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a - 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes - Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes - Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes - Oxley Act of 2002.
95*	Mine Safety and Health Administration Safety Data.
101.INS*	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BLACK HILLS CORPORATION

/s/ Linden R. Evans

Linden R. Evans, President and
Chief Executive Officer

/s/ Kimberly F. Nooney

Kimberly F. Nooney, Senior Vice President and
Chief Financial Officer

Dated: August 3, 2023

**FIRST AMENDMENT TO
FOURTH AMENDED AND RESTATED CREDIT AGREEMENT**

THIS FIRST AMENDMENT TO FOURTH AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment") is made as of May 9, 2023 (the "Effective Date") by and among BLACK HILLS CORPORATION, a South Dakota corporation (the "Borrower"), the financial institutions listed on the signature pages hereto (the "Banks") and U.S. BANK NATIONAL ASSOCIATION, as Administrative Agent (in such capacity, the "Administrative Agent"), under that certain Fourth Amended and Restated Credit Agreement, dated as of July 19, 2021 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Credit Agreement"), by and among the Borrower, the Banks party thereto and the Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Credit Agreement, as amended by this Amendment (the "Amended Credit Agreement").

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Banks and the Administrative Agent agree to make certain modifications to the Credit Agreement; and

WHEREAS, the Borrower, the Banks and the Administrative Agent have so agreed on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Banks and the Administrative Agent hereby agree as follows.

ARTICLE I - AMENDMENT

Effective as of the Effective Date but subject to the satisfaction of the conditions precedent set forth in Article III below, the Credit Agreement is hereby amended as follows:

1.1 Subject to the satisfaction of the conditions precedent set forth in Article III below, the Credit Agreement (including the Pricing Schedule and Exhibits E-1, E-2 and E-3, but excluding all other Schedules and Exhibits, which shall remain in the original form delivered) is hereby amended to delete the stricken text (indicated in the same manner as the following example: ~~stricken text~~) and to add the double underlined text (indicated in the same manner as the following example: double-underlined text) as set forth in Exhibit A attached hereto.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants as follows:

2.1 This Amendment and the Amended Credit Agreement constitute legal, valid and binding obligations of the Borrower and are enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally.

2.2 As of the date hereof and after giving effect to the terms of this Amendment, (i) the Borrower shall be in full compliance with all of the terms and conditions of the Amended Credit Agreement, and no Default or Event of Default shall have occurred and be continuing and (ii) each of the representations and warranties of the Borrower set forth in the Amended Credit Agreement (except with respect to representations contained in the first sentence of Section 5.2 of the Amended Credit Agreement which are untrue as the result of information on Schedule 5.2 of the Amended Credit Agreement which has not yet been required to be updated pursuant to Section 7.6(c) of the Amended Credit Agreement) are true and correct in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of the date hereof, except that if any such representation or warranty relates solely to an earlier date it need only remain true in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of such date.

ARTICLE III - CONDITIONS PRECEDENT

This Amendment shall become effective on the Effective Date, *provided, however*, that the effectiveness of this Amendment is subject to the satisfaction of each of the following conditions precedent:

3.1 The Administrative Agent shall have received:

- a. Counterparts of this Amendment duly executed by the Borrower, the Administrative Agent and the Banks; and
- b. Such other documents and information as the Administrative Agent may reasonably request.

3.2 All legal matters incident to the execution and delivery of this Amendment shall be satisfactory to the Banks.

3.3 There has been no material adverse change in the business, assets, operations, performance or condition, financial or otherwise, of the Borrower and its subsidiaries taken as a whole, since the last day of the most recently audited financial year of the Borrower.

ARTICLE IV - GENERAL

4.1 Expenses. The Borrower agrees to reimburse the Administrative Agent upon demand for all reasonable out-of-pocket expenses paid or incurred by the Administrative Agent, including, without limitation, reasonable fees, charges and disbursements of outside counsel to the Administrative Agent incurred in connection with preparation, negotiation and execution of this Amendment and any other document required to be furnished herewith.

4.2 Counterparts. This Amendment may be executed in any number of counterpart signature pages, and by the different parties on different counterparts, each of which when executed shall be deemed an original but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart hereof via facsimile or electronic means shall for all purposes be as effective as delivery of an original counterpart.

4.3 Severability of Provisions. Any provision in this Amendment that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Amendment are declared to be severable.

4.4 Governing Law. This Amendment, and the rights and duties of the parties hereto, shall be construed and determined in accordance with the internal laws of the State of New York.

4.5 Successors; Enforceability.

The terms and provisions of this Amendment shall be binding upon the Borrower, the Administrative Agent and the Banks and their respective successors and assigns, and shall inure to the benefit of the Borrower, the Administrative Agent and the Banks and the successors and assigns of the Administrative Agent and the Banks.

4.6 Reference to and Effect on the Credit Agreement.

- a. Upon the effectiveness of this Amendment, on and after the date hereof, each reference in the Amended Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of like import shall mean and be a reference to the Credit Agreement, as amended and modified hereby.
- b. Except as specifically amended above, the Credit Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith (including, without limitation, all of the Credit Documents) shall remain in full force and effect and are hereby ratified and confirmed.
- c. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Banks, nor constitute a waiver of any provision of the Amended Credit Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.
- d. This Amendment shall constitute a Credit Document.

4.7 Headings. Section headings used in this Amendment are for reference only and shall not affect the construction of this Amendment.

(signature pages follow)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized as of the date first written above.

BLACK HILLS CORPORATION,
as the Borrower

By: /s/ Kimberly F. Nooney

Name: Kimberly F. Nooney

Title: Senior Vice President - Chief Financial Officer and Treasurer

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

U.S. BANK NATIONAL ASSOCIATION,
as a Bank and as Administrative Agent

By: /s/ John M. Eyerman
Name: John M. Eyerman
Title: Senior Vice President

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

JPMORGAN CHASE BANK, N.A.,
as a Bank

By: /s/ Khawaja Tariq
Name: Khawaja Tariq
Title: Vice President

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

BANK OF AMERICA, N.A.,
as a Bank

By: /s/ Michael J. Haas
Name: Michael J. Haas
Title: Sr. Vice President

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as a Bank

By: /s/ Whitney Shellenberg
Name: Whitney Shellenberg
Title: Vice President

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

BMO HARRIS FINANCING, INC.,
as a Bank

By: /s/ Alex Wu
Name: Alex Wu
Title: Vice President

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

COBANK, ACB,
as a Bank

By: /s/ Kelli Cholas
Name: Kelli Cholas
Title: Assistant Corporate Secretary

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

MIZUHO BANK, LTD.,
as a Bank

By: /s/ Edward Sacks
Name: Edward Sacks
Title: Authorized Signatory

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

MUFG BANK, LTD.,
as a Bank

By: /s/ Viet-Linh Fujitaki
Name: Viet-Linh Fujitaki
Title: Director

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

ROYAL BANK OF CANADA,
as a Bank

By: /s/ Meg Donnelly
Name: Meg Donnelly
Title: Authorized Signatory

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

THE BANK OF NOVA SCOTIA,
as a Bank

By: /s/ David Dewar
Name: David Dewar
Title: Director

Signature Page to
First Amendment to
Black Hills Fourth Amendment and Restated Credit Amendment

FOURTH AMENDED AND RESTATED CREDIT AGREEMENT

DATED AS OF

July 19, 2021,
as amended by the First Amendment thereto, dated as of May 9, 2023

AMONG

BLACK HILLS CORPORATION,
as the Borrower,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Banks,

U.S. BANK NATIONAL ASSOCIATION,
as Administrative Agent,

JPMORGAN CHASE BANK, N.A.,
as Syndication Agent,

BANK OF AMERICA, N.A. and
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Co-Documentation Agents

U.S. BANK NATIONAL ASSOCIATION,
JPMORGAN CHASE BANK, N.A.,
BOFA SECURITIES, INC.,
and
WELLS FARGO SECURITIES, LLC,
as Co-Lead Arrangers and Co-Book Runners

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FOURTH AMENDED AND RESTATED CREDIT AGREEMENT

FOURTH AMENDED AND RESTATED CREDIT AGREEMENT, dated as of July 19, 2021, as amended by the First Amendment thereto dated as of May 9, 2023, among BLACK HILLS CORPORATION, a South Dakota corporation (the “*Borrower*”), the financial institutions from time to time party hereto (each a “*Bank*,” and collectively the “*Banks*”), JPMORGAN CHASE BANK, N.A., in its capacity as syndication agent for the Banks (in such capacity, the “*Syndication Agent*”), BANK OF AMERICA, N.A. in its capacity as a co-documentation agent for the Banks and WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as a co-documentation agent for the Banks (collectively, in such capacities, the “*Co-Documentation Agents*”), and U.S. BANK NATIONAL ASSOCIATION, in its capacity as administrative agent for the Banks hereunder (including its branches and Affiliates, in such capacity, the “*Administrative Agent*”).

WITNESSETH THAT:

WHEREAS, the Borrower, the Banks, the Syndication Agent, the Co-Documentation Agents and the Administrative Agent wish to amend and restate the Third Amended and Restated Credit Agreement, dated as of July 30, 2018 (as amended or modified prior to the effectiveness hereof, the “*Existing Credit Agreement*”), to which the Borrower and certain of the Banks are subject. The Borrower, the Banks, the Syndication Agent, the Co-Documentation Agents and the Administrative Agent have agreed to enter into this Agreement in order to (i) amend and restate the Existing Credit Agreement in its entirety pursuant to the terms hereof, and the Banks have each agreed to make such loans and other financial accommodations to the Borrower as set forth herein; (ii) re-evidence the “*Obligations*” under, and as defined in, the Existing Credit Agreement, which shall be repayable in accordance with the terms of this Agreement; and (iii) set forth the terms and conditions under which the existing loans under the Existing Credit Agreement shall be reallocated as Loans (as defined below) owing to the Banks under this Agreement in accordance with each Bank’s Percentage on the Effective Date;

WHEREAS, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities of the parties under the Existing Credit Agreement or be deemed to evidence or constitute full repayment of such obligations and liabilities, but that this Agreement amend and restate in its entirety the Existing Credit Agreement and re-evidence the obligations and liabilities of the Borrower outstanding thereunder, which shall be payable in accordance with the terms hereof;

WHEREAS, it is also the intent of the Borrower to confirm that all obligations under the Existing Credit Agreement and “*Credit Documents*” (as referred to and defined in the Existing Credit Agreement) shall continue in full force and effect as modified and/or restated hereby and that, from and after the Effective Date, all references to the “*Agreement*” contained in any such existing “*Credit Documents*” shall be deemed to refer to this Agreement; and

WHEREAS, the Borrower desires to obtain the several commitments of the Banks to make available a revolving credit for loans and letters of credit (the “*Revolving Credit*”), as described herein; and

WHEREAS, the Banks are willing to extend such commitments subject to all of the terms and conditions hereof and on the basis of the representations and warranties hereinafter set forth.

NOW, THEREFORE, in consideration of the recitals set forth above and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree that the Existing Credit Agreement is hereby amended and restated as follows:

SECTION 1. DEFINITIONS; INTERPRETATION.

a. *Definitions*

The following terms when used herein have the following meanings:

“*Account*” is defined in Section 8.4(b) hereof.

“*Added Bank*” is defined in Section 2.12(b) hereof.

“*Additional Commitment Bank*” is defined in Section 2.15(d) hereof.

“*Administrative Agent*” is defined in the first paragraph of this Agreement and includes any successor Administrative Agent pursuant to Section 10.7 hereof.

“*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, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition,

“*control*” (including, with their correlative meanings, “*controlled by*” and “*under common control with*”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), *provided* that, in any event for purposes of this definition: (i) any Person which owns directly or indirectly twenty percent (20%) or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or twenty percent (20%) or more of the partnership or other ownership interests of any other Person will be deemed to control such corporation or other Person; and (ii) each director and executive officer of the Borrower or any Subsidiary of the Borrower shall be deemed an Affiliate of the Borrower and each of its Subsidiaries.

“*Agreement*” means this Fourth Amended and Restated Credit Agreement, including all Exhibits and Schedules hereto, as it may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“*Anti-Corruption Laws*” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery, corruption or money laundering, including the Foreign Corrupt Practices Act of 1977, as amended.

“*Applicable Margin*” means, at any time (i) with respect to Base Rate Loans, the Base Rate Margin and (ii) with respect to Term SOFR Loans, the Term SOFR Margin.

“*Approved Fund*” means any Fund that is administered or managed by (a) a Bank, (b) an Affiliate of a Bank or (c) an entity or an Affiliate of an entity that administers or manages a Bank.

“*Arrangers*” means, collectively, U.S. Bank, JPMorgan, BofA Securities, Inc. and Wells Fargo Securities, LLC.

“*Assignment and Assumption*” means an assignment and assumption entered into by a Bank and an Eligible Assignee (with the consent of any party whose consent is required by the terms hereof), and accepted by the Administrative Agent, in substantially the form of **Exhibit C** or any other form approved by the Administrative Agent.

“*Authorized Representative*” means those persons whose specimen signatures are included in the incumbency certificate provided by the Borrower pursuant to Section 6.1(c) hereof, or any further or different officer of the Borrower so named by any Authorized Representative of the Borrower in a written notice to the Administrative Agent.

“*Available Tenor*” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“*Bail-In Action*” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of 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).

“*BANA*” means Bank of America, N.A.

“*Bank*” and “*Banks*” are defined in the first paragraph of this Agreement. Unless otherwise specified, the term “*Banks*” includes (i) U.S. Bank in its capacity as Swing Line Bank and (ii) each of the Issuing Agents. For the avoidance of doubt, the term “*Banks*” excludes Departing Banks.

“*Bank Notice Date*” is defined in Section 2.15(b) hereof.

“*Base Rate*” is defined in Section 2.3(a) hereof.

“*Base Rate Loan*” means a Loan bearing interest prior to maturity at a rate specified in Section 2.3(a) hereof.

“*Base Rate Margin*” means the percentage set forth in **Schedule 1** hereto beside the then applicable Level.

“*Benchmark*” means, initially, Term SOFR; provided that if a replacement of the Benchmark has occurred pursuant to Section 9.2(b), then “*Benchmark*” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to Section 9.2(b).

“*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) Daily Simple SOFR plus the SOFR Adjustment; or
- (2) 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 for U.S. dollar-denominated syndicated credit facilities 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 U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Credit Documents.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with a Benchmark Replacement pursuant to clause (2) of the definition of “*Benchmark Replacement*” for any applicable Interest Period and Available Tenor for any setting of such 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 for U.S. dollar-denominated syndicated credit facilities 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 U.S. dollar-denominated syndicated credit facilities.

“*Benchmark Replacement Conforming Changes*” means, with respect to any Benchmark Replacement and/or Term SOFR, any technical, administrative or operational changes (including changes to the definition of “*Borrowing*” and “*Term SOFR Borrowing*,” the definition of “*Base Rate*,” the definition of “*Business Day*,” the definition of “*Daily Term SOFR Loan*,” the definition of “*Interest Period*,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical,

administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Credit 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); and
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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 Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar
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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 any of the entities referenced in clause (2) above announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means 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 Credit Document in accordance with Section 9.2(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 9.2(b).

“*Beneficial Ownership Certification*” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“*Beneficial Ownership Regulation*” means 31 C.F.R. § 1010.230.

“*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.

“*BHP*” means Black Hills Power, Inc., a South Dakota corporation.

“*Borrower*” is defined in the first paragraph of this Agreement.

“*Borrowing*” means the total of Loans of a single type advanced, continued for an additional Interest Period, or converted from a different type into such type by the Banks on a single date and for a single Interest Period. Borrowings of Loans are made by and maintained ratably for each of the Banks according to their Percentages. A Borrowing is “*advanced*” on the day Banks advance funds comprising such Borrowing to the Borrower, is “*continued*” on the date a new Interest Period for the same type of Loans commences for such Borrowing and is “*converted*” when such Borrowing is changed from one type of Loan to the other, all as requested by the Borrower pursuant to Section 2.5(a) hereof. The term “Borrowing” shall include Swing Line Loans unless otherwise expressly provided.

“*Borrowing Notice*” is defined in Section 2.5(a) hereof.

“*Business Day*” means any day other than a Saturday or Sunday on which Banks are not authorized or required to close in New York, New York, Chicago, Illinois or Rapid City, South

Dakota; provided that, when used in connection with SOFR, Term SOFR, Term SOFR Base Rate or Term SOFR Rate, the term “Business Day” excludes any day on which the Securities Industry and Financial Markets Association (SIFMA) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“*Capital*” means, as of any date of determination thereof, without duplication, the sum of (A) Consolidated Net Worth *plus* (B) all Consolidated Indebtedness.

“*Capital Lease*” means at any date any lease of Property which, in accordance with GAAP, would be required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligations*” means, for any Person, the amount of such Person’s liabilities under Capital Leases determined at any date in accordance with GAAP.

“*Change in Law*” means the occurrence, after the date of this Agreement (or with respect to any Bank, if later, the date on which such Bank becomes a Bank), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority, or (c) the making or issuance of any request, rules, guideline, requirement or directive (whether or not having the force of law) by any governmental authority; *provided however*, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

“*Change of Control Event*” means one or more of the following events:

1. less than a majority of the members of the Board of Directors of the Borrower shall be persons who either were (i) nominated and approved by the Board of Directors of the Borrower serving as of the Effective Date or (ii) appointed by directors so nominated and approved; or
 2. the stockholders of the Borrower shall approve any plan or proposal for the liquidation or dissolution of the Borrower; or
 3. a Person or group of Persons acting in concert (other than the direct or indirect beneficial owners of the Voting Stock of the Borrower as of the Effective Date) shall, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, have become the direct or indirect beneficial owner (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended from time to time) of Voting Stock of the Borrower representing more than thirty percent (30%) of the combined voting power of the outstanding Voting Stock or other ownership interests for the election of directors or shall have the right to elect a majority of the Board of Directors of the Borrower; or
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4. except as permitted by Section 7.12 hereof, the Borrower ceases at any time to own one hundred percent (100%) of the Voting Stock and other equity interests of any Material Subsidiary (or such lower percentage that the Borrower owns at the time of organization or acquisition of such Material Subsidiary).

“*CLF&P*” means Cheyenne Light, Fuel & Power Company, a Wyoming corporation.

“*CLF&P Indenture*” means that certain Restated Indenture of Mortgage, Deed of Trust, Security Agreement and Financing Statement, dated as of November 20, 2007, between CLF&P and Wells Fargo Bank, National Association, as Trustee, together with all amendments and supplemental indentures thereto, and the first mortgage bonds issued in connection therewith.

“*Co-Documentation Agents*” is defined in the first paragraph of this Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Commitment*” and “*Commitments*” are defined in Section 2.1 hereof.

“*Commitment Fee*” is defined in Section 3.1(a) hereof.

“*Commitment Fee Rate*” means the rate set forth in **Schedule 1** hereto beside the then applicable Level.

“*Compliance Certificate*” means a certificate in the form of **Exhibit B** hereto.

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Consolidated Assets*” means all assets which should be listed on the consolidated balance sheet of the Borrower and its Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

“*Consolidated Indebtedness*” means, without duplication, all Indebtedness of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP; provided that Consolidated Indebtedness shall exclude Non-Recourse Indebtedness (but including first mortgage bond debt).

“*Consolidated Indebtedness to Capitalization Ratio*” means, as of any time the same is to be determined, the ratio of the amount of (A) Consolidated Indebtedness outstanding at such time to (B) the amount of Capital at such time.

“*Consolidated Net Worth*” means, as of any time the same is to be determined, the total shareholders’ equity (including capital stock, additional paid-in-capital and retained earnings after deducting treasury stock, but excluding (to the extent otherwise included in calculating shareholders’ equity), minority interests in Subsidiaries) which would appear on the consolidated balance sheet of the Borrower determined on a consolidated basis in accordance with GAAP.

“*Contractual Obligation*” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of its Property is bound.

“*Controlled Group*” means all members of a controlled group of corporations and all trades and businesses (whether or not incorporated) under common control that, together with the Borrower or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“*Conversion/Continuation Notice*” is defined in Section 2.5(a) hereof.

“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“*Covered Entity*” means any of the following:

1. a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
2. a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b);
or

a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Covered Party*” is defined in Section 11.27.

“*Credit Documents*” means this Agreement, the Notes, the Fee Letters, the Supplemental Letter of Credit Agreement, the Letters of Credit and all other documents executed in connection herewith or therewith.

“*Credit Event*” means any Borrowing or the issuance of, or extension of the expiration date or increase in the amount of, any Letter of Credit.

“*Daily Simple SOFR*” means for any day, SOFR, with the conventions for this rate (which will include a lookback of five (5) Business Days) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended for U.S. dollar-denominated syndicated credit facilities by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated 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.

“*Daily Term SOFR Base Rate*” means, with respect to a Swing Line Loan, the greater of (a) zero and (b) the one-month Term SOFR rate quoted by the Administrative Agent from the Screen for the Business Day of such Swing Line Loan (such Business Day, the “*Daily Term SOFR Determination Date*”). If as of 5:00 p.m. (New York time) on any Daily Term SOFR Determination Date, the one-month Term SOFR rate has not been published by the Term SOFR Administrator or on the Screen, then the rate used will be that as published by the Term SOFR Administrator or on the Screen for the first preceding Business Day for which such rate was published on such Screen so long as such first preceding Business Day is not more than three Business Days prior to such Daily Term SOFR Determination Date. For purposes of determining any interest rate hereunder or under any other Credit Document that is based on the Daily Term

SOFR Base Rate, such interest rate shall change as and when the Daily Term SOFR Base Rate changes.

“*Daily Term SOFR Determination Date*” has the meaning provided in the definition of Daily Term SOFR Base Rate.

“*Daily Term SOFR Loan*” means a Swing Line Loan that bears interest at the Daily Term SOFR Rate.

“*Daily Term SOFR Rate*” means, with respect to a Swing Line Loan, the sum of (a) the Daily Term SOFR Base Rate, plus (b) the Applicable Margin for Term SOFR Loans, plus (c) the SOFR Adjustment.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“*Defaulting Bank*” means any Bank that has (a) failed to fund any portion of its Loans or participations in L/C Obligations on or prior to the date required to be funded by it hereunder, (b) notified the Borrower, the Administrative Agent, the Swing Line Bank or any Issuing Agent in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Bank’s good faith determination that a condition precedent (specifically identified and including the condition precedent, together with any applicable default) to funding under this Agreement cannot be satisfied), (c) failed, within five (5) Business Days after written request by the Administrative Agent or any Issuing Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding L/C Documents, provided that such Bank shall cease to be a Defaulting Bank pursuant to this clause (c) upon receipt of such certification in form and substance satisfactory to the Administrative Agent and, if applicable, any such Issuing Agent, (d) otherwise failed to pay over to the Administrative Agent or any other Bank any other amount required to be paid by it hereunder within three (3) Business Days after the date when due, unless the subject of a good faith dispute, (e) become (i) or is insolvent or has a parent company that has become or is insolvent or (ii) the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it or has taken any corporate or board or other action seeking or agreeing to the appointment of any such Person or (f) has (or whose direct or indirect parent company has) become the subject of a Bail-In Action; provided, a Bank shall not become a Defaulting Bank solely as the result of the acquisition or maintenance of an ownership interest in such Bank or Person controlling such Bank or the exercise of control over a Bank or Person controlling such Bank by a governmental authority or an instrumentality thereof.

“*Departing Bank*” means each lender under the Existing Credit Agreement that executes and delivers to the Administrative Agent a Departing Bank Signature Page.

“*Departing Bank Signature Page*” means each signature page to this Agreement on which it is indicated that the Departing Bank executing the same shall cease to be a party to the Existing Credit Agreement on the Effective Date.

“*Derivative Arrangement*” means any agreement (including any master agreement and any agreement, whether or not in writing, relating to any single transaction) that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, forward foreign exchange agreement, rate cap, collar or floor agreement, future agreement, currency swap agreement, cross-currency rate swap agreement, swaption, currency option, that relates to fluctuations in raw material prices or utility or energy prices or other costs, or any other similar agreement, including any option to enter into any of the foregoing, or any combination of any of the foregoing. “*Derivative Arrangements*” shall include all such agreements or arrangements made or entered into at any time, or in effect at any time, whether or not related to a Loan or L/C Obligations.

“*Derivative Obligations*” means, with respect to any Person, all liabilities of such Person under any Derivative Arrangement (including but not limited to obligations and liabilities arising in connection with or as a result of early or premature termination of a Derivative Arrangement, whether or not occurring as a result of a default thereunder), absolute or contingent, now or hereafter existing or incurred or due or to become due.

“*Designated Persons*” means a person or entity (a) listed in the annex to any Executive Order or (b) named as a “Specially Designated National and Blocked Person” (“*SDN*”) on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list (the “*SDN List*”) or that is otherwise the subject of any Sanctions Laws and Regulations.

“*EEA Financial Institution*” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“*EEA Member Country*” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“*EEA Resolution Authority*” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“*Effective Date*” means July 19, 2021.

“*Electronic Signature*” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“*Electronic System*” means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, DebtX® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“*Eligible Assignee*” means (a) a Bank, (b) an Affiliate of a Bank, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent, (ii) each Issuing Agent, and (iii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); provided that, notwithstanding the foregoing, “Eligible Assignee” shall not include any Ineligible Institution.

“*Environmental and Health Laws*” means any and all federal, state, regional, county, local and foreign statutes, laws, common law, regulations, ordinances, judgments, orders (including, without limitation, administrative orders), permits, licenses and governmental rules or restrictions relating to human health, safety (including without limitation occupational safety and health standards), pollution, natural resources, conservation or the environment, or to emissions, discharges, Releases or threatened Releases of pollutants, contaminants, Hazardous Materials or wastes into the environment, (including without limitation ambient air, surface water, ground water or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, Hazardous Materials or wastes, or the removal, investigation or clean-up (including but not limited to oversight, security and relocation) or other remediation thereof.

“*ERISA*” is defined in Section 5.8 hereof.

“*Erroneous Payment*” is defined in Section 10.9(a) hereof.

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

“*Event of Default*” means any of the events or circumstances specified in Section 8.1 hereof.

“*Excluded Taxes*” means any of the following Taxes imposed on or with respect to any Administrative Agent or Bank or required to be withheld or deducted from a payment to any Administrative Agent or Bank, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Administrative Agent or Bank being organized under the laws of, or having its principal office or, in the case of any Bank, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Bank, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Bank with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Bank acquires such interest in the Loan, Letter of Credit or Commitment or (ii) such Bank changes its lending office, except in each case to the extent that, pursuant to Section 11.1, amounts with respect to such Taxes were payable either to such Bank’s assignor immediately before such Bank became a party hereto or to such Bank immediately before it changed its lending office, (c) Taxes attributable to Administrative Agent’s or Bank’s failure to comply with Section 11.1 and (d) any U.S. Federal withholding Taxes imposed under FATCA.

“*Executive Order*” has the meaning assigned to such term in the definition of Sanctions Laws and Regulations.

“*Existing Credit Agreement*” is defined in the Preamble hereto.

“*Existing Letters of Credit*” means each of the Letters of Credit outstanding under this Agreement as of the Effective Date, as set forth on **Schedule 1.1** hereto.

“*Existing Termination Date*” is defined in Section 2.15 hereof.

“*Extending Bank*” is defined in Section 2.15 hereof.

“*Extension Date*” is defined in Section 2.15 hereof.

“*Farm Credit Lender*” means a federally-chartered Farm Credit System lending institution organized under the Farm Credit Act of 1971, as the same may be amended or supplemented from time to time.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Rate*” means, for any day, the greater of (a) zero and (b) the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (Central time) on such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent in its sole discretion.

“*Fee Letters*” means, individually and collectively, each of (i) that certain letter dated as of June 18, 2021 by and between U.S. Bank and the Borrower pertaining to fees to be paid by the Borrower to U.S. Bank thereunder, (ii) that certain letter dated as of June 18, 2021 by and among U.S. Bank, JPMorgan and the Borrower pertaining to fees to be paid by the Borrower to U.S. Bank and JPMorgan thereunder and (iii) that certain letter dated as of June 18, 2021 by and among BofA Securities, BANA, Wells Fargo, Wells Fargo Securities, LLC and the Borrower pertaining to fees to be paid by the Borrower to BofA Securities, BANA, Wells Fargo and Wells Fargo Securities, LLC thereunder.

“*First Amendment*” means that certain First Amendment to Fourth Amended and Restated Credit Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the financial institutions listed on the signature pages thereto and the Administrative Agent.

“*First Amendment Effective Date*” means May 9, 2023.

“*Fitch Rating*” means the rating assigned by Fitch Ratings Inc., or any successor thereto that is a nationally recognized rating agency to the outstanding senior unsecured non-credit enhanced long-term indebtedness of a person (or, if neither such division nor any successor shall be in the business of rating long-term indebtedness, a nationally recognized rating agency in the United States as mutually agreed between the Required Banks and Borrower). Any reference herein to any specific rating is a reference to such rating as currently defined by Fitch Ratings Inc. (or such a successor) and shall be deemed to refer to the equivalent rating if such rating system changes.

“*Floor*” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Term SOFR Base Rate. For the avoidance of doubt, the initial Floor for each of the Term SOFR Base Rate and Daily Simple SOFR shall be 0.00%.

“*Foreign Bank*” means a Bank that is not a U.S. person.

“*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.

“*GAAP*” means generally accepted accounting principles as in effect in the United States from time to time, applied by the Borrower and its Subsidiaries on a basis consistent with the preparation of the Borrower’s financial statements furnished to the Banks as described in Section 5.4 hereof.

“*Granting Bank*” has the meaning specified in Section 11.10(h) hereof.

“*Guarantee*” means, in respect of any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of another Person, including, without limitation, by means of an agreement to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to maintain financial covenants, or to assure the payment of such Indebtedness by an agreement to make payments in respect of goods or services regardless of whether delivered, or otherwise, *provided*, that the term “*Guarantee*” shall not include endorsements for deposit or collection in the ordinary course of business; and such term when used as a verb shall have a correlative meaning.

“*Hazardous Material*” means any chemical, substance or material, the generation, use, storage, transportation or disposal of which, is prohibited, limited or regulated by any Environmental and Health Law, and includes, without limitation, (a) asbestos, polychlorinated biphenyls, dioxins and petroleum or its by-products or derivatives (including crude oil or any fraction thereof), lead-based paint, mold and radon, and (b) any material or substance the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, Release, disposal, abatement, cleanup, removal, remediation or handling of which, is prohibited, controlled or regulated pursuant to any Environmental and Health Law.

“*Immaterial Subsidiary*” shall mean, any Subsidiary of the Borrower whose total assets (as determined in accordance with GAAP) do not represent at least ten percent (10%) of Consolidated Assets as reflected on the most recent balance sheet delivered by the Borrower pursuant to Section 7.6 hereof.

“*Impacted Bank*” means any Bank that fails promptly to provide the Administrative Agent, upon the Administrative Agent’s reasonable request therefor, reasonably satisfactory assurance that such Bank will not become a Defaulting Bank.

“*Indebtedness*” means, as to any Person, without duplication: (i) all obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments; (ii) all obligations of such Person for the deferred purchase price of property or services (other than in respect of trade accounts payable arising in the ordinary course of business which are not past-due); (iii) all Capitalized Lease Obligations of such Person; (iv) all Indebtedness of others

secured by a Lien on any properties, assets or revenues of such Person (other than stock, partnership interests or other equity interests of the Borrower or any Subsidiary of the Borrower in other entities) to the extent of the lesser of the value of the property subject to such Lien or the amount of such Indebtedness; (v) all Guarantees issued by such Person, *provided* that, for purposes of calculating the Borrower's compliance with the financial covenant set forth in Section 7.17 hereof, (A) Long-Term Guaranties shall not be deemed "Indebtedness" and (B) the amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith; (vi) all obligations of such Person, contingent or otherwise, in respect of any letters or credit (whether commercial or standby) or bankers' acceptances, (vii) all Derivative Obligations of such Person, provided that for purposes of determining the Borrower's compliance with the financial covenant set forth in Section 7.17 hereof, only the Borrower's Derivative Obligations under Derivative Arrangements (calculated after giving effect to any cash collateral and counterparty netting arrangements with respect to any such Derivative Obligations) which must be marked-to-market in accordance with GAAP shall be included as Indebtedness of the Borrower, and (viii) all obligations of such Person under synthetic (and similar type) lease arrangements, provided that for purposes of calculating such Person's Indebtedness under such synthetic (or similar type) lease arrangements, such lease arrangement shall be treated as if it were a Capital Lease. Notwithstanding the foregoing, Indebtedness shall exclude the principal amount of Indebtedness which (i) if a Permitted Receivables Facility is structured as a lending agreement or other similar agreement, constitutes the principal amount of such Indebtedness or (ii) if a Permitted Receivables Facility is structured as a purchase agreement or other similar agreement, would be outstanding at such time under the Permitted Receivables Facility if the same were structured as a lending agreement rather than a purchase agreement or such other similar agreement (whether such amount is described as "capital" or otherwise).

"*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 the Borrower under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"*Ineligible Institution*" means (i) a natural person, (ii) a Defaulting Bank or any of its Subsidiaries, (iii) the Borrower, any of its Subsidiaries or any of its Affiliates, or (iv) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

"*Interest Differential*" is defined in Section 2.11.

"*Interest Period*" is defined in Section 2.6 hereof.

"*IRS*" means the United States Internal Revenue Service.

"*Issuing Agents*" means each of (i) U.S. Bank, (ii) JPMorgan, (iii) BANA, (iv) Wells Fargo, (v) solely with respect to the Existing Letters of Credit, each other Bank which has issued any such Existing Letters of Credit, and (vi) any other Bank who agrees to be an Issuing Agent and who is acceptable to the Borrower and the Administrative Agent.

"*JPMorgan*" means JPMorgan Chase Bank, N.A.

“*L/C Documents*” means the Letters of Credit, any draft or other document presented in connection with a drawing thereunder, any Supplemental Letter of Credit Agreement and this Agreement.

“*L/C Fee Rate*” means the rates set forth in **Schedule 1** hereto beside the then applicable Level.

“*L/C Obligations*” means the aggregate undrawn face amounts of all outstanding Letters of Credit and all unpaid Reimbursement Obligations.

“*Lending Office*” is defined in Section 9.4 hereof.

“*Letter of Credit*” is defined in Section 2.2(a) hereof.

“*Level I Status*” means, subject to Schedule 1, the Borrower’s S&P Rating is A or higher, its Fitch Rating is A or higher and its Moody’s Rating is A2 or higher.

“*Level II Status*” means, subject to Schedule 1, Level I Status does not apply, but the Borrower’s S&P Rating is A- or higher, its Fitch Rating is A- or higher and its Moody’s Rating is A3 or higher.

“*Level III Status*” means, subject to Schedule 1, neither Level I Status nor Level II Status applies, but the Borrower’s S&P Rating is BBB+ or higher, its Fitch Rating is BBB+ or higher and its Moody’s Rating is Baa1 or higher.

“*Level IV Status*” means, subject to Schedule 1, neither Level I Status, Level II Status nor Level III Status applies, but the Borrower’s S&P Rating is BBB or higher, its Fitch Rating is BBB or higher and its Moody’s Rating is Baa2 or higher.

“*Level V Status*” means, subject to Schedule 1, neither Level I Status, Level II Status, Level III Status nor Level IV Status applies.

“*Lien*” means any mortgage, 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).

“*Loan*” and “*Loans*” means a Revolving Loan or a Swing Line Loan.

“*Long-Term Guarantee*” means (i) any Guarantee issued by the Borrower or its Subsidiaries under which the holder or beneficiary of such Guarantee is not permitted under any circumstance or contingency to make demand or exercise any other remedies under such Guarantee prior to the Termination Date, as extended from time to time in accordance with the terms hereof and (ii) any coal mining reclamation bonds or contingent indemnity or reimbursement obligations with respect to such reclamation bonds (so long as such reclamation bonds have not been called upon).

“*Material Adverse Effect*” means a material adverse effect on (i) the business, financial position or results of operations of the Borrower or the Borrower and its Subsidiaries taken as a whole,

(ii) the ability of the Borrower to perform its material obligations under the Credit Documents or (iii) the validity or enforceability of the material obligations of the Borrower under any Credit Document or the rights or remedies of the Agent and the Banks thereunder; *provided* that a downgrade of the Borrower's S&P Rating, Fitch Rating and/or Moody's Rating and/or any other credit rating of Borrower from any other credit rating agency shall not, in and of itself, be deemed a "Material Adverse Effect" for purposes of this Agreement.

"*Material Subsidiaries*" means any Subsidiary of the Borrower whose total assets (including any equity interests in other Subsidiaries and as determined in accordance with GAAP) represent ten percent (10%) or more of Consolidated Assets as reflected on the most recent balance sheet delivered by the Borrower pursuant to Section 7.6 hereof; all Material Subsidiaries are designated as such in **Schedule 5.2** hereto, as updated from time to time in accordance with the terms of this Agreement.

"*Moody's Rating*" means the rating assigned by Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency to the outstanding senior unsecured non-credit enhanced long-term indebtedness of a Person (or if neither Moody's Investors Service, Inc. nor any such successor shall be in the business of rating long-term indebtedness, a nationally recognized rating agency in the United States of America as mutually agreed between the Required Banks and the Borrower). Any reference in this Agreement to any specific rating is a reference to such rating as defined as of the date hereof by Moody's Investors Service, Inc. (or such a successor) and shall be deemed to refer to the equivalent rating if such rating system changes.

"*Multiemployer Plan*" means an employee pension benefit plan covered by Title IV of ERISA that is a multiemployer plan under Section 4001(a)(3) of ERISA, and to which a member of the Controlled Group is then making or accruing an obligation to make contributions or has within the preceding five years made contributions.

"*Non-Defaulting Bank*" means a Bank that is not a Defaulting Bank.

"*Non-Extending Bank*" is defined in Section 2.15(b) hereof.

"*Non-Recourse Indebtedness*" means, without duplication, all Indebtedness of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP incurred in connection with project financings and refinancings (including project financings and refinancings of existing assets) as to which the holder of such Indebtedness has recourse solely against the assets of the Project Finance Subsidiary that incurs such Indebtedness and not against the Borrower or a Subsidiary of the Borrower other than a Project Finance Subsidiary or any of their other assets (whether directly, through a Guarantee or otherwise), other than the pledge of the stock (or similar equity interest) of the Project Finance Subsidiary which incurred such Indebtedness. For purposes of clarification, any Indebtedness of a Project Finance Subsidiary which would otherwise constitute Non-Recourse Indebtedness but for the issuance by the Borrower or a Subsidiary of the Borrower of a Guarantee or other document which provides recourse with respect to such Indebtedness, such Indebtedness shall for all purposes of this Agreement be deemed Non-Recourse Indebtedness so long as (i) the Borrower's or such Subsidiary's obligations under such Guarantee or other document are treated for all purposes as Consolidated Indebtedness hereunder, (ii) such Consolidated Indebtedness of the Borrower or such Subsidiary pursuant to such Guaranty is unsecured and is otherwise permitted by this Agreement, and (iii) such Consolidated Indebtedness

of the Borrower or such Subsidiary pursuant to all such Guaranties does not in the aggregate exceed \$100,000,000 at any one time outstanding.

“*Note*” is defined in Section 2.10(a) hereof.

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds 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 shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Obligations*” means all fees payable hereunder, all obligations of the Borrower to pay principal of or interest on Loans and L/C Obligations, fees, expenses, indemnities, and all other payment obligations of the Borrower arising under or in relation to any Credit Document.

“*OFAC*” has the meaning assigned to such term in the definition of Sanctions Laws and Regulations.

“*Other Connection Taxes*” means, with respect to any Administrative Agent or Bank, Taxes imposed as a result of a present or former connection between such Administrative Agent or Bank and the jurisdiction imposing such Tax (other than connections arising from such Administrative Agent or Bank having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document).

“*Other Taxes*” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 11.18).

“*Overnight Bank Funding Rate*” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar 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 (from and after such date as the NYFRB shall commence to publish such composite rate).

“*Participating Interest*” is defined in Section 2.2(d) hereof.

“*Paydown Notice*” is defined in Section 2.8(a) hereof.

“*Payment Recipient*” is defined in Section 10.9(a) hereof.

“*Percentage*” means, for each Bank, the percentage of the Commitments represented by such Bank’s Commitment or, if the Commitments have been terminated, the percentage held by such Bank (including through participation interests in Swing Line Loans and L/C Obligations) of the aggregate principal amount of all outstanding Obligations.

“*Permitted Derivative Obligations*” means all Derivative Obligations as to which the Derivative Arrangements giving rise to such Derivative Obligation are entered into in the ordinary course of business to hedge interest rate risk, currency risk, commodity price risk or the production of the Borrower or its Subsidiaries (and not for speculative purposes) and if such Derivative Obligation is an obligation of the Borrower, such Derivative Obligation ranks no greater than *pari passu* to the Obligations.

“*Permitted Receivables Facility*” shall mean the receivables facility or facilities created under the Permitted Receivables Facility Documents, providing for the sale or pledge by one or more Receivables Sellers of Permitted Receivables Facility Assets (thereby providing financing to the respective Receivables Sellers) to the Receivables Entity (either directly or through another Receivables Seller), which in turn shall sell or pledge interests in the respective Permitted Receivables Facility Assets to third-party investors pursuant to the Permitted Receivables Facility Documents (with the Receivables Entity permitted to issue investor certificates, purchased interest certificates or other similar documentation evidencing interests in the Permitted Receivables Facility Assets) in return for the cash used by the Receivables Entity to purchase the Permitted Receivables Facility Assets from the respective Receivables Sellers, in each case as more fully set forth in the Permitted Receivables Facility Documents.

“*Permitted Receivables Facility Assets*” shall mean (i) Receivables (whether now existing or arising in the future) of the Receivable Sellers which are transferred or pledged to the Receivables Entity pursuant to the Permitted Receivables Facility and any related Permitted Receivables Related Assets which are also so transferred or pledged to the Receivables Entity and all proceeds thereof and (ii) loans to Subsidiaries of the Borrower secured by Receivables (whether now existing or arising in the future) and any Permitted Receivables Related Assets of Subsidiaries of the Borrower which are made pursuant to the Permitted Receivables Facility.

“*Permitted Receivables Facility Documents*” shall mean each of the documents and agreements entered into in connection with any Permitted Receivables Facility, including all documents and agreements relating to the issuance, funding and/or purchase of certificates and purchased interests on terms and conditions reasonably acceptable to the Administrative Agent, in each case as such documents and agreements described in this definition of “Permitted Receivables Facility Documents” may be amended, modified, supplemented, refinanced or replaced from time to time so long as any such amendments, modifications, supplements, refinancings or replacements (i) do not impose any conditions or requirements the result of which would cause the applicable Receivables Entity to fail to satisfy the requirements of clause (y) of the definition of “Receivables Entity”, (ii) do not impose any conditions or requirements on the Borrower or any of its Subsidiaries (other than the applicable Receivables Entity) that, taken as a whole, are more restrictive in any material respect than those in existence immediately prior to any such amendment, modification, supplement, refinancing or replacement, and (iii) are not material and adverse in any way to the interests of the Banks; provided, that with respect to any such documents and agreements described in this definition of “Permitted Receivables Facility Documents”, (x) any extension of maturity, (y) any change in commitments or (z) any

modification of the advance rates thereunder shall be deemed not to be in violation of subclauses (i) through (iii) above.

“*Permitted Receivables Related Assets*” means any assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving receivables similar to Receivables and any collections or proceeds of any of the foregoing.

“*Person*” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or any agency or political subdivision thereof.

“*Plan*” means at any time an employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code that is sponsored and maintained by a member of the Controlled Group.

“*PBGC*” is defined in Section 5.8 hereof.

“*Project Finance Subsidiary*” means any Subsidiary of the Borrower as to which the creditors and other holders of Indebtedness of such Subsidiary have recourse solely against the assets of such Subsidiary and not against the Borrower or any other Subsidiary of the Borrower or any of their other assets (whether directly, through a Guarantee or otherwise) other than (i) pursuant to a Guarantee permitted hereunder and (ii) the stock of such Subsidiary (or similar equity interest).

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*PUHCA*” means the Public Utility Holding Company Act of 2005, as amended.

“*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*” is defined in Section 11.27.

“*Receivables*” means, solely to the extent arising in connection with the Borrower’s recovery of costs related to Storm Uri, all accounts receivable (including, without limitation, all rights to payment created by or arising from time to time from sales of goods, leases of goods or the rendition of services rendered no matter how evidenced whether or not earned by performance) and the proceeds thereof.

“*Receivables Entity*” means each wholly-owned Subsidiary of the Borrower which engages in no activities other than in connection with the financing of Receivables and which is designated (as provided below) as the “Receivables Entity” (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Borrower or any other Subsidiary (excluding, with respect to any Subsidiary, guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Borrower or any Subsidiary in any way (other than, with respect to any Subsidiary, pursuant to Standard Securitization Undertakings) or (iii) subjects any property or asset of the Borrower or any Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof (other than, with respect to any Subsidiary, pursuant to

Standard Securitization Undertakings), (b) with which neither the Borrower nor any of its Subsidiaries has any material contract, agreement, arrangement or understanding (other than, with respect to any Subsidiary, pursuant to the Permitted Receivables Facility Documents (including with respect to fees payable in the ordinary course of business in connection with the servicing of accounts receivable and related assets)) on terms which the Borrower reasonably believes to be less favorable to the Borrower or such Subsidiary than those that might be obtained at the time from persons that are not Affiliates of the Borrower, and (c) to which neither the Borrower nor any Subsidiary has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results. Any such designation shall be evidenced to the Administrative Agent by filing with the Administrative Agent an officer's certificate of the Borrower certifying that, to the best of such officer's knowledge and belief after consultation with counsel, such designation complied with the foregoing conditions.

"Receivables Sellers" means Subsidiaries of the Borrower that are from time to time party to the Permitted Receivables Facility Documents.

"Reference Rating" is the rating for the Borrower's senior, unsecured long-term indebtedness for borrowed money that is not guaranteed by any other person or entity.

"Reference Time" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is Term SOFR, 10:00 a.m. (Central time) on the day that is two Business Days before the date of such setting, and (2) if such Benchmark is not Term SOFR, the time determined by the Administrative Agent in its reasonable discretion.

"Reimbursement Obligation" is defined in Section 2.2(c) hereof.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment (including, without limitation, the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), or into or out of any property, including the movement of any Hazardous Material through the air, soil, surface water, groundwater or property.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"Required Banks" means, as of the date of determination thereof, any Banks holding in the aggregate more than fifty percent (50%) of the Percentages, provided, that at any time there are two (2) or fewer Banks, Required Banks shall mean Banks holding one hundred percent (100%) of the Percentages.

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

“*Revolving Credit*” has the meaning specified in the recitals hereof.

“*Revolving Loans*” are defined in Section 2.1 hereof and include a Base Rate Loan or Term SOFR Loan, each of which is a “*type*” of Loan hereunder.

“*S&P Rating*” means the rating assigned by Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and any successor thereto that is a nationally recognized rating agency to the outstanding senior unsecured non-credit enhanced long-term indebtedness of a Person (or, if neither such division nor any successor shall be in the business of rating long-term indebtedness, a nationally recognized rating agency in the United States as mutually agreed between the Required Banks and the Borrower). Any reference in this Agreement to any specific rating is a reference to such rating as defined as of the date hereof by Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business (or such a successor), and shall be deemed to refer to the equivalent rating if such rating system changes.

“*Sanctions Laws and Regulations*” means (a) any sanctions, prohibitions or requirements imposed by any executive order (an “*Executive Order*”) or by any sanctions program administered or enforced by the U.S. Department of the Treasury Office of Foreign Assets Control (“*OFAC*”) or the U.S. Department of State and (b) any sanctions measures imposed, administered or enforced by the United Nations Security Council, European Union or the United Kingdom or other relevant sanctions authority.

“*Screen*” has the meaning provided in the definition of Term SOFR Base Rate.

“*SEC*” means the United States Securities and Exchange Commission.

“*Security*” has the same meaning as in Section 2(l) of the Securities Act of 1933, as amended.

“*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.

“*SOFR Adjustment*” means 0.10% per annum.

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*SPC*” has the meaning specified in Section 11.10(h) hereof.

“*Standard Securitization Undertakings*” shall mean representations, warranties, covenants and indemnities entered into by any Subsidiary of Borrower in connection with the Permitted Receivables Facility which are reasonably customary in an accounts receivable financing transaction.

“*Subsidiary*” of a Person means any corporation or other entity (i) which is consolidated into the financial statements of such Person in accordance with GAAP or (ii) of which more than fifty percent (50%) of the outstanding stock or comparable equity interests having ordinary voting power for the election of the Board of Directors of such corporation or similar governing body in the case of a non-corporation (irrespective of whether or not, at the time, stock or other equity interests of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned by such Person or by one or more of its Subsidiaries; *provided, however* that the term “Subsidiary” shall not include any corporation or other entity in which such Person owns no outstanding stock or comparable equity interest. Unless otherwise specified, all references herein to a “Subsidiary” or “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“*Supplemental Letter of Credit Agreement*” is defined in Section 2.2(a) hereof.

“*Supported QFC*” is defined in Section 11.27.

“*Swing Line Availability*” is defined in Section 2.1(b)(i) hereof.

“*Swing Line Bank*” means U.S. Bank National Association or such other Bank which may succeed to its rights and obligations as Swing Line Bank pursuant to the terms of this Agreement.

“*Swing Line Borrowing Notice*” is defined in Section 2.1(b)(ii) hereof.

“*Swing Line Loan*” means a Loan made available to the Borrower by the Swing Line Bank pursuant to Section 2.1(b) hereof.

“*Swing Line Sublimit*” means the maximum principal amount of Swing Line Loans the Swing Line Bank may have outstanding to the Borrower at any one time, which, as of the date hereof, is \$75,000,000.

“*Syndication Agent*” is defined in the first paragraph of this Agreement.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any governmental authority, including any interest, additions to tax or penalties applicable thereto.

“*Term SOFR*” means the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR.

“*Term SOFR Administrator*” means CME Group Benchmark Administration Ltd. (or a successor administrator of Term SOFR).

“*Term SOFR Administrator’s Website*” means <https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html>, or any successor source for Term SOFR identified as such by the Term SOFR Administrator from time to time.

“*Term SOFR Base Rate*” means, for the relevant Interest Period, the greater of (a) zero and (b) the Term SOFR rate quoted by the Administrative Agent from the Term SOFR Administrator’s Website or the applicable Bloomberg screen (or other commercially available source providing

such quotations as may be selected by the Administrative Agent from time to time) (the “Screen”) for such Interest Period, which shall be the Term SOFR rate published two Business Days before the first day of such Interest Period (such Business Day, the “Term SOFR Determination Date”). If as of 5:00 p.m. (New York time) on any Term SOFR Determination Date, the Term SOFR rate has not been published by the Term SOFR Administrator or on the Screen, the rate used will be that as published by the Term SOFR Administrator or on the Screen for the first preceding Business Day for which such rate was published on such Screen so long as the first preceding Business Day is not more than three (3) Business Days prior to such Term SOFR Determination Date.

“Term SOFR Borrowing” means a Borrowing that bears interest at the applicable Term SOFR Rate.

“Term SOFR Determination Date” has the meaning provided in the definition of Term SOFR Base Rate.

“Term SOFR Loan” means a Loan that bears interest at the applicable Term SOFR Rate other than pursuant to clause (iii) of the definition of Base Rate.

“Term SOFR Margin” means the percentage set forth on **Schedule 1** hereto beside the then applicable Level.

“Term SOFR Rate” means, for the relevant Interest Period, the sum of (a) the Term SOFR Base Rate applicable to such Interest Period, plus (b) the Applicable Margin, plus (c) the SOFR Adjustment.

“Termination Date” means July 19, 2026.

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement and the other Credit Documents, the borrowing of Loans and other credit extensions hereunder, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfunded Vested Liabilities” means, with respect to any Plan at any time, the amount (if any) by which (i) the present value of all vested nonforfeitable accrued benefits under such Plan exceeds (ii) the fair market value of all Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the Controlled Group to the PBGC or the Plan under Title IV of ERISA.

“*Unguaranteed Non-Recourse Indebtedness*” means, without duplication, Indebtedness of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP incurred in connection with project financings (including project financings of existing assets) as to which the holder of such Indebtedness has recourse solely against the assets of the Project Finance Subsidiary that incurs such Indebtedness and not against the Borrower or a Subsidiary of the Borrower other than a Project Finance Subsidiary or any of their other assets (whether directly, through a Guarantee or otherwise), other than the pledge of the stock (or similar equity interest) of the Project Finance Subsidiary which incurred such Indebtedness; provided, for purposes of clarification of this definition, any Indebtedness of a Project Finance Subsidiary in which the Borrower or a Subsidiary of the Borrower has issued a Guarantee or is a party to any other document which provides recourse with respect to such Indebtedness, such Indebtedness shall for all purposes of this Agreement not be deemed Unguaranteed Non-Recourse Indebtedness.

“*U.S. Bank*” means U.S. Bank National Association.

“*U.S. Dollars*” and “\$” each means the lawful currency of the United States of America.

“*U.S. Person*” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“*U.S. Special Resolution Regimes*” is defined in Section 11.27.

“*U.S. Tax Compliance Certificate*” has the meaning specified in Section 11.1.

“*Voting Participant*” is defined in Section 11.10(i) hereof.

“*Voting Participant Notification*” is defined in Section 11.10(i) hereof.

“*Voting Stock*” of any Person means capital stock of any class or classes or other equity interests (however designated) having ordinary voting power for the election of directors or similar governing body of such Person.

“*Welfare Plan*” means a “*welfare plan*,” as defined in Section 3(l) of ERISA.

“*Wells Fargo*” means Wells Fargo Bank, National Association.

“*Wholly-Owned*” when used in connection with any Subsidiary means a Subsidiary of which all of the issued and outstanding shares of stock or other equity interests (other than directors’ qualifying shares as required by law) shall be owned by the Borrower and/or one or more of its Wholly-Owned Subsidiaries.

“*Withholding Agent*” means the Borrower and the Administrative Agent.

“*Write-Down and Conversion Powers*” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the

Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2 Interpretation.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the terms defined. All references to times of day in this Agreement shall be references to New York, New York time unless otherwise specifically provided. The word “*including*” means including without limiting the generality of any description preceding such term. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with GAAP in effect on the Effective Date, to the extent applicable, except where such principles are inconsistent with the specific provisions of this Agreement. Whether any obligations of the Borrower or any Subsidiary are “*pari passu*” with the Obligations shall be determined based on contractual rights and shall not take into consideration structural seniority or subordination. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), and (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws). Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification Section 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Subsidiaries at “fair value”, as defined therein, or (ii) any treatment of Indebtedness in respect of convertible debt instruments under Financial Accounting Standards Codification Subtopic 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. In addition, notwithstanding any other provision herein, the definitions set forth in this Agreement and any financial calculations required by the Credit Documents shall be computed to exclude any change to lease accounting rules as a result of Financial Accounting Standards Board Accounting Standards Codification 842 (Leases) from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance.

Section 1.3 Term SOFR Notification.

The interest rate on Term SOFR Borrowings and Daily Term SOFR Loans is determined by reference to the Term SOFR Base Rate and Daily Term SOFR Base Rate, respectively, which is derived from Term SOFR. Section 9.2(b) provides a mechanism for (a) determining an alternative rate of interest if Term SOFR is no longer available or in the other circumstances set

forth in Section 9.2(b), and (b) modifying this Agreement to give effect to such alternative rate of interest. 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 Term SOFR or other rates in the definition of Term SOFR Base Rate and Daily Term SOFR Base Rate, as applicable, or with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether any such alternative, successor or replacement reference rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 9.2(b), will have the same value as, or be economically equivalent to, the Term SOFR Base Rate or Daily Term SOFR Base Rate, as applicable. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, Term SOFR, the Term SOFR Base Rate, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Base Rate, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Bank or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.4 Divisions.

For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its capital stock or other equity interests at such time.

SECTION 2. THE CREDITS.

Section 2.1 The Commitments and the Loans.

(a) *The Revolving Loan Commitment.* Subject to the terms and conditions hereof (including Sections 6.1 and 6.2 hereof), each Bank, by its acceptance hereof, severally agrees to make a loan or loans to the Borrower from time to time on a revolving basis (individually a "*Revolving Loan*" and collectively "*Revolving Loans*") in U.S. Dollars in an aggregate outstanding amount up to the amount of its commitment set forth opposite the name of such Bank on **Schedule 2.1** hereto (such amount, as reduced pursuant to Section 2.12(a) hereof, increased pursuant to Section 2.12(b) hereof, or changed as a result of one or more assignments under Section 11.10 hereof its "*Commitment*" and, cumulatively for all the Banks, the "*Commitments*") before the Termination Date, *provided that* the sum of the aggregate amount of Loans (including Revolving Loans and Swing Line Loans) and of L/C Obligations at any time outstanding shall not exceed the Commitments in effect at such time. On the Termination Date the Commitments shall terminate. Each Borrowing of Revolving Loans shall be made ratably from

the Banks in proportion to their respective Percentages. As provided in Section 2.5(a) hereof, the Borrower may elect that each Borrowing of Revolving Loans be either Base Rate Loans or Term SOFR Loans. Revolving Loans may be repaid and the principal amount thereof reborrowed before the Termination Date, subject to all the terms and conditions hereof. Unless an earlier maturity is provided for hereunder, all Revolving Loans shall mature and be due and payable on the Termination Date.

(b) *Swing Line Loans.*

(i) *Swing Line Loans.* Upon the satisfaction of the conditions precedent set forth in Section 6.2 hereof, if such Swing Line Loan is to be made on the date of the initial Credit Event hereunder, the satisfaction of the conditions precedent set forth in Section 6.1 hereof as well, from and including the date of this Agreement and prior to the Termination Date, the Swing Line Bank may, at its option, on the terms and conditions set forth in this Agreement, make Swing Line Loans in U.S. Dollars to the Borrower from time to time in an aggregate principal amount not to exceed the Swing Line Sublimit, *provided* that the sum of the aggregate amount of Loans (including Revolving Loans and Swing Line Loans) and of L/C Obligations at any time outstanding shall not exceed the Commitments in effect at such time, and *provided further* that at no time shall the sum of (i) the Swing Line Bank's Percentage of the Swing Line Loans, plus (ii) the outstanding Revolving Loans made by the Swing Line Bank pursuant to Section 2.1 hereof, plus (iii) the Swing Line Bank's Percentage of the L/C Obligations, exceed the Swing Line Bank's Commitment in its capacity as a Bank hereunder at such time. Subject to the terms of this Agreement (including, without limitation the discretion of the Swing Line Bank), the Borrower may borrow, repay and reborrow Swing Line Loans at any time prior to the Termination Date.

(ii) *Borrowing Notice.* In order to borrow a Swing Line Loan, the Borrower shall deliver to the Administrative Agent and the Swing Line Bank an irrevocable Borrowing Notice (a "*Swing Line Borrowing Notice*") not later than 1:00 p.m. (New York time) on the date of Borrowing of such Swing Line Loan, specifying (i) the applicable date of Borrowing (which date shall be a Business Day), and (ii) the aggregate amount of the requested Swing Line Loan which shall be an amount not less than \$100,000.

(iii) *Making of Swing Line Loans; Participations.* Not later than 2:00 p.m. (New York time) on the applicable date of Borrowing, the Swing Line Bank shall make available the Swing Line Loan, in funds immediately available, to the Administrative Agent at its address specified pursuant to Section 11.8 hereof. The Administrative Agent will promptly make the funds so received from the Swing Line Bank available to the Borrower on the date of Borrowing at the Administrative Agent's aforesaid address. Each time that a Swing Line Loan is made by the Swing Line Bank pursuant to this Section 2.1(b)(iii), the Swing Line Bank shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably sold to each Bank and each Bank shall be deemed, without further action by

any party hereto, to have unconditionally and irrevocably purchased from the Swing Line Bank a participation in such Swing Line Loan in proportion to its Percentage.

(iv) Repayment of Swing Line Loans. The Borrower shall repay the then unpaid principal amount of each Swing Line Loan on the earlier of the Termination Date and the first date after such Swing Line Loan is made that is the last day of a calendar month and is at least two (2) Business Days after such Swing Line Loan is made. In addition, the Swing Line Bank may at any time in its sole discretion with respect to any outstanding Swing Line Loan, upon notice to the banks delivered not later than 11:00 a.m. (New York time) on any date, require each Bank to fund the participation acquired by such Bank pursuant to Section 2.1(b)(iii) hereof or require each Bank (including the Swing Line Bank) to make a Revolving Loan in the amount of such Bank's Percentage of such Swing Line Loan (including, without limitation, any interest accrued and unpaid thereon), for the purpose of repaying such Swing Line Loan. Not later than 12:00 noon (New York time) on the date of any notice received pursuant to this Section 2.1(b)(iv), each Bank shall make available its required Revolving Loan, in funds immediately available to the Administrative Agent at its address specified pursuant to Section 11.8 hereof. Revolving Loans made pursuant to this Section 2.1(b)(iv) shall initially be Base Rate Loans or Daily Term SOFR Loans and thereafter may be continued as Base Rate Loans or Daily Term SOFR Loans or converted into Term SOFR Loans in the manner provided in Section 2.6 hereof and subject to the other conditions and limitations set forth in this Article II. Unless a Bank shall have notified the Swing Line Bank, prior to the Swing Line Bank's making any Swing Line Loan, that any applicable condition precedent set forth in Sections 6.1 or 6.2 hereof had not then been satisfied, such Bank's obligation to make Revolving Loans pursuant to this Section 2.1(b)(iv) to repay Swing Line Loans or to fund the participation acquired pursuant to Section 2.1(b)(iii) hereof shall be unconditional, continuing, irrevocable and absolute and shall not be affected by any circumstances, including, without limitation, (a) any set-off, counterclaim, recoupment, defense or other right which such Bank may have against the Borrower, the Administrative Agent, the Swing Line Bank or any other Person, (b) the occurrence or continuance of a Default or Event of Default, (c) any adverse change in the condition (financial or otherwise) of the Borrower, or (d) any other circumstances, happening or event whatsoever. In the event that any Bank fails to make payment to the Administrative Agent of any amount due under this Section 2.1(b)(iv), interest shall accrue thereon at the NYFRB Rate for each day during the period commencing on the date of demand and ending on the date such amount is received and the Administrative Agent shall be entitled to receive, retain and apply against such obligation the principal and interest otherwise payable to such Bank hereunder until the Administrative Agent receives such payment from such Bank or such obligation is otherwise fully satisfied. On the Termination Date, the Borrower shall repay in full the outstanding principal balance of the Swing Line Loans, together with accrued interest thereon.

(a) *General Terms.* Subject to the terms and conditions hereof, as part of the Revolving Credit the Issuing Agents shall issue standby letters of credit denominated in U.S. Dollars (each a “*Letter of Credit*”) for the Borrower’s account, provided that: the aggregate amount of L/C Obligations outstanding at any time shall not exceed either (x) the difference between the Commitments in effect at such time and the aggregate amount of Loans then outstanding or (y) \$200,000,000. Upon receipt of a request to issue a Letter of Credit, the relevant Issuing Agent shall notify the Administrative Agent in order to confirm sufficient availability pursuant to the immediately preceding sentence. Each Letter of Credit shall be issued by the applicable Issuing Agent, but each Bank shall be obligated to purchase an undivided percentage participating interest in such Letter of Credit from the applicable Issuing Agent pursuant to Section 2.2(d) hereof in an amount equal to its Percentage of the amount of each drawing thereunder and, accordingly, the undrawn face amount of each Letter of Credit shall constitute usage of the Commitment of each Bank *pro rata* in accordance with each Bank’s Percentage. The Borrower shall execute a standard letter of credit application and agreement which serves the same purpose with each Issuing Agent (collectively, the “*Supplemental Letter of Credit Agreement*”) which shall contain certain terms applicable to the Letters of Credit. To the extent any provision of the Supplemental Letter of Credit Agreement is inconsistent with the terms of this Agreement, the terms of this Agreement shall control. Each Existing Letter of Credit shall for all purposes be deemed to be a Letter of Credit issued on the Effective Date under this Agreement. No Issuing Agent shall have an obligation pursuant to the Credit Documents to issue any Letter of Credit if, after giving effect to the issuance of such Letter of Credit, the aggregate face amount of Letters of Credit issued by such Issuing Agent then outstanding plus, without duplication, any unreimbursed Reimbursement Obligations in respect of Letters of Credit issued by such Issuing Agent, would exceed \$18,750,000, unless otherwise agreed to by such Issuing Agent and the Administrative Agent.

(b) *Supplemental Letter of Credit Agreements.* At any time before thirty (30) days prior to the Termination Date, each Issuing Agent shall, at the request of the Borrower given to such Issuing Agent at least three (3) Business Days prior to the requested date of issuance, issue one or more Letters of Credit, in a form satisfactory to such Issuing Agent, with expiration dates no later than five (5) Business Days prior to the Termination Date, in an aggregate face amount as set forth above, upon the receipt of a duly executed Supplemental Letter of Credit Agreement for the relevant Letter of Credit in the form customarily prescribed by such Issuing Agent for the type of Letter of Credit requested. Notwithstanding anything contained in any Supplemental Letter of Credit Agreement to the contrary (i) the Borrower’s obligation to pay fees in connection with each Letter of Credit shall be as exclusively set forth in Section 3.1(b) hereof, and (ii) if the applicable Issuing Agent is not timely reimbursed for the amount of any drawing under a Letter of Credit on the date such drawing is paid (it being understood that a drawing which is reimbursed pursuant to, and in accordance with, Section 2.5(c) hereof shall be deemed to have been timely reimbursed), the Borrower’s obligation to reimburse the applicable Issuing Agent for the amount of such drawing shall bear interest (which the Borrower hereby promises to pay on

demand) from and after the date such drawing is paid at a rate per annum equal to the sum of two percent (2.00%) plus the Base Rate Margin plus the Base Rate from time to time in effect. The applicable Issuing Agent will promptly notify the Administrative Agent, which in turn will promptly notify the Banks of each issuance by it of a Letter of Credit and any amendment or extension of a Letter of Credit. Each Issuing Agent agrees to issue amendments to any Letters of Credit issued by it increasing the amount, or extending the expiration date, thereof at the request of the Borrower subject to the conditions set forth herein (including the conditions set forth in Section 6.2 hereof and the other terms of this Section 2.2). Without limiting the generality of the foregoing, an Issuing Agent's obligation to issue, amend or extend the expiration date of a Letter of Credit is subject to the conditions set forth herein (including the conditions set forth in Section 6.2 hereof and the other terms of this Section 2.2) and an Issuing Agent will not issue, amend or extend the expiration date of any Letter of Credit if any Bank notifies such Issuing Agent of any failure to satisfy or otherwise comply with such conditions and terms and directs such Issuing Agent not to take such action.

(c) *The Reimbursement Obligations.* Subject to Section 2.2(b) hereof, the obligation of the Borrower to reimburse the applicable Issuing Agent for all drawings under a Letter of Credit (a "*Reimbursement Obligation*") shall be governed, to the extent not inconsistent with this Agreement, by the Supplemental Letter of Credit Agreement related to such Letter of Credit, except that (i) reimbursement of each drawing paid prior to 1:30 p.m. (New York time) shall be made in immediately available funds at the applicable office of Issuing Agent which has been designated by it to the Borrower in writing for such purpose on the date when such drawing is paid or (ii) if such drawing was paid after 1:30 p.m. (New York time), by 12:00 noon (New York time) on the next Business Day. If the Borrower does not make any such reimbursement payment on the date due (whether through a deemed request for a Base Rate Loan pursuant to Section 2.5(c) hereof or otherwise) and the Banks fund their participations therein in the manner set forth in Section 2.2(d) hereof, then all payments thereafter received by an Issuing Agent in discharge of any of the relevant Reimbursement Obligations shall be distributed in accordance with Section 2.2(d) hereof. An Issuing Agent shall notify the Borrower and the Administrative Agent promptly of its intent to pay, or payment of, a drawing under a Letter of Credit.

(d) *The Participating Interests.* Each Bank, by its acceptance hereof, severally agrees to purchase from each Issuing Agent, and each Issuing Agent hereby agrees to sell to each such Bank, an undivided percentage participating interest (a "*Participating Interest*"), to the extent of its Percentage, in each Letter of Credit issued by, and each Reimbursement Obligation owed to, such Issuing Agent. Upon any failure by the Borrower to pay any Reimbursement Obligation by the time required as set forth in Section 2.2(c) hereof, or if an Issuing Agent is required at any time to return to the Borrower or to a trustee, receiver, liquidator, custodian or other Person any portion of any payment of any Reimbursement Obligation, each Bank shall, not later than the Business Day it receives a demand from the Administrative Agent on behalf of such Issuing Agent (which Issuing Agent hereby covenants and agrees it will deliver to the Administrative Agent) to such effect, if such demand is received before 2:00 p.m. (New York time), or not later than the following Business Day, if such demand is received after such time,

pay to such Issuing Agent an amount equal to its Percentage of such unpaid or recaptured Reimbursement Obligation together with interest on such amount accrued from the date the related payment was made by such Issuing Agent to the date of such payment by such Bank a rate per annum equal to (i) from the date the related payment was made by such Issuing Agent to the date two (2) Business Days after payment by such Bank is due hereunder, the NYFRB Rate for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Bank to the date such payment is made by such Bank, the Base Rate in effect for each such day. Each such Bank shall thereafter be entitled to receive its Percentage of each payment received in respect of the relevant Reimbursement Obligation and of interest paid thereon, with the applicable Issuing Agent retaining its Percentage as a Bank hereunder.

The several obligations of the Banks to the Issuing Agents under this Section 2.2(d) shall be absolute, irrevocable and unconditional under any and all circumstances whatsoever and shall not be subject to any set-off, counterclaim or defense to payment which any Bank may have or have had against the Borrower, the Administrative Agent, the Issuing Agents, any Bank or any other Person whatsoever. Without limiting the generality of the foregoing, such obligations shall not be affected by any Default or Event of Default or by any reduction or termination of any Commitment of any Bank, and each payment by a Bank under this Section 2.2 shall be made without any offset, abatement, withholding or reduction whatsoever. The Issuing Agents and the Administrative Agent shall be entitled to offset amounts received for the account of a Bank under the Credit Documents against unpaid amounts due from such Bank to the applicable Issuing Agent or the Administrative Agent, as applicable, hereunder (whether as fundings of participations, indemnities or otherwise).

(e) *Indemnification.* The Banks shall, to the extent of their respective Percentages, indemnify each Issuing Agent (to the extent not reimbursed by the Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except to the extent resulting from such Issuing Agent's gross negligence or willful misconduct as determined in a final, non-appealable judgment by a court of competent jurisdiction) that an Issuing Agent may suffer or incur in connection with any Letter of Credit issued by it. The Issuing Agents shall be entitled to all of the rights and protections afforded the Administrative Agent under Section 10 hereof. The obligations of the Banks under this Section 2.2(e) and all other parts of this Section 2.2 shall survive termination of this Agreement and of all other L/C Documents.

(f) *Issuing Agents.* Each Bank hereby appoints U.S. Bank, JPMorgan, BANA, Wells Fargo and any other Person who satisfies the definition of Issuing Agent, as the Issuing Agents hereunder and hereby authorizes each of the Issuing Agents to take such action as Issuing Agent on its behalf and to exercise such powers under the Credit Documents as are delegated to the Issuing Agents by the terms thereof, together with such powers as are reasonably incidental thereto. The relationship between each of the Issuing Agents and the Banks is and shall be that of agent and principal only, and nothing contained in this Agreement or any other Credit Document shall be construed to constitute an Issuing Agent as a trustee or fiduciary for any Bank or the Borrower.

Section 2.3 *Applicable Interest Rates*

(a) *Base Rate Loans.* Each Base Rate Loan made or maintained by a Bank shall bear interest during each Interest Period it is outstanding (computed at all times on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed) on the unpaid principal amount thereof from the date such Loan is advanced, continued or created by conversion from a Term SOFR Loan until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin plus the Base Rate from time to time in effect, payable on the last day of its Interest Period and at maturity (whether by acceleration or otherwise) and no less frequently than quarterly.

“*Base Rate*” means for any day the greatest of: (i) the rate of interest announced by U.S. Bank from time to time as its prime rate, or equivalent, for U.S. Dollar loans within the United States as in effect on such day, with any change in the Base Rate resulting from a change in said prime rate to be effective as of the date of the relevant change in said prime rate; (ii) the sum of (x) the NYFRB Rate, plus (y) one half of one percent (0.50%) per annum; (iii) the Term SOFR Rate (without giving effect to the Applicable Margin) for a one-month Interest Period on such day (or if such day is not a Business Day or if the Term SOFR Rate for such Business Day is not published due to a holiday or other circumstance that the Administrative Agent deems in its sole discretion to be temporary, the immediately preceding Business Day) for Dollars plus 1.00%; and (iv) one percent (1.0%).

(b) *Term SOFR Loans.* Each Term SOFR Loan made or maintained by a Bank shall bear interest during each Interest Period it is outstanding (computed on the basis of a year of 360 days and actual days elapsed) on the unpaid principal amount thereof from the date such Loan is advanced, continued, or created by conversion from a Base Rate Loan until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Applicable Margin plus the Adjusted Term SOFR applicable for such Interest Period, payable on the last day of the Interest Period and at maturity (whether by acceleration or otherwise), and, if the applicable Interest Period is longer than three months, on each day occurring every three months after the commencement of such Interest Period.

(c) *Daily Term SOFR Loans.* Notwithstanding the foregoing, each Swing Line Loan shall bear interest on the outstanding principal amount thereof, for each day from and including the day such Swing Line Loan is made to but excluding the date it is paid, at a rate per annum equal to, at the Borrower’s option, the Daily Term SOFR Rate or the Base Rate plus an applicable margin agreed to by the Borrower and the Swing Line Bank.

(d) *Rate Determinations.* The Administrative Agent shall determine each interest rate applicable to Obligations, and a determination thereof by the Administrative Agent shall be conclusive and binding except in the case of manifest error.

(e) *Term SOFR Conforming Changes.* In connection with the use or administration of Term SOFR, 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 Credit 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 Credit Document. The Administrative Agent will promptly notify the Borrower and the Banks of the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use or administration of Term SOFR.

(f) *Existing Eurodollar Loans.* Notwithstanding anything in this Agreement or any other Credit Document to the contrary, interest on all “Eurodollar Loans” (as defined in this Agreement as in effect immediately prior to the First Amendment Effective Date) outstanding immediately prior to the First Amendment Effective Date shall continue to accrue and be paid based upon Adjusted LIBOR applicable pursuant to the terms of this Agreement as in effect immediately prior to the First Amendment Effective Date solely until the expiration of the current “Interest Period” (as defined in this Agreement as in effect immediately prior to the First Amendment Effective Date) applicable thereto (at which time such Eurodollar Loans may be reborrowed as or converted to Base Rate Borrowings, Term SOFR Borrowings or Daily Term SOFR Borrowings in accordance with this Section 2.3); provided, however, that from and after the First Amendment Effective Date, the Applicable Margin to be applied to any such Eurodollar Loans shall be based on the Applicable Margin for Term SOFR Loans after the First Amendment Effective Date.

Section 2.4 Minimum Borrowing Amounts.

Each Borrowing of Base Rate Loans (other than a Borrowing to repay Swing Line Loans) and Term SOFR Loans shall be in an amount not less than \$1,000,000 and integral multiples of \$1,000,000 in excess thereof; provided, a Borrowing of Base Rate Loans applied to pay a Reimbursement Obligation pursuant to Section 2.5(c) hereof shall be in an amount equal to such Reimbursement Obligation.

Section 2.5 Manner of Borrowing Loans and Designating Interest Rates Applicable to Loans

(a) *Notice to the Administrative Agent.* The Borrower shall give notice to the Administrative Agent in the form of **Exhibit E-1** (a “Borrowing Notice”) by no later than 1:00 p.m. (New York time) (i) at least three (3) Business Days before the date on which the Borrower requests the Banks to advance a Borrowing of Term SOFR Loans, or (ii) on the date on which the Borrower requests the Banks to advance a Borrowing of Base Rate Loans. The Loans included in each Borrowing shall bear interest initially at the type of rate specified in such notice of a new Borrowing. Thereafter, the Borrower may from time to time elect to change or continue the type of interest rate borne by each Borrowing or, subject to the minimum amount requirement for each outstanding Borrowing set forth in Section 2.4 hereof, a portion thereof, as follows: (i) if such Borrowing is of Term SOFR Loans, on the last day of the Interest Period applicable thereto, the Borrower may continue part or all of such Borrowing as Term SOFR Loans for an Interest Period or Interest Periods specified by the Borrower or convert part or all of such Borrowing into Base Rate Loans, and (ii) if such Borrowing is of Base Rate Loans, on any Business Day, the Borrower may convert all or part of such

Borrowing into Term SOFR Loans for an Interest Period or Interest Periods specified by the Borrower. The Borrower shall give all such notices requesting the advance, continuation, or conversion of a Borrowing to the Administrative Agent by telephone, telecopy or email of a properly executed pdf (which notice shall be irrevocable once given and, if by telephone, shall be promptly confirmed in writing). Notices of the continuation of a Borrowing of Term SOFR Loans for an additional Interest Period or of the conversion of part or all of a Borrowing of Term SOFR Loans into Base Rate Loans or of Base Rate Loans into Term SOFR Loans shall be in the form of **Exhibit E-2** (a "Conversion/Continuation Notice") and must be given by no later than 1:00 p.m. (New York time) at least three (3) Business Days before the date of the requested continuation or conversion. All such notices concerning the advance, continuation, or conversion of a Borrowing shall be irrevocable once given and shall specify the date of the requested advance, continuation or conversion of a Borrowing (which shall be a Business Day), the amount of the requested Borrowing to be advanced, continued, or converted, the type of Loans to comprise such new, continued or converted Borrowing and, if such Borrowing is to be comprised of Term SOFR Loans, the Interest Period applicable thereto. The Borrower agrees that the Administrative Agent may rely on any such telephonic or telecopy notice given by any person it in good faith believes is an Authorized Representative without the necessity of independent investigation, and in the event any such notice by telephone conflicts with any written confirmation, such telephonic notice shall govern if the Administrative Agent has acted in reliance thereon. There may be no more than ten (10) different Interest Periods in effect at any one time, provided that for purposes of determining the number of Interest Periods in effect at any one time, all Base Rate Loans and all Swing Line Loans shall be deemed to have one and the same Interest Period.

(b) Notice to the Banks. The Administrative Agent shall give prompt telephonic or telecopy notice to each Bank of any Borrowing Notice or Conversion/Continuation Notice from the Borrower received pursuant to Section 2.5(a) hereof or Swing Line Borrowing Notice from the Borrower received pursuant to Section 2.2(b) hereof. The Administrative Agent shall give notice to the Borrower and each Bank by like means of the interest rate applicable to each Borrowing of Term SOFR Loans.

(c) Borrower's Failure to Notify. Any outstanding Borrowing of Base Rate Loans shall, subject to Section 6.2 hereof, automatically be continued for an additional Interest Period on the last day of its then current Interest Period unless the Borrower has notified the Administrative Agent within the period required by Section 2.5(a) hereof that it intends to convert such Borrowing into a Borrowing of Term SOFR Loans or notifies the Administrative Agent within the period required by Section 2.8(a) hereof that it intends to prepay or repay such Borrowing. If the Borrower fails to give notice pursuant to Section 2.5(a) hereof of the continuation or conversion of any outstanding principal amount of a Borrowing of Term SOFR Loans before the last day of its then current Interest Period within the period required by Section 2.5(a) hereof and has not notified the Administrative Agent within the period required by Section 2.8(a) hereof that it intends to prepay such Borrowing, such Borrowing shall automatically be converted into a Borrowing of Base Rate Loans, subject to Section 6.2 hereof.

The Administrative Agent shall promptly notify the Banks of the Borrower's failure to so give a notice under Section 2.5(a) hereof. In the event the Borrower fails to give notice pursuant to Section 2.5(a) hereof of a Borrowing equal to the amount of a Reimbursement Obligation and has not notified the Administrative Agent by 12:00 noon (New York time) on the day such Reimbursement Obligation becomes due that it intends to repay such Reimbursement Obligation through funds not borrowed under this Agreement, the Borrower shall be deemed to have requested a Borrowing of Base Rate Loans on such day in the amount of the Reimbursement Obligation then due, subject to Section 6.2 hereof, which Borrowing shall be applied to pay the Reimbursement Obligation then due.

(d) *Disbursement of Loans.* Not later than 12:00 noon (New York time) on the date of any requested advance of a new Borrowing of Term SOFR Loans, and not later than 2:00 p.m. (New York time) on the date of any requested advance of a new Borrowing of Base Rate Loans, subject to Section 6 hereof, each Bank shall make available its Loan comprising part of such Borrowing in funds immediately available at the principal office of the Administrative Agent. The Administrative Agent shall make available to the Borrower Loans in the type of funds received by the Administrative Agent from the Banks.

(e) *Administrative Agent Reliance on Bank Funding.* Unless the Administrative Agent shall have been notified by a Bank (i) with respect to Term SOFR Loans, before the date on which such Bank is scheduled to make payment to the Administrative Agent of the proceeds of a Loan (which notice shall be effective upon receipt) or (ii) with respect to Base Rate Loans, no later than 2:00 p.m. (New York time) on the due date thereof, that such Bank does not intend to make such payment, the Administrative Agent may assume that such Bank has made such payment when due and the Administrative Agent may in reliance upon such assumption (but shall not be required to) make available to the Borrower the proceeds of the Loan to be made by such Bank and, if any Bank has not in fact made such payment to the Administrative Agent, such Bank shall, on demand, pay to the Administrative Agent the amount made available to the Borrower attributable to such Bank together with interest thereon in respect of each day during the period commencing on the date such amount was made available to the Borrower and ending on (but excluding) the date such Bank pays such amount to the Administrative Agent at a rate per annum equal to (i) from the date the related payment was made by the Administrative Agent to the date two (2) Business Days after payment by such Bank is due hereunder, the NYFRB Rate for each such day and (ii) from the date two (2) Business Days after the date such payment is due from such Bank to the date such payment is made by such Bank, the Base Rate in effect for each such day. If such amount is not received from such Bank by the Administrative Agent immediately upon demand, the Borrower will, on demand, repay to the Administrative Agent the proceeds of the Loan attributable to such Bank with interest thereon at a rate per annum equal to the interest rate applicable to the relevant Loan.

Section 2.6 Interest Periods.

As provided in Section 2.5(a) hereof, at the time of each request for a Borrowing of Term SOFR Loans, the Borrower shall select an Interest Period applicable to such Loans from among the

available options. The term “*Interest Period*” means the period commencing on the date a Borrowing of Loans is advanced, continued, or created by conversion and ending: (a) in the case of Base Rate Loans or Swing Line Loans, on the last Business Day of the calendar quarter in which such Borrowing is advanced, continued, or created by conversion (or on the last day of the following calendar quarter if such Loan is advanced, continued or created by conversion on the last Business Day of a calendar quarter) and (b) in the case of Term SOFR Loans, 1, 3 or 6 months thereafter (or such other time period as may be agreed to by and among the Borrower, the Administrative Agent and the Banks); *provided, however*, that:

- (a) any Interest Period for a Borrowing of Base Rate Loans or Swing Line Loans that otherwise would end after the Termination Date shall end on the Termination Date;
- (b) for any Borrowing of Term SOFR Loans, the Borrower may not select an Interest Period that extends beyond the Termination Date;
- (c) whenever the last day of any Interest Period would otherwise be a day that is not a Business Day, the last day of such Interest Period shall be extended to the next succeeding Business Day, provided that, if such extension would cause the last day of an Interest Period for a Borrowing of Term SOFR Loans to occur in the following calendar month, the last day of such Interest Period shall be the immediately preceding Business Day; and
- (d) for purposes of determining an Interest Period for a Borrowing of Term SOFR Loans, a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month; *provided, however*, that if there is no numerically corresponding day in the month in which such an Interest Period is to end or if such an Interest Period begins on the last Business Day of a calendar month, then such Interest Period shall end on the last Business Day of the calendar month in which such Interest Period is to end.

Section 2.7 Maturity of Loans.

Unless an earlier maturity is provided for hereunder (whether by acceleration or otherwise), all Obligations (including principal and interest on all outstanding Loans) shall mature and become due and payable by the Borrower on the Termination Date.

Section 2.8 Prepayments.

- (a) The Borrower may prepay any Borrowing of Term SOFR Loans or Base Rate Loans without premium or penalty and in whole or in part (but, if in part, then (i) in an amount not less than \$1,000,000 and integral multiples of \$1,000,000 in excess thereof, and (ii) in an amount such that the minimum amount required for a Borrowing pursuant to Section 2.4 hereof remains outstanding) upon irrevocable notice to the Administrative Agent in the form of **Exhibit E-3** (a “Paydown Notice”) (A) in the case of any Borrowing of Term SOFR Loans, no later than 2:00 p.m. (New York time) on the date that is three (3) Business Days prior to such prepayment, and (B) in the case of any Borrowing of Base Rate Loans (other than Swing Line Loans), no later than 2:00 p.m. (New
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York time) on the date of such prepayment, such prepayment to be made by the payment of the principal amount to be prepaid and accrued interest thereon to the date fixed for prepayment. The Borrower may at any time pay, without penalty or premium, all outstanding Swing Line Loans, or any portion of the outstanding Swing Line Loans, upon delivery of a Paydown Notice to the Administrative Agent and the Swing Line Bank by 2:00 p.m. (New York time) on the date of repayment. In the case of Term SOFR Loans, any amounts owing under Section 2.11 hereof as a result of such prepayment shall be paid contemporaneously with such prepayment. The Administrative Agent will promptly advise each Bank of any such prepayment notice it receives from the Borrower. Any amount paid or prepaid before the Termination Date may, subject to the terms and conditions of this Agreement, be borrowed, repaid and borrowed again.

(b) If the aggregate amount of outstanding Loans and L/C Obligations shall at any time for any reason exceed the Commitments then in effect, the Borrower shall, immediately and without notice or demand, pay the amount of such excess to the Administrative Agent for the ratable benefit of the Banks as a prepayment of the Loans and, if necessary, a prefunding of Letters of Credit. Immediately upon determining the need to make any such prepayment the Borrower shall notify the Administrative Agent of such required prepayment. Each such prepayment shall be accompanied by a payment of all accrued and unpaid interest on the Loans prepaid and shall be subject to Section 2.11 hereof.

Section 2.9 Default Rate.

If any payment of principal or interest on any Loan, or payment of any other Obligation, is not made when due (whether by acceleration or otherwise), such principal, interest or other Obligation shall bear interest (computed on the basis of a year of 360 days and actual days elapsed or, if based on the Base Rate, on the basis of a year of 365 or 366 days, as applicable, and the actual number of days elapsed) from the date such payment was due until paid in full, payable on demand, at a rate per annum equal to:

- (a) for any Obligation other than a Term SOFR Loan (including principal and interest relating to Base Rate Loans and interest on Term SOFR Loans), the sum of two percent (2.00%) plus the Applicable Margin plus the Base Rate from time to time in effect; and
- (b) for the principal of any Term SOFR Loan, the sum of two percent (2.00%) plus the rate of interest in effect thereon at the time of such default until the end of the Interest Period applicable thereto and, thereafter, at a rate per annum equal to the sum of two percent (2.00%) plus the Applicable Margin plus the Base Rate from time to time in effect.

Section 2.10 The Notes.

(a) The Loans made to the Borrower by each Bank shall, upon the written request of any such Bank, be evidenced by a single promissory note, or in the case of the Swing Line Bank, a promissory note reflecting the Revolving Loans and a promissory note reflecting the Swing Line Loans, of the Borrower issued to such Bank in the form of **Exhibit A** hereto, with appropriate changes for notes

evidencing Swing Line Loans. Each such promissory note is hereinafter referred to as a “Note” and collectively such promissory notes are referred to as the “Notes.”

(b) Each Bank shall record on its books and records or on a schedule to its Note (if any) the amount of each Loan advanced, continued, or converted by it, all payments of principal and interest and the principal balance from time to time outstanding thereon, the type of such Loan, and, for any Term SOFR Loan, the Interest Period and the interest rate applicable thereto. The record thereof, whether shown on such books and records of a Bank or on a schedule to any Note, shall be *prima facie* evidence of the same; *provided, however*, that the failure of any Bank to record any of the foregoing or any error in any such record shall not limit or otherwise affect the obligation of the Borrower to repay all Loans made hereunder together with accrued interest thereon. At the written request of any Bank and upon such Bank tendering to the Borrower the Note to be replaced, the Borrower shall furnish a new Note to such Bank to replace any outstanding Note, and at such time the first notation appearing on a schedule on the reverse side of, or attached to, such Note shall set forth the aggregate unpaid principal amount of all Loans, if any, then outstanding thereon.

Section 2.11 Funding Indemnity.

If:

- (a) any payment of a Term SOFR Borrowing occurs on a date that is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise;
- (b) a Term SOFR Borrowing is not made on the date specified by the Borrower for any reason other than default by the Banks;
- (c) a Term SOFR Borrowing is converted other than on the last day of the Interest Period applicable thereto;
- (d) the Borrower fails to borrow, convert, continue or prepay a Term SOFR Borrowing on the date specified in any notice delivered pursuant hereto; or
- (e) a Term SOFR Borrowing is assigned other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 11.18;

then, upon the demand of any Bank, the Borrower shall pay to such Bank such amount as will reimburse such Bank for such loss, cost or expense. The term “*Interest Differential*” means the greater of zero and the financial loss incurred by the Bank resulting from prepayment, calculated as the difference between the amount of interest such Bank would have earned (from like investments as of the first day of the Interest Period) had prepayment not occurred and the interest such Bank will actually earn (from like investments as of the date of prepayment) as a result of the redeployment of funds from the prepayment. Because of the short-term duration of any Interest Period, the Borrower agrees that the Interest Differential shall not be discounted to its present value. If any Bank makes such a claim for compensation, it shall provide to the Borrower, with a copy to the Administrative Agent, a certificate executed by an officer of such

Bank setting forth the amount of such loss, cost or expense in reasonable detail (including an explanation of the basis for and the computation of such loss, cost or expense) and the amounts shown on such certificate if reasonably calculated shall be *prima facie* evidence of the amount of such loss, cost or expense. The Borrower shall pay such Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

The Borrower hereby acknowledges that the Borrower shall be required to pay Interest Differential with respect to any portion of the principal balance accelerated or paid before the end of the Interest Period for such Term SOFR Borrowing, whether voluntarily, involuntarily, or otherwise, including without limitation any principal payment required upon maturity when the Borrower has elected an Interest Period that extends beyond the scheduled maturity when the Borrower has elected an Interest Period that extends beyond the scheduled maturity date of such Loan and any principal payment required following default, demand for payment, acceleration, collection proceedings, foreclosure, sale or other disposition of collateral, bankruptcy or other insolvency proceedings, eminent domain, condemnation, application of insurance proceeds, or otherwise. Such Interest Differential shall at all times be an Obligation as well as an undertaking by the Borrower to the Banks whether arising out of a voluntary or mandatory prepayment.

Section 2.12 Commitments.

(a) The Borrower shall have the right at any time and from time to time, upon three (3) Business Days' prior written notice to the Administrative Agent, to terminate an unused portion of the Commitments without premium or penalty, in whole or in part, any partial termination to be (i) in an amount not less than \$5,000,000 and integral multiples of \$1,000,000 in excess thereof, and (ii) allocated ratably among the Banks in proportion to their respective Percentages, provided that the Commitments may not be reduced to an amount less than the sum of the Loans and all L/C Obligations then outstanding. The Administrative Agent shall give prompt notice to each Bank of any such termination of Commitments. Any termination of Commitments pursuant to this Section 2.12 may not be reinstated.

(b) So long as Sections 6.2(b) and (c) hereof are satisfied, the Borrower, with the prior written consent of the Administrative Agent, the Issuing Agents and the Swing Line Bank (which, in each case, shall not be unreasonably conditioned or withheld), may from time to time add additional financial institutions as parties to this Agreement or, with the prior written consent of the Administrative Agent, the Issuing Agents (which, in each case, shall not be unreasonably conditioned or withheld) and an existing Bank, increase the Commitment of such existing Bank (any such financial institution or existing Bank which is increasing its commitment being referred to as an "*Added Bank*") pursuant to documentation reasonably satisfactory to the Borrower and the Administrative Agent and provided that the minimum commitment of each such Added Bank equals or exceeds \$10,000,000, any such Added Bank shall for all purposes be considered a Bank for purposes of this Agreement and the other Credit Documents with a Commitment as set forth in such documentation. No Bank shall be obligated in any way whatsoever to increase its Commitment or provide a new Commitment. Any such Added Bank shall on the date it is deemed a party to this Agreement purchase from the other Banks its Percentage (or the increase in its Percentage, in the case of an Added Bank which is an existing Bank) of the Loans outstanding

and shall be deemed to purchase pursuant to Section 2.2(d) hereof a Participating Interest in all Letters of Credit and Reimbursement Obligations outstanding on such date to the extent of its Percentage (or the increase in its Percentage, in the case of an Added Bank which is an existing Bank). Notwithstanding anything contained in this Section 2.12(b) to the contrary, any increase shall be in minimum increments of \$5,000,000 and the aggregate amount of Commitments may not, without the consent of the Required Banks, at any time exceed an amount equal to (x) \$1,000,000,000 less (y) the aggregate amount of any Commitment reductions pursuant to Section 2.12(a) hereof.

Section 2.13 Interest Rate Limitation.

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Bank holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Bank in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Bank.

Section 2.14 Defaulting Banks.

Notwithstanding any provision of this Agreement to the contrary, if any Bank becomes a Defaulting Bank, then the following provisions shall apply for so long as such Bank is a Defaulting Bank:

- (a) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Bank pursuant to Section 3.1 hereof;
 - (b) if any Swing Line Loans shall be outstanding or any L/C Obligations shall exist at the time a Bank becomes a Defaulting Bank then:
 - (i) all or any part of the unfunded participations in and commitments with respect to such Swing Line Loans and L/C Obligations of such Defaulting Bank shall be reallocated among the Non-Defaulting Banks in accordance with their respective Percentages but only to the extent that no Default or Event of Default has occurred and is continuing, and that as a result thereof (x) the sum of all Non-Defaulting Banks’ outstanding Loans plus such Defaulting Bank’s L/C Obligations and Swing Line Loans would not exceed the Non-Defaulting Banks’ existing Commitments and (y) the sum of each Non-Defaulting Bank’s outstanding Loans plus such Non-Defaulting Bank’s share under this clause (i) of such Defaulting Bank’s L/C Obligations and Swing Line Loans would not exceed such Non-Defaulting Bank’s existing Commitment; and
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(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay the outstanding Swing Line Loans that were not reallocated and (y) second, cash collateralize such Defaulting Bank's L/C Obligations (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth herein for so long as such L/C Obligations are outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Bank's L/C Obligations pursuant to this Section 2.14(b), the Borrower shall not be required to pay any fees to such Defaulting Bank pursuant to Section 3.1 hereof with respect to such Defaulting Bank's L/C Obligations during the period such Defaulting Bank's L/C Obligations are cash collateralized; and

(iv) if the L/C Obligations of the Non-Defaulting Banks are reallocated pursuant to this Section 2.14(b), then the fees payable to the Banks pursuant to Section 3.1 hereof shall be adjusted to give effect to such reallocations in accordance with such Non-Defaulting Banks' Percentages;

(c) so long as any Bank is a Defaulting Bank, no Issuing Agent shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the Non-Defaulting Banks (and/or cash collateralized in accordance with the terms hereof), and participating interests in any such newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Banks in a manner consistent with Section 2.14(b)(i) hereof (and Defaulting Banks shall not participate therein); and

(d) any amount payable to such Defaulting Bank hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Bank pursuant to this Agreement) shall, in lieu of being distributed to such Defaulting Bank, subject to any applicable requirements of law, be applied (i) first, to the payment of any amounts owing by such Defaulting Bank to the Administrative Agent hereunder, (ii) second, pro rata, to the payment of any amounts then owing by such Defaulting Bank to any Issuing Agent or Swing Line Bank hereunder, (iii) third, in the event such Defaulting Bank's L/C Obligations are cash collateralized under this Section 2.14 by the Borrower, then, if no Default or Event of Default then exists, to the Borrower as a return of its corresponding cash collateral deposits until all such cash collateral has been returned to the Borrower, and (iv) fourth, to such Defaulting Bank, or, in each case, as otherwise directed by a court of competent jurisdiction.

In the event that the Administrative Agent, the Borrower, the Swing Line Bank and each Issuing Agent each agrees that a Defaulting Bank has adequately remedied all matters that caused such Bank to be a Defaulting Bank, then the Loans of the Banks shall be readjusted and reallocated to reflect the inclusion of such Bank's Commitment and on such date such Bank shall purchase at par such of the Loans and participations in Letters of Credit and Swing Line Loans of the other Banks as the Administrative Agent shall determine may be necessary in order for such Bank to

hold such Loans and participations in Letters of Credit and Swing Line Loans in accordance with its applicable Percentage after giving effect to such reallocation; provided, that, notwithstanding the foregoing, the Borrower must comply with all applicable terms hereof.

Notwithstanding anything set forth herein to the contrary, a Defaulting Bank shall not have any voting or consent rights under or with respect to any Credit Documents or constitute a "Bank" for any voting or consent rights under or with respect to any Credit Document, in any matter requiring the consent of Required Banks. Moreover, for the purposes of determining Required Banks, the Loans and Commitments held by Defaulting Banks shall be excluded from the total Loans and Commitments outstanding. For purposes of clarification, a Defaulting Bank shall not lose its right to vote with respect to matters set forth in clauses (i) and (ii) of Section 11.11 hereof.

Section 2.15 Extension of Termination Date.

(a) The Borrower may at any time from time to time not more than seventy-five (75) days and not less than forty-five (45) days prior to any anniversary of the Effective Date (other than the Termination Date), by notice to the Administrative Agent (who shall promptly notify the Banks), request that each Bank extend (each such date on which an extension occurs, an "Extension Date") such Bank's Termination Date to the date that is one year after the Termination Date then in effect for such Bank (the "Existing Termination Date").

(b) Each Bank, acting in its sole and individual discretion, shall, by notice to the Administrative Agent given not later than the date that is fifteen (15) days after the date on which the Administrative Agent received the Borrower's extension request (the "Bank Notice Date"), advise the Administrative Agent whether or not such Bank agrees to such extension (each Bank that determines to so extend its Termination Date, an "Extending Bank"). Each Bank that determines not to so extend its Termination Date (a "Non-Extending Bank") shall notify the Administrative Agent of such fact promptly after such determination (but in any event no later than the Bank Notice Date), and any Bank that does not so advise the Administrative Agent on or before the Bank Notice Date shall be deemed to be a Non-Extending Bank. The election of any Bank to agree to such extension shall not obligate any other Bank to so agree, and it is understood and agreed that no Bank shall have any obligation whatsoever to agree to any request made by the Borrower for extension of the Termination Date.

(c) The Administrative Agent shall promptly notify the Borrower of each Bank's determination under this Section.

(d) The Borrower shall have the right, but shall not be obligated, on or before the applicable Termination Date for any Non-Extending Bank to replace such Non-Extending Bank with, and add as "Banks" under this Agreement in place thereof, one or more financial institutions that are not Ineligible Institutions (each, an "Additional Commitment Bank") approved by the Administrative Agent and the Issuing Agents in accordance with the procedures provided in Section 11.18 each of which Additional Commitment Banks shall have entered into an Assignment and Assumption (in accordance with and subject to the restrictions contained in Section 11.10(b), with the Borrower obligated to pay any applicable processing or recordation fee) with such Non-Extending Bank, pursuant to which

such Additional Commitment Banks shall, effective on or before the applicable Termination Date for such Non-Extending Bank, assume a Commitment (and, if any such Additional Commitment Bank is already a Bank, its Revolving Commitment shall be in addition to such Bank's Revolving Commitment hereunder on such date). Prior to any Non-Extending Bank being replaced by one or more Additional Commitment Banks pursuant hereto, such Non-Extending Bank may elect, in its sole discretion, by giving irrevocable notice thereof to the Administrative Agent and the Borrower (which notice shall set forth such Bank's new Termination Date), to become an Extending Bank. The Administrative Agent may effect such amendments to this Agreement as are reasonably necessary to provide for any such extensions with the consent of the Borrower but without the consent of any other Banks.

(e) If (and only if) the total of the Commitments of the Banks that have agreed to extend their Termination Date and the new or increased Commitments of any Additional Commitment Banks is more than 50% of the aggregate amount of the Commitments in effect immediately prior to the applicable Extension Date, then, effective as of the applicable Extension Date, the Termination Date of each Extending Bank and of each Additional Commitment Bank shall be extended to the date that is one year after the Existing Termination Date (except that, if such date is not a Business Day, such Termination Date as so extended shall be the next preceding Business Day) and each Additional Commitment Bank shall thereupon become a "Bank" for all purposes of this Agreement and shall be bound by the provisions of this Agreement as a Bank hereunder and shall have the obligations of a Bank hereunder. For purposes of clarity, it is acknowledged and agreed that the Termination Date on any date of determination shall not be a date more than five (5) years after such date of determination, whether such determination is made before or after giving effect to any extension request made hereunder.

(f) Notwithstanding the foregoing, (x) no more than two (2) extensions of the Termination Date shall be permitted hereunder and (y) any extension of any Termination Date pursuant to this Section 2.15 shall not be effective with respect to any Extending Bank unless:

(i) no Default or Event of Default shall have occurred and be continuing on the applicable Extension Date and immediately after giving effect thereto;

(ii) the representations and warranties of the Borrower set forth in this Agreement are true and correct on and as of the applicable Extension Date and after giving effect thereto, as though made on and as of such date (or to the extent that such representations and warranties specifically refer to an earlier date, as of such earlier date); and

(iii) the Administrative Agent shall have received a certificate dated as of the applicable Extension Date from the Borrower signed by an Authorized Representative of the Borrower (A) certifying the accuracy of the foregoing clauses (i) and (ii) and (B) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension.

(g) On the Termination Date of each Non-Extending Bank, (i) the Commitment of each Non-Extending Bank shall automatically terminate and (ii) the Borrower shall repay such Non-Extending Bank in accordance with Section 4.1 (and shall pay to such Non-Extending Bank all of the other Obligations owing to it under this Agreement) and after giving effect thereto shall prepay any Revolving Loans outstanding on such date (and pay any additional amounts required pursuant to Section 2.8) to the extent necessary to keep outstanding Revolving Loans ratable with any revised Percentages of the respective Banks effective as of such date, and the Administrative Agent shall administer any necessary reallocation of the Banks' Revolving Loans and L/C Obligations (without regard to any minimum borrowing, pro rata borrowing and/or pro rata payment requirements contained elsewhere in this Agreement).

(h) This Section shall supersede any provisions in Section 11.11 to the contrary.

SECTION 3. FEES.

Section 3.1 Fees.

(a) *Commitment Fee.* From and after the Effective Date, the Borrower shall pay to the Administrative Agent for the ratable account of the Banks in accordance with their Percentages a commitment fee accruing at a rate per annum equal to the Commitment Fee Rate on the average daily unused amount of the Commitments (the "*Commitment Fee*"). Such Commitment Fee is payable in arrears on the last Business Day of each calendar quarter and on the Termination Date, and if the Commitments are terminated in whole prior to the Termination Date, the fee for the period to but not including the date of such termination shall be paid in whole on the date of such termination. Swing Line Loans shall not count as usage of the Commitments for the purpose of calculating the Commitment Fee due hereunder.

(b) *Letter of Credit Fees.*

(i) The Borrower shall pay to the Administrative Agent for the account of each Bank letter of credit fees with respect to the Letters of Credit at a rate per annum equal to the L/C Fee Rate on the average daily maximum undrawn face amount of such outstanding Letters of Credit (including any Letters of Credit outstanding after the termination of the Commitments), computed in each case on a quarterly basis in arrears on the last Business Day of each calendar quarter and on the Termination Date.

(ii) The letter of credit fees payable under Section 3.1(b)(i) hereof shall be due and payable quarterly in arrears on the last Business Day of each calendar quarter during which Letters of Credit are outstanding, commencing on the first such quarterly date to occur after the Effective Date, and on the Termination Date, and if the Commitments are terminated in whole on an earlier date, the fee for the period to but not including the

date of such termination shall be paid in whole on the date of such termination.

(iii) The Borrower shall pay to each Issuing Agent from time to time on demand the normal issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Agent relating to Letters of Credit as from time to time in effect, and such fronting fees as may be agreed upon by the Borrower and such Issuing Agent.

(c) *Administrative Fees.* The Borrower shall pay to the Administrative Agent for the account of the Administrative Agent (and no other persons) the fees agreed to among the Administrative Agent and the Borrower in the respective Fee Letter otherwise agreed in writing among them.

(d) *Arranger Fees.* The Borrower shall pay to the Arrangers for the accounts of the Arrangers (and no other Persons) the fees agreed to among the Arrangers and the Borrower in their respective Fee Letters or as otherwise agreed in writing among them.

(e) *Fee Calculations.* All fees payable under this Agreement shall be payable in U.S. Dollars and shall be computed on the basis of a year of 360 days, for the actual number of days elapsed. All determinations of the amount of fees owing hereunder (and the components thereof) shall be made by the Administrative Agent and shall be *prima facie* evidence of the amount of such fee, absent manifest error.

SECTION 4. PLACE AND APPLICATION OF PAYMENTS.

Section 1.4 Place and Application of Payments.

All payments of principal of and interest on the Loans, and of all other Obligations and other amounts payable by the Borrower under the Credit Documents, shall be made by the Borrower in U.S. Dollars to the Administrative Agent or the applicable Issuing Agent if such payment is being made with respect to a Reimbursement Obligation, by no later than 2:00 p.m. (New York time) on the due date thereof at the principal office of the Administrative Agent or the office of the applicable Issuing Agent designated in writing to the Borrower by such Issuing Agent, as applicable, pursuant to the payment instructions set forth on Part A of **Schedule 4** hereto (or such other location in the United States as the Administrative Agent or the applicable Issuing Agent, as applicable, may designate to the Borrower) or, if such payment is on a Reimbursement Obligation, no later than provided by Section 2.2(c) hereof, in each case for the benefit of the Person or Persons entitled thereto. Any payments received after such time shall be deemed to have been received by the Administrative Agent or the applicable Issuing Agent on the next Business Day. All such payments shall be made free and clear of, and without deduction for, any set-off, defense, counterclaim, levy, or any other deduction of any kind in immediately available funds at the place of payment. The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest on Loans or applicable fees ratably (except (i) with respect to repayments of Swing Line Loans, (ii) in the case of Reimbursement Obligations for which the applicable Issuing Agent has not been fully indemnified by the Banks or (iii) as otherwise specifically required hereunder) to the Banks and

like funds relating to the payment of any other amount payable to any Person to such Person, in each case to be applied in accordance with the terms of this Agreement.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

The Borrower hereby represents and warrants to each Bank as to itself and, where the following representations and warranties apply to its Subsidiaries, as to each Subsidiary of the Borrower, as follows:

Section 5.1 Corporate Organization and Authority

The Borrower is duly organized and existing in good standing under the laws of the state of South Dakota; has all necessary corporate power to carry on its present business; and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business transacted by it or the nature of the Property owned or leased by it makes such licensing, qualification or good standing necessary and in which the failure to be so licensed, qualified or in good standing would have a Material Adverse Effect.

Section 5.2 Subsidiaries

Schedule 5.2 (as updated from time to time pursuant to Section 7.1 hereof) hereto identifies each Subsidiary of the Borrower, the jurisdiction of organization, the percentage of issued and outstanding equity securities owned by the Borrower and its Subsidiaries and, if such percentage is not one hundred percent (100%) (excluding directors' qualifying shares as required by law), a description of each class of its equity securities and the number of securities issued and outstanding. Each Subsidiary is duly organized and existing in good standing under the laws of the jurisdiction of its organization, has all necessary corporate or equivalent power to carry on its present business, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business transacted by it or the nature of the Property owned or leased by it makes such licensing or qualification necessary and in which the failure to be so licensed or qualified would have a Material Adverse Effect. All of the issued and outstanding securities of each Subsidiary owned directly or indirectly by the Borrower are validly issued and outstanding and fully paid and nonassessable except as set forth on **Schedule 5.2** hereto. All such securities owned by the Borrower are owned beneficially, and of record, free of any Lien, except as permitted in Section 7.9 hereof.

Section 5.3 Corporate Authority and Validity of Obligations

The Borrower has full right and authority to enter into this Agreement and the other Credit Documents to which the Borrower is a party, to make the borrowings herein provided for, to issue its Notes in evidence thereof, to apply (and to have applied) for the issuance of the Letters of Credit, and to perform all of its obligations under the Credit Documents to which it is a party. Each Credit Document to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes valid and binding obligations of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally and by equitable principles of general applicability (regardless of whether such enforceability is considered in a proceeding in equity or at law). No Credit Document, nor the performance or observance by the Borrower of any of the matters or things therein provided for, contravenes any provision of law or any charter or by-law provision of the

Borrower or any material Contractual Obligation of or affecting the Borrower or any of the Borrower's Properties or results in or requires the creation or imposition of any Lien on any of the Properties or revenues of the Borrower.

Section 5.4 Financial Statements

All financial statements heretofore delivered to the Banks showing historical performance of the Borrower for the Borrower's fiscal years ending on or before December 31, 2020 have been prepared in accordance with generally accepted accounting principles applied on a basis consistent, except as otherwise noted therein, with that of the previous fiscal year. The unaudited balance sheet and income statements for the three-month period ended March 31, 2021 have been prepared in accordance with generally accepted accounting principles applicable to interim financial statements applied on a basis consistent, except as otherwise noted therein, with the previous same fiscal period of the Borrower in the prior fiscal year (subject to normal year-end adjustments). Each of such financial statements fairly presents on a consolidated basis the financial condition of the Borrower and its Subsidiaries as of the dates thereof and the results of operations for the periods covered thereby. The Borrower and its Subsidiaries have no material contingent liabilities other than those disclosed in such financial statements referred to in this Section 5.4 or in comments or footnotes thereto, or in any report supplementary thereto, heretofore furnished to the Banks. Since December 31, 2020, there has been no event or series of events which has resulted in, or reasonably could be expected to result in, a Material Adverse Effect.

Section 5.5 No Litigation

Except as disclosed on **Schedule 5.5** hereto, there is no litigation or governmental proceeding pending, or to the knowledge of the Borrower, threatened, against the Borrower or any Subsidiary of the Borrower, in which there is a reasonable possibility of an adverse decision which, if adversely determined, could (individually or in the aggregate) have a Material Adverse Effect.

Section 5.6 Taxes

The Borrower and its Subsidiaries have timely filed all United States Federal tax returns, and all other foreign, state, local and other tax returns, required to be filed and have timely paid all taxes due from the Borrower and its Subsidiaries (whether or not pursuant to such returns or pursuant to any assessment received by the Borrower or any Subsidiary of the Borrower), except such taxes, if any, as are being contested in good faith and for which adequate reserves have been provided. No notices of tax liens have been filed, other than such notices in respect of any tax liens that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and no claims are being asserted concerning any such taxes, which liens or claims are material to the financial condition of the Borrower or any of its Subsidiaries (individually or in the aggregate). The charges, accruals and reserves on the books of the Borrower and its Subsidiaries for any taxes or other governmental charges are adequate and in conformance with GAAP.

Section 5.7 Approvals

No authorization, consent, approval, license, exemption, filing or registration with any court or governmental department, agency or instrumentality **which have not already been obtained**, nor

any approval or consent of the stockholders of the Borrower or any Subsidiary of the Borrower or from any other Person, is necessary to the valid execution, delivery or performance by the Borrower or any Subsidiary of the Borrower of any Credit Document to which it is a party.

Section 5.8 ERISA

With respect to each Plan, the Borrower and each other member of the Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all material respects with the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and with the Code to the extent applicable to it. The Borrower and each other member of the Controlled Group has made all contribution to each Multiemployer Plan when due. The Borrower and each other member of the Controlled Group has not incurred any liability to the Pension Benefit Guaranty Corporation (“PBGC”), a Plan or a Multiemployer Plan under Title IV of ERISA other than (a) a liability incurred in the ordinary course of business related to the ongoing funding requirements of a Plan or Multiemployer Plan or (b) a liability to the PBGC for premiums under Section 4007 of ERISA. Neither the Borrower nor any Subsidiary of the Borrower has any contingent liabilities for any post-retirement benefits under a Welfare Plan, and other than (i) liability for continuation coverage described in Part 6 of Title I of ERISA and Section 4980B of the Code or similar state statute and (ii) additional liabilities that could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect. The Borrower is not an entity deemed to hold “plan assets” within the meaning of 29 C.F.R. § 2510.3-101, as modified by Section 3(42) of ERISA, of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Code) which is subject to Section 4975 of the Code. The assets of the Borrower are not subject to any law, rule or regulation which is substantially similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code.

Section 5.9 Government Regulation

Neither the Borrower nor any Subsidiary of the Borrower is an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 5.10 Margin Stock; Use of Proceeds

Neither the Borrower nor any Subsidiary of the Borrower is engaged principally, or as one of its primary activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (“margin stock” to have the same meaning herein as in Regulation U of the Board of Governors of the Federal Reserve System). The proceeds of the Loans and Letters of Credit are to be used solely (i) to fund the Borrower’s and its Subsidiaries’ working capital needs and (ii) for general corporate purposes of the Borrower and its Subsidiaries. The Borrower will not use the proceeds of any Loan or Letter of Credit in a manner that violates any provision of Regulation U or X of the Board of Governors of the Federal Reserve System.

Section 5.11 Compliance with Laws

The Borrower and each of its Subsidiaries is in compliance with all applicable laws, regulations, ordinances and orders of any governmental or judicial authorities except for any such law, regulation, ordinance or order which, the failure to comply therewith, could not reasonably be expected to have a Material Adverse Effect. The Borrower and its Subsidiaries have

implemented and maintained in effect policies and procedures designed to ensure compliance with Anti-Corruption Laws and Sanctions Laws and Regulations.

Section 5.12 Ownership of Property; Liens

The Borrower and each Subsidiary of the Borrower has good title to or valid leasehold interests in all its Property necessary for the Borrower and its Subsidiaries to conduct its respective business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. None of the Borrower's or any Subsidiary's Property is subject to any Lien, except as permitted in Section 7.9 hereof.

Section 5.13 [Reserved]

Section 5.14 Full Disclosure

(a) All information heretofore furnished by the Borrower to the Administrative Agent or any Bank for purposes of or in connection with the Credit Documents or any transaction contemplated thereby is, and all such information hereafter furnished by the Borrower to the Administrative Agent or any Bank will be, true and accurate in all material respects and not misleading; *provided* that with respect to any projected financial information, the Borrower represents only that such information was prepared in good faith upon reasonable assumptions.

(b) As of the Effective Date, the information included in any Beneficial Ownership Certification, if any, is true and correct in all respects.

Section 5.15 [Reserved]

Section 5.16 Sanctions Laws and Regulations

None of the Borrower, any of its Subsidiaries or any of their respective directors, officers or employees or, to the knowledge of the Borrower, any Affiliates of the Borrower or its Subsidiaries or any agent of the Borrower or any of its Subsidiaries that will act in any capacity in connection with this Agreement or benefit from the credit facility established hereby, is a Designated Person. The Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Sanctions Laws and Regulations in all material respects. No Borrowing, Letter of Credit, use of proceeds or other Transactions will violate any Sanctions Laws and Regulations.

Section 5.17 Affected Financial Institution

The Borrower is not an Affected Financial Institution.

SECTION 6. CONDITIONS PRECEDENT.

The obligation of each Bank to effect a Borrowing, or of an Issuing Agent to issue, extend the expiration date of or increase the amount of any Letter of Credit, shall be subject to the following conditions precedent:

b. *Initial Credit Event*

On or before the Effective Date:

1. The Administrative Agent shall have received for each Bank the favorable written opinion of (i) Faegre Drinker Biddle & Reath LLP, counsel to the Borrower, and (ii) General Counsel to the Borrower; provided, either such opinion shall include a legal opinion to the effect that the Borrower has obtained all necessary approvals under PUHCA in connection with its obligations under the Credit Documents, and such other related matters as the Administrative Agent may reasonably request;
 2. The Administrative Agent shall have received for each Bank copies of the Borrower's (i) Articles of Incorporation, together with all amendments, and (ii) bylaws (or comparable constituent documents) and any amendments thereto, certified in each instance by its Secretary or an Assistant Secretary;
 3. The Administrative Agent shall have received for each Bank satisfactory evidence that the Borrower's Board of Directors has authorized the execution and delivery of the Credit Documents and the consummation of the transactions contemplated thereby together with specimen signatures of the persons authorized to execute such documents on the Borrower's behalf, all certified in each instance by its Secretary or Assistant Secretary;
 4. The Administrative Agent shall have received for each Bank which has requested same such Bank's duly executed Note of the Borrower dated the date hereof and otherwise in compliance with the provisions of Section 2.10(a) hereof;
 5. The Administrative Agent shall have received a duly executed set of the Credit Documents;
 6. All legal matters incident to the execution and delivery of the Credit Documents shall be satisfactory to the Banks;
 7. The Administrative Agent shall have received a duly executed Compliance Certificate containing financial information as of March 31, 2021 (stating a Consolidated Indebtedness to Capitalization Ratio in accordance with Section 7.17 hereof);
 8. During the period from December 31, 2020 to the Effective Date, neither the Borrower nor any of its Subsidiaries shall have issued, incurred, assumed, created, become liable for, contingently or otherwise, any material Indebtedness other than pursuant to that certain Credit Agreement, dated as of February 24, 2021, among the Borrower, the Financial Institutions Party Thereto, U.S. Bank National Association, as Administrative Agent, Wells Fargo Bank, National Association, as Syndication Agent, Bank of Montreal, Chicago Branch, as Documentation Agent;
 9. The Borrower shall have provided to the Administrative Agent a certificate stating that the conditions precedent set forth in this Section 6.1 and Sections 6.2(b) and (c) hereof have been satisfied;
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10. The Borrower shall have paid to the Administrative Agent for the benefit of each Bank the applicable fees for providing their respective Commitments under this Agreement;
11. Upon the reasonable request of any Bank made at least ten days prior to the Effective Date, the Borrower must have provided to such Bank the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least five days prior to the Effective Date;
12. At least five days prior to the Effective Date, if the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Borrower must deliver a Beneficial Ownership Certification in relation to Borrower; and
13. The Administrative Agent shall have received such other documents and information as it may reasonably request.

c. *All Credit Events*

As of the time of each Credit Event hereunder:

1. In the case of a Borrowing, the Administrative Agent shall have received the notice required by Section 2.5 hereof, in the case of the issuance of any Letter of Credit, the applicable Issuing Agent shall have received the request for such Letter of Credit required by Section 2.2(b) hereof, and a duly completed Supplemental Letter of Credit Agreement for a Letter of Credit and, in the case of an extension or increase in the amount of a Letter of Credit, the applicable Issuing Agent shall have received a written request therefor, in a form acceptable to such Issuing Agent;
2. Each of the representations and warranties set forth in Section 5 hereof (except with respect to representations contained in the first sentence of Section 5.2 hereof which are untrue as the result of information on **Schedule 5.2** which has not yet been required to be updated pursuant to Section 7.6(c) hereof) shall be and remain true and correct in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of said time, except that if any such representation or warranty relates solely to an earlier date it need only remain true in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of such date; and
3. No Default or Event of Default shall have occurred and be continuing or would occur as a result of such Credit Event.

Each request for a Credit Event shall be deemed to be a representation and warranty by the Borrower on the date of such Credit Event as to the facts specified in paragraphs (b) and (c) of this Section 6.2.

2. COVENANTS.

The Borrower covenants and agrees that, so long as any Note, Loan or L/C Obligation is outstanding hereunder, or any Commitment is available to or in use by the Borrower hereunder, except to the extent compliance in any case is waived in writing by the Required Banks:

a. *Corporate Existence; Subsidiaries*

The Borrower shall, and shall cause each of its Subsidiaries to, preserve and maintain its corporate existence, subject to the provisions of Section 7.12 hereof. Together with any financial statements delivered pursuant to Section 7.6 hereof, the Borrower shall deliver an updated **Schedule 5.2** to reflect any changes from the existing **Schedule 5.2**.

b. *Maintenance*

The Borrower will maintain, preserve and keep its plants, Properties and equipment necessary to the proper conduct of its business in reasonably good repair, working order and condition and will from time to time make all reasonably necessary repairs, renewals, replacements, additions and betterments thereto so that at all times such plants, Properties and equipment shall be reasonably preserved and maintained, and the Borrower will cause each of its Subsidiaries to do so in respect of Property owned or used by it; *provided, however*, that nothing in this Section 7.2 shall prevent the Borrower or a Subsidiary of the Borrower from discontinuing the operation or maintenance of any such Properties if such discontinuance could not reasonably be expected to have a Material Adverse Effect and is, in the judgment of the Borrower, desirable in the conduct of its business or the business of its Subsidiaries.

c. *Taxes*

The Borrower will duly pay and discharge, and will cause each of its Subsidiaries duly to pay and discharge, all taxes, rates, assessments, fees and governmental charges upon or against it or against its Properties, in each case before the same becomes delinquent and before penalties accrue thereon, unless and to the extent that the same is being contested in good faith by appropriate proceedings and reserves in conformity with GAAP have been provided therefor on the books of the Borrower, except where such failure to pay and discharge such taxes, rates, assessments, fees and charges could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

d. *ERISA*

The Borrower will, and will cause each of its Subsidiaries to, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which, if unpaid or unperformed, might result in the imposition of a Lien against any of its properties or assets and will promptly notify the Administrative Agent of (i) the occurrence of any reportable event (as defined in ERISA) affecting a Plan, other than any such event of which the PBGC has waived notice by regulation, (ii) receipt of any notice from PBGC of its intention to seek termination of any Plan or appointment of a trustee therefor, (iii) the Borrower's or any of its Subsidiaries' intention to completely or partially terminate any Plan, (iv) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination under Section 4041 of ERISA, (v) with respect to any Multiemployer Plan, its or any of its Subsidiaries' intention to completely or partially withdraw from the Multiemployer Plan, (vi) the failure of a Plan, Multiemployer Plan or related trust intended to qualify for tax exempt status under Section 401(a) or 501 of the Code to qualify thereunder, and (vii) the occurrence of any event affecting any Plan or Multiemployer Plan which could result in the incurrence by the Borrower or any of its Subsidiaries of any material liability, fine or penalty, or any material increase in the contingent liability of the

Borrower or any of its Subsidiaries under any post-retirement Welfare Plan benefit. The Administrative Agent will promptly distribute to each Bank any notice it receives from the Borrower pursuant to this Section 7.4.

e. *Insurance*

The Borrower will insure, and keep insured, and will cause each of its Subsidiaries to insure, and keep insured, with good and responsible insurance companies, all insurable Property owned by it of a character usually insured by companies similarly situated and operating like Property. To the extent usually insured by companies similarly situated and conducting similar businesses, the Borrower will also insure, and cause each of its Subsidiaries to insure, employers' and public and product liability risks with good and responsible insurance companies. The Borrower will, upon request of any Bank, furnish to such Bank a summary setting forth the nature and extent of the insurance maintained pursuant to this Section 7.5.

f. *Financial Reports and Other Information*

1. The Borrower will maintain a system of accounting in accordance with GAAP and will furnish to the Banks and their respective duly authorized representatives such information respecting the business and financial condition of the Borrower and its Subsidiaries as any Bank may reasonably request; and without any request, the Borrower shall deliver to the Administrative Agent, which in turn will deliver to each Bank, in form and detail satisfactory to the Administrative Agent, each of the following:
 - a. within 90 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2021, a copy of the Borrower's financial statements for such fiscal year, including the consolidated balance sheet of the Borrower and its Subsidiaries for such year and the related statements of income and statements of cash flow, each as certified by independent public accountants of recognized national standing selected by the Borrower in accordance with GAAP with such accountants' opinion to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in all material respects in accordance with GAAP the consolidated financial position of the Borrower and its Subsidiaries as of the close of such fiscal year and the results of their operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, provided that such opinion shall not contain a "going concern" or like qualification or exception or a qualification arising out of the scope of the audit, and provided, further, that if the Borrower publicly files with the SEC its annual report on Form 10-K for the applicable annual period, and such annual report contains the financial statements and accountants' certifications, opinions and
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statements described above, the Borrower may satisfy the requirements of this Section 7.6(a) (i) by such filing, subject to Section 7.6(b) hereof. Together with such information the Borrower shall provide to the Administrative Agent such consolidating information as may be necessary for the Banks to determine the Borrower's compliance with Section 7.17 hereof;

- b. within 60 days after the end of each of the first three quarterly fiscal periods of each fiscal year of the Borrower, commencing with the fiscal quarter ending June 30, 2021, a consolidated unaudited balance sheet of the Borrower and its Subsidiaries, and the related statements of income and statements of cash flow, as of the close of such period, all of the foregoing prepared by the Borrower in reasonable detail in accordance with GAAP and certified by the Borrower's chief executive officer, chief financial officer, corporate controller or treasurer as fairly presenting the financial condition as at the dates thereof and the results of operations for the periods covered thereby, provided that if the Borrower publicly files with the SEC a Form 10-Q for the applicable quarterly period, and such quarterly report contains the financial statements and certifications described above, the Borrower may satisfy the requirements of this Section 7.6(a)(ii) by such filing, subject to Section 7.6(b) hereof. Together with such information the Borrower shall provide to the Administrative Agent such consolidating information as may be necessary for the Banks to determine the Borrower's compliance with Section 7.17 hereof;
 - c. within the period provided in subsection (i) above, the written statement of the accountants who certified the audit report thereby required consistent with past practices that in the course of their audit they have obtained no knowledge of certain Defaults or Events of Default, or, if such accountants have obtained knowledge of any such Default or Event of Default, they shall disclose in such statement the nature and period of the existence thereof;
 - d. promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports the Borrower or any of its non Wholly-Owned Subsidiaries that are Material Subsidiaries sends to its (or their, as applicable) shareholders, and subject to Section 7.6(b) hereof, copies of all other regular, periodic and special reports and all registration statements the Borrower or any of its Subsidiaries file with the SEC or any successor thereto, or with any national securities exchanges; and
 - e. on or promptly after any time at which the Borrower or any Subsidiary becomes subject to the Beneficial Ownership Regulation, a completed Beneficial Ownership Certification in form and substance acceptable to the Administrative Agent.
2. Any financial statement, report or registration statement required to be furnished pursuant to Section 7.6(a)(i), (ii) or (iv) hereof shall be
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deemed to have been furnished on the date on which the Administrative Agent receives notice that the Borrower has filed such financial statement, report or registration statement with the SEC and it is available on the EDGAR website on the Internet at www.sec.gov or any successor government website that is freely and readily available to the Administrative Agent and the Banks without charge; provided that the Borrower shall give notice of any such filing to the Administrative Agent (which shall then give notice of any such filing to the Banks). Notwithstanding the foregoing, the Borrower shall deliver paper copies of any such financial statement, report or registration statement to the Administrative Agent if the Administrative Agent requests the Borrower to furnish such paper copies until written notice to cease delivering such paper copies is given by the Administrative Agent.

3. Each financial statement furnished to the Administrative Agent pursuant to Section 7.6(a)(i) or (ii) hereof shall be accompanied by (A) a written certificate signed by the Borrower's chief executive officer, chief financial officer, corporate controller or treasurer to the effect that (i) no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by the Borrower to remedy the same, (ii) the representations and warranties contained in Section 5 hereof are true and correct in all material respects as though made on the date of such certificate (other than those made solely as of an earlier date, which need only remain true as of such date), except as otherwise described therein, (B) a Compliance Certificate in the form of **Exhibit B** hereto showing the Borrower's compliance with the covenant set forth in Section 7.17 hereof, and (C) a reasonably detailed description of any material change in any of the material information set forth on **Schedules 5.2** and **5.5** since the date of the last certificate delivered pursuant to clause (A) above.
 4. The Borrower will promptly (and in any event within three (3) Business Days after an officer of the Borrower has knowledge thereof) give notice to the Administrative Agent and each Bank:
 - a. of the occurrence of any Default or Event of Default;
 - b. any event or condition which could reasonably be expected to have a Material Adverse Effect;
 - c. of any event that would cause the representations and warranties set forth in Section 5.5 or Section 5.11 hereof to be untrue;
 - d. of the entering into of any Long-Term Guaranties, and the Borrower shall promptly provide the Administrative Agent with a copy of any such Guarantee and any modification to such Guarantee;
 - e. ***promptly, but within five (5) days after such change, written notice to the Administrative Agent of each change to the Reference Rating;***
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- f. any change in the information provided in any Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification; and
- g. promptly following request therefor, such information and documentation reasonably requested by the Administrative Agent or any Bank for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act or other applicable anti-money laundering laws or the Beneficial Ownership Regulation.

g. *Bank Inspection Rights*

For purposes of confirming compliance with the Credit Documents or after the occurrence and during the continuance of an Event of Default, upon reasonable notice from the Administrative Agent or the Required Banks, the Borrower will, at the Borrower’s expense, permit such Banks (and such Persons as any Bank may designate) during normal business hours to visit and inspect, under the Borrower’s guidance, any of the Properties of the Borrower or any of its Subsidiaries, to examine all of their books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers, employees and with their independent public accountants (and by this provision the Borrower authorizes such accountants to discuss with the Banks (and such Persons as any Bank may designate) the finances and affairs of the Borrower and its Subsidiaries) all at such reasonable times and as often as may be reasonably requested; *provided, however*, that except upon the occurrence and during the continuation of any Default or Event of Default, not more than one such visit and inspection may be conducted each calendar quarter.

h. *Conduct of Business*

Neither the Borrower nor any Subsidiary of the Borrower will engage in any line of business other than business activities in the field of (i) cogeneration and related thermal uses, (ii) energy production, (iii) energy development, (iv) energy recovery, (v) utility ownership, operation and management, including the provision of services reasonably ancillary thereto, such as gas services and call centers, (vi) demand side management services, (vii) management of investment funds which invest in energy related businesses and investments in such funds, (viii) hedging (but not speculative activities relating to any of the foregoing lines of business described in clauses (i) through (viii)), (ix) telecommunications, (x) management and operating services related to any of the foregoing lines of business, and (xi) other businesses not described in the foregoing so long as the Investments and expenses made in such other businesses does not exceed \$50,000,000.

i. *Liens*

The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, permit to exist or to be incurred any Lien of any kind on any Property owned by the Borrower or any Subsidiary of the Borrower; *provided, however*, that this Section 7.9 shall not apply to or operate to prevent:

1. Liens arising by operation of law in respect of Property of the Borrower or any of its Subsidiaries which are incurred in the ordinary course of business which do not in the aggregate materially detract from the value of such Property or materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries;
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2. Liens securing **(i) Non-Recourse Indebtedness** of any Subsidiary of the Borrower **or (ii) the obligations of a Project Finance Subsidiary under a power purchase agreement or under Non-Recourse Indebtedness of such Project Finance Subsidiary**, provided that **in the case of clause (i) above** any such Lien is limited to the Property being financed or refinanced by such Non-Recourse Indebtedness and the stock (or similar equity interest) of the Subsidiary which incurred such Non-Recourse Indebtedness, **and in the case of clause (ii) above any such Lien is limited to the Property and the stock (or similar equity interest) of such Subsidiary or Project Finance Subsidiary, as applicable**;
 3. Liens for taxes or assessments or other government charges or levies on the Borrower or any Subsidiary of the Borrower or their respective Properties which are being contested in good faith by appropriate proceedings and for which reserves in conformity with GAAP have been provided on the books of the Borrower; *provided* that the aggregate amount of liabilities (including interest and penalties, if any) of the Borrower and its Subsidiaries secured by such Liens shall not exceed \$50,000,000 at any one time outstanding;
 4. Liens arising out of judgments or awards against the Borrower or any Subsidiary of the Borrower, or in connection with surety or appeal bonds in connection with bonding such judgments or awards, the time for appeal from which or petition for rehearing of which shall not have expired or with respect to which the Borrower or such Subsidiary shall be prosecuting an appeal or proceeding for review, and with respect to which it shall have obtained a stay of execution pending such appeal or proceeding for review; *provided* that the aggregate amount of liabilities (including interest and penalties, if any) of the Borrower and its Subsidiaries secured by such Liens shall not exceed \$50,000,000 at any one time outstanding;
 5. Survey exceptions or encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties which are necessary for the conduct of the activities of the Borrower and any Subsidiary of the Borrower or which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not in any event materially impair their use in the operation of the business of the Borrower or any Subsidiary of the Borrower;
 6. Liens existing on the date hereof and listed on **Schedule 7.9** hereto;
 7. Liens securing (i) Indebtedness evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of personal property of the Borrower or a Subsidiary of the Borrower used in the ordinary course of business of the Borrower or a Subsidiary of the Borrower, so long as such Liens are limited to the property being financed or acquired and proceeds thereof, (ii) Capitalized Lease Obligations, so long as such Liens are limited to the property subject to the related Capital Lease and proceeds thereof, and (iii) the performance of tenders, statutory obligations, bids, leases or other
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similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on performance bonds; *provided*, that such Liens shall only be permitted to the extent the aggregate amount of Indebtedness and other obligations secured by all such Liens does not exceed five percent (5%) of Consolidated Assets as reflected on the most recent balance sheet delivered by the Borrower pursuant to Section 7.6 hereof;

8. Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;
 9. Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits;
 10. Liens relating to synthetic lease arrangements of the Borrower or a Subsidiary of the Borrower, *provided* that (i) such Lien is limited to the Property being leased, and (ii) to the extent the lessor or any other Person has recourse to the Borrower, any Subsidiary or any of their Property (other than the Property being so leased), through a Guarantee (including a residual guarantee) or otherwise, such Lien shall be permitted if the Borrower has included the recourse portion of such obligations as Indebtedness for all purposes (including financial covenant calculations) under the Credit Documents;
 11. Liens on any property or assets of a Subsidiary of the Borrower arising under Permitted Receivables Facilities;
 12. Liens securing Indebtedness issued pursuant to **(i)** that certain Restated and Amended Indenture of Mortgage and Deed of Trust dated as of September 1, 1999 between BHP and The Bank of New York Mellon (as successor to JPMorgan Chase Bank), as trustee (and any successor trustee thereunder), together with all amendments and supplemental indentures thereto, **(ii) the CLF&P Indenture, together with all amendments and supplemental indentures thereto, and (iii) Indebtedness constituting first mortgage bonds that is issued or incurred by any direct or indirect Subsidiary to finance the design, permitting, construction, ownership, operation or maintenance of utility properties** which does not mature prior to the Termination Date, as extended from time to time in accordance with the terms hereof, and is not in excess of an amount equal to fifty percent (50%) of the consolidated net book value of the property, plant and equipment of such Subsidiary (as reported in the most recent quarterly financial statements which were prepared in accordance with GAAP); *provided*, the Borrower shall promptly provide the Administrative Agent with a copy of any documentation evidencing such Indebtedness in excess of \$25,000,000 and any modification to such Indebtedness;
 13. Any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part of any Lien referred to in
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the foregoing paragraphs (a) through (j), inclusive, *provided, however*, that the principal amount of Indebtedness secured thereby shall not exceed the principal amount of Indebtedness so secured at the time of such extension, renewal or replacement, and that such extension, renewal or replacement shall be limited to the Property which was subject to the Lien so extended, renewed or replaced or in the case of a Project Finance Subsidiary, all of the assets of such Project Finance Subsidiary;

14. Liens (i) of a collecting bank arising under the UCC on items in the course of collection, (ii) in favor of a banking institution arising as a matter of law, or which arise under the documents governing the deposit relationship, encumbering deposits (including the right of set-off, charge-back rights, and refund rights) and which are within the general parameters customary in the banking industry, or (iii) encumbering customary deposits and margin deposits and other Liens attaching to brokerage accounts or arising under or in connection with Derivative Arrangements or Derivative Obligations, in each case incurred in the ordinary course of business; and
15. Other Liens made in the ordinary course of business of the Borrower or its Subsidiaries so long as the aggregate amount of Indebtedness or other obligations secured by such Liens does not exceed, in the aggregate, ten percent (10%) of Consolidated Assets as reflected on the most recent balance sheet delivered by the Borrower pursuant to Section 7.6 hereof, excluding goodwill.

provided, that the foregoing paragraphs shall not be deemed under any circumstance to permit a Lien to exist on any capital stock or other equity interests of the Material Subsidiaries.

j. *Use of Proceeds; Regulation U*

The proceeds of each Borrowing, and the credit provided by Letters of Credit, will be used by the Borrower solely (i) to fund the Borrower's and its Subsidiaries' working capital needs, and (ii) for general corporate purposes of the Borrower and its Subsidiaries. The Borrower will not use any part of the proceeds of any of the Borrowings or of the Letters of Credit directly or indirectly to purchase or carry any margin stock (as defined in Section 5.10 hereof) or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

k. *[Reserved]*

l. *Mergers, Consolidations, Acquisitions and Sales of Assets*

1. The Borrower will not, and will not permit any of its Material Subsidiaries to, consolidate with or be a party to merger with any other Person or sell, lease or otherwise dispose of all or a "*substantial part*" of the assets of the Borrower and its Subsidiaries; *provided, however*, that
 - a. the foregoing shall not prohibit any sale, lease, transfer or disposition of assets, other than equity interests in or the assets of BHP and CLF&P, solely to the extent and so long as (A) such transaction does not result in a downgrade of the Borrower's S&P
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Rating below BBB-, the Borrower's Fitch Rating below BBB- or the Borrower's Moody's Rating below Baa3, (B) such transaction is for cash consideration (or other consideration acceptable to the Required Banks) in an amount not less than the fair market value of the applicable assets, and (C) such transaction, when combined with all other such transactions, would not have a Material Adverse Effect, taken as a whole;

- b. the foregoing shall not prohibit any sale, lease, transfer or disposition to which the Required Banks have consented, such consent not to be unreasonably withheld if (A) such transaction does not result in a downgrade of either the Borrower's S&P Rating below BBB-, the Borrower's Fitch Rating below BBB- or the Borrower's Moody's Rating below Baa3, (B) such transaction is for cash consideration (or other consideration acceptable to the Required Banks) in an amount not less than the fair market value of the applicable assets, and (C) such transaction, when combined with all other such transactions, would not have a Material Adverse Effect, taken as a whole;
 - c.
 - a) any Subsidiary of the Borrower may merge or consolidate with or into or sell, lease or otherwise convey all or a substantial part of its assets to the Borrower or any Subsidiary of which the Borrower holds (directly or indirectly) at least the same percentage equity ownership; *provided that* in any such merger or consolidation involving the Borrower, the Borrower shall be the surviving or continuing corporation;
 - b) the Borrower or any Subsidiary of the Borrower may cause the dissolution of any direct or indirect Subsidiary of the Borrower; *provided that* the assets of the Subsidiary to be dissolved have first been sold, contributed, distributed or otherwise conveyed to (1) the Borrower or any direct or indirect Wholly-Owned Subsidiary of the Borrower or (2) a third party in a transaction permitted by this Section 7.12; and
 - c) the Borrower may contribute or otherwise convey all of the equity interests in each of BHP and CLF&P to one or more direct Wholly-Owned Subsidiaries of the Borrower (any such direct Wholly-Owned Subsidiary holding the equity interests of BHP or CLF&P, an "*Intermediate Holding Company*"); *provided that* no Intermediate Holding Company shall incur, assume or permit to exist any Indebtedness or other liabilities (other than (1) non-consensual obligations imposed by operation of applicable law and (2) immaterial liabilities incurred in the ordinary course of business, in the case of this clause (2), in an aggregate amount at any time outstanding not to exceed \$25,000,000);
 - d. the Borrower and its Subsidiaries may sell (A) inventory, reserves and electricity in the ordinary course of business and (B) Receivables and related Permitted Receivables Related Assets under Permitted Receivables Facilities;
 - e. the Borrower and its Subsidiaries may sell the assets of or equity interest in any Immaterial Subsidiary; *provided that* the total assets of such Immaterial Subsidiary, when added to the total assets of all other Immaterial Subsidiaries sold pursuant to this Section 7.12(a)(v) during such fiscal year, shall not exceed twenty percent (20%) of the Consolidated Assets of the Borrower and its
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Subsidiaries, determined on a consolidated basis as of the last day of the immediately preceding fiscal year; and

- f. the Borrower may enter into a merger with, or acquisition of all or substantially all of the capital stock or assets of, another Person so long as:

(A) if a merger, the Borrower or such Subsidiary is the surviving entity; (B) unless consented to by the Required Banks, no downgrade in the Borrower's S&P Rating below BBB-, the Borrower's Fitch Rating below BBB- or the Borrower's Moody's Rating below Baa3 would occur as a result of the consummation of such a transaction; (C) if such transaction is an acquisition, the Board of Directors (or similar governing body) of the Person being acquired has approved being so acquired; and (D) no Default or Event of Default has occurred and is continuing at the time of, or would occur as a result of, such transaction.

As used in this Section 7.12(a), a sale, lease, transfer or disposition of assets during any fiscal year shall be deemed to be of a "substantial part" of the Consolidated Assets of the Borrower and its Subsidiaries if the net book value of such assets, when added to the net book value of all other assets sold, leased, transferred or disposed of by the Borrower and its Subsidiaries during such fiscal year (other than inventory, reserves and electricity in the ordinary course of business) exceeds ten percent (10%) of the total assets of the Borrower and its Subsidiaries, determined on a consolidated basis as of the last day of the immediately preceding fiscal year.

2. Except as permitted pursuant to Section 7.12(a) hereof, the Borrower will not sell, transfer or otherwise dispose of, or permit any of its Subsidiaries to issue, sell, transfer or otherwise dispose of, any shares of stock of any class (including as "stock" for purposes of this Section, any warrants, rights or options to purchase or otherwise acquire stock or other Securities exchangeable for or convertible into stock) of any Subsidiary of the Borrower, except to the Borrower or a Wholly-Owned Subsidiary of the Borrower or except for the purpose of qualifying directors.

m. *[Reserved]*

n. *[Reserved]*

o. *[Reserved]*

p. *[Reserved]*

q. *Consolidated Indebtedness to Capitalization Ratio*

The Borrower will not permit the Consolidated Indebtedness to Capitalization Ratio to exceed 0.65 to 1.00, at the end of any fiscal quarter.

r. *Dividends and Other Shareholder Distributions*

1. The Borrower shall not (i) declare or pay any dividends or make a distribution of any kind (including by redemption or purchase) on or relating to its outstanding capital stock, or (ii) repay (directly, through sinking fund payments or otherwise) any Indebtedness or other obligations owing to a shareholder (other than publicly-traded
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Indebtedness or obligations) unless in either circumstance no Default or Event of Default exists prior to or would result after giving effect to such action.

2. Except (i) **to the extent such an encumbrance or restriction is imposed by PUHCA, the rules and regulations promulgated thereunder or any order of the SEC issued pursuant thereto**, (ii) as set forth on **Schedule 7.18 hereto**, or (iii) in connection with Non-Recourse Indebtedness of a Project Finance Subsidiary, the Borrower will not, and will not permit any of its Subsidiaries, directly or indirectly to create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to: (1) pay dividends or make any other distribution on any of such Subsidiary's capital stock owned by the Borrower or any Subsidiary of the Borrower; (2) pay any Indebtedness owed to the Borrower or any other Subsidiary; (3) make loans or advances to the Borrower or any other Subsidiary; or (4) transfer any of its property or assets to the Borrower or any other Subsidiary.

s. *[Reserved]*

t. *Transactions with Affiliates*

Except (i) as is required by PUHCA or the rules and regulations promulgated thereunder (ii) pursuant to Permitted Receivables Facilities with Receivables Entities, or (iii) with respect to any transaction among the Borrower and/or any Subsidiaries of the Borrower, as permitted by Section 7.12, the Borrower will not, and will not permit any of its Subsidiaries to, enter into or be a party to any material transaction or arrangement with any Affiliate of such Person (other than the Borrower), including without limitation, the purchase from, sale to or exchange of Property with, any merger or consolidation with or into, or the rendering of any service by or for, any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon terms no less favorable to the Borrower or such Subsidiary than could be obtained in a similar transaction involving a third-party.

u. *Compliance with Laws*

Without limiting any of the other covenants of the Borrower in this Section 7, the Borrower will, and will cause each of its Subsidiaries to, conduct its business, and otherwise be, in compliance with all applicable laws, regulations, ordinances and orders of any governmental or judicial authorities (including all Environmental and Health Laws, Anti-Corruption Laws and Sanctions Laws and Regulations); *provided, however*, that neither the Borrower nor any Subsidiary of the Borrower shall be required to comply with any such law, regulation, ordinance or order if the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

v. *Pari-Passu*

The Borrower will at all times cause the Obligations to rank at least *pari passu* with all other senior unsecured Indebtedness of the Borrower.

w. *Certain Subsidiaries*

Unless pursuant to Indebtedness which is authorized pursuant to this Agreement, the Borrower will not, and the Subsidiaries of the Borrower will not, permit any creditor of a Project Finance Subsidiary to have recourse to the Borrower or any Subsidiary of the Borrower (other than such Project Finance Subsidiary) or any of their assets (other than (i) the stock or similar equity interest of the applicable Subsidiary or any Subsidiary which is an entity whose sole purpose and extent of business activities is to own the stock or similar equity interest of a Project Finance Subsidiary and (ii) with respect to a Permitted Derivative Obligation) other than recourse under Long-Term Guaranties.

x. *Ratings*

The Borrower will at all times this Agreement is in effect maintain any two of (i) an S&P Rating, (ii) a Fitch Rating, and/or (iii) a Moody's Rating (or if any or all of such ratings are unavailable, rating(s) from such other recognized national rating agency or agencies as may be acceptable to the Administrative Agent and the Required Banks).

y. *[Reserved]*

z. *Sanctions Laws and Regulations*

1. The Borrower shall not request any Loans or Letters of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its and their respective directors, officers and employees shall not, directly or indirectly, use the proceeds of the Loans or any Letter of Credit (i) in furtherance of an offer, payment, promise to pay or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) to fund any activities or business of or with any Designated Person, or in any country, region or territory, that at the time of such funding is the subject of any sanctions under any Sanctions Laws and Regulations, or (iii) in any other manner that would result in a violation of any Sanctions Laws and Regulations by any party to this Agreement (including any Person participating in the Loans or Letters of Credit, whether as Administrative Agent, Arranger, Issuing Agent, Bank, underwriter, advisor, investor, or otherwise).
2. The Borrower shall not knowingly permit any of the funds or assets of the Borrower that are used to pay any amount due pursuant to this Agreement to constitute funds obtained from transactions with or relating to Designated Persons or countries which are the subject of sanctions under any Sanctions Laws and Regulations.

(c) The Borrower and its Subsidiaries shall maintain in effect and enforce policies and procedures designed to ensure compliance with Anti-Corruption Laws and Sanctions Laws and Regulations.

3. **EVENTS OF DEFAULT AND REMEDIES.**

a. *Events of Default*

Any one or more of the following shall constitute an Event of Default:

1. (i) default in the payment when due of any fees, interest or of any other Obligation not covered by clause (ii) below and such payment default
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- continues for five (5) days or (ii) default in the payment when due of the principal amount of any Loan or of any Reimbursement Obligation;
2. default by the Borrower or any Subsidiary in the observance or performance of any covenant set forth in Section 7.1 (solely with respect to the existence of the Borrower), Section 7.6(d)(i), Sections 7.9 through 7.20, and Sections 7.22 through 7.26;
 3. default by the Borrower or any Subsidiary in the observance or performance of any provision hereof or of any other Credit Document not mentioned in (a) or (b) above, which is not remedied within thirty (30) days after notice thereof shall have been given to the Borrower by the Administrative Agent;
 4. (i) failure to pay when due Indebtedness in an aggregate principal amount of \$50,000,000 or more of the Borrower or any Material Subsidiary (other than any such Indebtedness which is Unguaranteed Non-Recourse Indebtedness) or (ii) default shall occur under one or more indentures, agreements or other instruments under which any Indebtedness of the Borrower or any of its Material Subsidiaries in an aggregate principal amount of \$50,000,000 or more, and such default shall continue for a period of time sufficient to permit the holder or beneficiary of such Indebtedness or a trustee therefor to cause the acceleration of the maturity of any such Indebtedness or any mandatory unscheduled prepayment, purchase or funding thereof;
 5. any representation or warranty made herein or in any other Credit Document by the Borrower or any Subsidiary of the Borrower, or in any statement or certificate furnished pursuant hereto or pursuant to any other Credit Document by the Borrower or any Subsidiary of the Borrower, or in connection with any Credit Document, proves untrue in any material respect as of the date of the issuance or making, or deemed making or issuance, thereof;
 6. the Borrower or any Material Subsidiary shall (i) fail to pay its debts generally as they become due or admit in writing its inability to pay its debts generally as they become due, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (iv) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it or any analogous action is taken under any other applicable law relating to bankruptcy or insolvency, (v) take any corporate action (such as the passage by its board of directors of a resolution) in furtherance of any matter described in parts (i)-(iv) above, or (vi) fail to contest in good faith any appointment or proceeding described in Section 8.1(g) hereof;
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7. a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any Material Subsidiary, or any substantial part of any of their Property, or a proceeding described in Section 8.1(f)(iv) hereof shall be instituted against the Borrower or any Material Subsidiary, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days;
8. the Borrower or any Material Subsidiary shall fail within thirty (30) days to pay, bond or otherwise discharge any judgment or order for the payment of money in excess of \$50,000,000, which is not stayed on appeal or otherwise being appropriately contested in good faith in a manner that stays execution thereon;
9. the Borrower or any other member of the Controlled Group shall (i) fail to pay when due an amount or amounts which it shall have become liable to the PBGC or to a Plan under Title IV of ERISA, or (ii) file notice of intent to terminate a Plan or Plans having aggregate Unfunded Vested Liabilities in excess of \$50,000,000 (collectively, a “*Material Plan*”) under Title IV of ERISA, or (iii) take any action with respect to a Plan that could result in the requirement of the Borrower or any of its Subsidiaries to furnish a bond to the PBGC or such Plan; or the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Material Plan; or a proceeding shall be instituted by a fiduciary of any Multiemployer Plan against the Borrower or any other member of the Controlled Group to enforce Section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within thirty (30) days thereafter; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated; or the occurrence of any event with respect to any Plan that could result in the incurrence by the Borrower or any other member of its Controlled Group of any material liability, fine or penalty; or any notice from any Multiemployer Plan that (i) such Multiemployer Plan is in reorganization, (ii) any such Multiemployer Plan has been funded at a rate less than that required by the Code and ERISA, (iii) any such Multiemployer Plan is or may be terminated, or (iv) any such Multiemployer Plan is or may become insolvent;
10. the Borrower or any Subsidiary of the Borrower or any Person acting on behalf of the Borrower, a Subsidiary or any governmental authority challenges the validity of any Credit Document or the Borrower’s or one of its Subsidiary’s obligations thereunder or any Credit Document ceases to be in full force and effect or is modified other than in accordance with the terms thereof and hereof;
11. a Change of Control Event shall have occurred; or
12. the Borrower shall for any reason cease to be wholly liable for the full amount of the Obligations.

b. *Non-Bankruptcy Defaults*

When any Event of Default other than those described in subsections (f) or (g) of Section 8.1 hereof has occurred and is continuing, the Administrative Agent shall, if so directed by the Required Banks, by written notice to the Borrower: (a) terminate the remaining Commitments and all other obligations of the Banks hereunder on the date stated in such notice (which may be the date thereof); (b) declare the principal of and the accrued interest on all outstanding Loans to be forthwith due and payable and thereupon all outstanding Loans, including both principal and interest thereon, and all other Obligations, shall be and become immediately due and payable together with all other amounts payable under the Credit Documents without further demand, presentment, protest or notice of any kind; (c) automatically convert each Term SOFR Loan to a Base Rate Loan at the end of the Interest Period then in effect for such Term SOFR Loan; and (d) demand that the Borrower immediately pay to the Administrative Agent, subject to Section 8.4 hereof, the full amount then available for drawing under each or any Letter of Credit, and the Borrower agrees to immediately make such payment and acknowledges and agrees that the Banks would not have an adequate remedy at law for failure by the Borrower to honor any such demand and that the Administrative Agent, for the benefit of the Banks, shall have the right to require the Borrower to specifically perform such undertaking whether or not any drawings or other demands for payment have been made under any Letter of Credit. The Administrative Agent, after giving notice to the Borrower pursuant to Section 8.1(c) hereof or this Section 8.2, shall also promptly send a copy of such notice to the other Banks, but the failure to do so shall not impair or annul the effect of such notice.

c. *Bankruptcy Defaults*

When any Event of Default described in subsections (f) or (g) of Section 8.1 hereof has occurred and is continuing, then all outstanding Loans, including both interest and principal thereon, and all other Obligations shall immediately become due and payable together with all other amounts payable under the Credit Documents without presentment, demand, protest or notice of any kind, the obligation of the Banks to extend further credit pursuant to any of the terms hereof shall immediately terminate and the Borrower shall immediately pay to the Administrative Agent, subject to Section 8.4 hereof, the full amount then available for drawing, under all outstanding Letters of Credit, the Borrower acknowledging that the Banks would not have an adequate remedy at law for failure by the Borrower to honor any such demand and that the Banks, and the Administrative Agent on their behalf, shall have the right to require the Borrower to specifically perform such undertaking whether or not any draws or other demands for payment have been made under any of the Letters of Credit.

d. *Collateral for Outstanding Letters of Credit*

1. If the payment or prepayment of the amount available for drawing under any or all outstanding Letters of Credit is required under Section 2.2(b), Section 2.8(b), Section 8.2 or Section 8.3 hereof, the Borrower shall forthwith pay the amount required to be so prepaid, to be held by the Administrative Agent as provided in subsection (b) below.
 2. All amounts prepaid pursuant to subsection (a) above shall be held by the Administrative Agent in a separate collateral account (such account, and the credit balances, properties and any investments from time to time held therein, and any substitutions for such account, any certificate of deposit or other instrument evidencing any of the foregoing and all proceeds of and earnings on any of the foregoing being collectively called the "Account") as security for, and for application by the
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Administrative Agent (to the extent available) to, the reimbursement of any payment under any Letter of Credit then or thereafter made by the Issuing Agents, and to the payment of the unpaid balance of any Loans and all other Obligations. The Account shall be held in the name of and subject to the exclusive dominion and control of the Administrative Agent for the benefit of the Administrative Agent, the Issuing Agents and the Banks, and the Borrower hereby grants to the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Agents and the Banks, a security interest in all of the Borrower's rights, title and interest in and to the Account and all property (including investment property) contained therein or credited thereto. So long as no Default or Event of Default has occurred, if and when requested by the Borrower, the Administrative Agent shall invest funds held in the Account from time to time in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America with a remaining maturity of one year or less, *provided*, that the Administrative Agent is irrevocably authorized to sell investments held in the Account when and as required to make payments out of the Account for application to amounts due and owing from the Borrower to the Administrative Agent, the Issuing Agents or Banks, and *provided, further*, that if a Default or Event of Default has then occurred and is continuing, the Borrower shall have no access to or right to control the Account. If (i) the Borrower shall have made payment of all such obligations referred to in subsection (a) above, (ii) all relevant preference or other disgorgement periods relating to the receipt of such payments have passed, and (iii) no Letters of Credit, Commitments, Loans or other Obligations remain outstanding hereunder, then the Administrative Agent shall repay to the Borrower any remaining amounts held in the Account.

e. *Expenses*

The Borrower agrees to pay to the Administrative Agent, the Issuing Agents, the Swing Line Bank and each Bank, and any other holder of any Note outstanding hereunder, all reasonable and properly documented out-of-pocket costs and expenses incurred or paid by the Administrative Agent, the Issuing Agents, the Swing Line Bank or such Bank or any such holder, including attorneys' fees (including allocable fees of in house counsel) and court costs, in connection with (i) any amendment or waiver to the Credit Documents requested by the Borrower, (ii) any Default or Event of Default by the Borrower hereunder, or (iii) the enforcement of any of the Credit Documents.

f. *Application of Funds*

. After the exercise of remedies provided for in Section 8.2 (or after the Obligations under this Agreement and the other Credit Documents have automatically become immediately due and payable as set forth in Section 8.3), the Administrative Agent shall apply any amounts it receives on account of the Obligations in the following order:

1. first, to payment of fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Section 9) payable to the Administrative Agent in its capacity as such;
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2. second, to payment of fees, indemnities and other reimbursable expenses (other than principal, Reimbursement Obligations, interest, letter of credit fees with respect to the Letters of Credit and commitment fees) payable to the Lenders and the Issuing Agents (including fees, charges and disbursements of counsel to the Lenders and Issuing Agents as required by Section 11.13 and amounts payable under Section 9);
3. third, to payment of accrued and unpaid letter of credit fees with respect to the Letters of Credit, commitment fees and interest on the Loans and Reimbursement Obligations, ratably among the Lenders and the Issuing Banks in proportion to the amounts described in this Section 8.6(c) payable to them;
4. fourth, (i) to payment of that portion of the Obligations constituting unpaid principal of the Loans and Reimbursement Obligations and (ii) to cash collateralize that portion of L/C Obligations comprising the undrawn amount of Letters of Credit to the extent not otherwise cash collateralized by the Borrower pursuant to Section 2.2, ratably among the Lenders and the Issuing Agents in proportion to the respective amounts described in this Section 8.6(d) payable to them; provided that (x) any amounts applied pursuant to clause (ii) above shall be paid to the Administrative Agent for the ratable account of the applicable Issuing Agents to cash collateralize such L/C Obligations, (y) subject to Section 2.2, amounts used to cash collateralize the L/C Obligations pursuant to this Section 8.6(d) shall be used to satisfy drawings under such Letters of Credit as they occur and (z) upon the expiration of any Letter of Credit (without any pending drawings), the pro rata share of cash collateral attributable to such Letter of Credit shall be distributed in accordance with this Section 8.6(d);
5. fifth, to payment of all other Obligations ratably among the Administrative Agent, the Lenders, and the Issuing Agents based upon the respective aggregate amounts of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and
6. last, the balance, if any, to the Borrower or as otherwise required by law.

4. CHANGE IN CIRCUMSTANCES.

a. *Change of Law*

Notwithstanding any other provisions of this Agreement or any Note, if at any time after the date hereof any Change in Law makes it unlawful for any Bank to make or continue to maintain, make, fund, continue or convert Term SOFR Loans or Daily Term SOFR Loans or to perform its obligations as contemplated hereby, such Bank shall promptly give notice thereof to the Borrower and such Bank's obligations to make or maintain Term SOFR Loans or Daily Term SOFR Loans under this Agreement shall be suspended until it is no longer unlawful for such Bank to make or maintain Term SOFR Loans or Daily Term SOFR Loans. The Borrower shall prepay on demand the outstanding principal amount of any such affected Term SOFR Loans or Daily Term SOFR Loans, together with all interest accrued thereon at a rate per annum equal to

the interest rate applicable to such Loan; *provided, however*, subject to all of the terms and conditions of this Agreement, the Borrower may in the alternative elect to convert the principal amount of the affected Term SOFR Loans or Daily Term SOFR Loans from such Bank into Base Rate Loans from such Bank, which Base Rate Loans shall not be made ratably by the Banks but only from such affected Bank.

b. *Availability of Types of Borrowings; Adequacy of Interest Rate; Benchmark Replacement.*

(a) *Availability of Term SOFR Borrowing and Daily Term SOFR Loans.*

Notwithstanding anything to the contrary in this Agreement or any other Credit Document, but subject to Section 9.2(b), if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Banks notify the Administrative Agent that the Required Banks have determined, that:

(i) for any reason in connection with any request for a Term SOFR Borrowing or a Daily Term SOFR Loan or a conversion or continuation thereof that the Term SOFR Base Rate for any requested Interest Period with respect to a proposed Term SOFR Borrowing or a Daily Term SOFR Loan does not adequately and fairly reflect the cost to such Banks of the funding such Loans, or

(ii) the interest rate applicable to Term SOFR Borrowings or Daily Term SOFR Loans for any requested Interest Period is not ascertainable or available (including, without limitation, because the applicable Screen (or on any successor or substitute page on such screen) is unavailable) and such inability to ascertain or unavailability is not expected to be permanent, then the Administrative Agent shall suspend the availability of Term SOFR Borrowings and Daily Term SOFR Loans and require any affected Term SOFR Borrowings and Daily Term SOFR Loans to be repaid or converted to Base Rate Borrowings at the end of the applicable Interest Period.

(b) *Benchmark Replacement.*

(i) *Benchmark Transition Event.* Notwithstanding anything to the contrary herein or in any other Credit Document, if a Benchmark 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 (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit 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 Credit Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth Business Day after the date notice of such Benchmark Replacement is provided by the Administrative Agent to the Banks without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Banks comprising the Required Banks. If an Unadjusted Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) *Benchmark Replacement Conforming Changes.* In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit 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 Credit Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Banks of (A) the implementation of any Benchmark Replacement, (B) the effectiveness of any Benchmark Replacement Conforming Changes, (C) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (v) below and (D) 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 Bank (or group of Banks) pursuant to this Section 9.2(b), 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 Credit Document, except, in each case, as expressly required pursuant to this Section 9.2(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Base Rate, Term SOFR or the Daily Term SOFR Base 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" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove any tenor of such Benchmark that is unavailable or non-representative for any Benchmark settings 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" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(vi) Benchmark Unavailability Period. Upon notice to the Borrower by the Administrative Agent in accordance with Section 11.8 of the commencement of a Benchmark Unavailability Period and until a Benchmark Replacement is determined in accordance with this Section 9.2(b), the Borrower may revoke any request for a Term SOFR Borrowing or Daily Term SOFR Loan, or any request for the conversion or continuation of a Term SOFR Borrowing or Daily Term SOFR Loan to be made, converted or continued during any Benchmark Unavailability Period at the end of the of the applicable Interest Period, and, failing that, the Borrower will be deemed to have converted any such request at the end of the applicable Interest Period into a request for a Borrowing of Base Rate Loans or conversion to a Borrowing of Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

c. *Increased Cost and Reduced Return*

1. If, on or after the date hereof, any Change in Law:
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- a. shall subject any Bank or the Administrative Agent to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or
- b. shall impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including, without limitation, any compulsory loan requirement, insurance charge or other assessment or any other such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding with respect to any Term SOFR Loans or Daily Term SOFR Loans any such requirement included in an applicable Term SOFR) against assets of, deposits with or for the account of, or credit extended by, any Bank (or its Lending Office) or shall impose on any Bank (or its Lending Office) or on the interbank market any other condition, cost or expense affecting its Term SOFR Loans, its Daily Term SOFR Loans, its Notes, its Letter(s) of Credit, or its participation in any thereof, any Reimbursement Obligation owed to it, or its obligation to make Term SOFR Loans or Daily Term SOFR Loans, to issue a Letter of Credit, or to participate therein;

and the result of any of the foregoing is to increase the cost to such Bank (or its Lending Office) or the Administrative Agent of making or maintaining any Loan, issuing or maintaining a Letter of Credit, or participating therein, or to reduce the amount of any sum received or receivable by such Bank (or its Lending Office) or the Administrative Agent under this Agreement or under its Notes with respect thereto, by an amount deemed by such Bank or the Administrative Agent to be material, then, within fifteen (15) days after demand by such Bank (with a copy to the Administrative Agent) or the Administrative Agent, the Borrower shall be obligated to pay to such Bank or the Administrative Agent such additional amount or amounts as will compensate such Bank or the Administrative Agent for such increased cost or reduction. In the event any law, rule, regulation or interpretation described above is revoked, declared invalid or inapplicable or is otherwise rescinded, and as a result thereof a Bank or the Administrative Agent is determined to be entitled to a refund from the applicable authority for any amount or amounts which were paid or reimbursed by the Borrower to such Bank or the Administrative Agent hereunder, such Bank or the Administrative Agent shall refund such amount or amounts to the Borrower without interest.

2. If, after the date hereof, any Bank or the Administrative Agent shall have determined that any Change in Law regarding capital adequacy or liquidity requirements, or any change therein (including, without limitation, any revision in the Final Risk-Based Capital Guidelines of the Board of Governors of the Federal Reserve System (12 CFR Part 208, Appendix A; 12 CFR Part 225, Appendix A) or of the Office of the Comptroller of the Currency (12 CFR Part 3, Appendix A), or in any other applicable capital or liquidity rules heretofore adopted and issued by any governmental authority), or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Bank (or its Lending
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Office) with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law but, if not having the force of law, compliance with which is customary in the applicable jurisdiction) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Bank's capital, or on the capital of any corporation controlling such Bank, as a consequence of its obligations hereunder to a level below that which such Bank could have achieved but for such Change in Law (taking into consideration such Bank's policies with respect to capital adequacy and liquidity) by an amount deemed by such Bank to be material, then from time to time, within fifteen (15) days after demand by such Bank (with a copy to the Administrative Agent), the Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank for such reduction.

3. Each Bank that determines to seek compensation under this Section 9.3 shall notify the Borrower and the Administrative Agent of the circumstances that entitle the Bank to such compensation pursuant to this Section 9.3 and will designate a different Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the sole judgment of such Bank, be otherwise disadvantageous to such Bank. A certificate of any Bank claiming compensation under this Section 9.3 and setting forth the additional amount or amounts to be paid to it hereunder submitted to the Borrower and the Administrative Agent by such Bank in good faith shall be *prima facie* evidence of the amount of such compensation. In determining such amount, such Bank may use any reasonable averaging and attribution methods.

d. *Lending Offices*

Each Bank may, at its option, elect to make its Loans hereunder at the branch, office or affiliate specified in its respective Administrative Questionnaire or in the assignment agreement which any assignee bank executes pursuant to Section 11.12 hereof (each a "*Lending Office*") for each type of Loan available hereunder or at such other of its branches, offices or affiliates as it may from time to time elect and designate in a written notice to the Borrower and the Administrative Agent, so long as such election does not increase costs or other amounts payable by the Borrower to such Bank hereunder.

5. THE AGENT.

a. *Appointment and Authorization of Administrative Agent*

Each Bank hereby appoints U.S. Bank as the Administrative Agent under the Credit Documents and hereby authorizes the Administrative Agent to take such action as the Administrative Agent on its behalf and to exercise such powers under the Credit Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the other Credit Documents. The Administrative Agent is acting pursuant to a contractual relationship on an arm's length basis and the duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Credit Document a fiduciary

relationship in respect of any Bank, the holder of any Note or any other Person; and nothing in this Agreement or any other Credit Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Credit Document except as expressly set forth herein or therein.

b. *Administrative Agent and its Affiliates*

The Administrative Agent shall have the same rights and powers under this Agreement and the other Credit Documents as any other Bank and may exercise or refrain from exercising the same as though it were not the Administrative Agent, and the Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Affiliate of the Borrower as if it were not the Administrative Agent under the Credit Documents.

c. *Action by Administrative Agent*

If the Administrative Agent receives from the Borrower a written notice of an Event of Default pursuant to Section 7.6(d)(i) hereof, the Administrative Agent shall promptly give each of the Banks written notice thereof. The obligations of the Administrative Agent under the Credit Documents are only those expressly set forth therein. Without limiting the generality of the foregoing, the Administrative Agent shall not be required to take any action hereunder with respect to any Default or Event of Default, except as expressly provided in Sections 8.2 and 8.3 hereof. In no event, however, shall the Administrative Agent be required to take any action in violation of applicable law or of any provision of any Credit Document, and the Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder or under any other Credit Document unless it shall be first indemnified to its reasonable satisfaction by the Banks against any and all costs, expense, and liability which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall be entitled to assume that no Default or Event of Default exists unless notified to the contrary in writing by a Bank or the Borrower. In all cases in which this Agreement and the other Credit Documents do not require the Administrative Agent to take certain actions, the Administrative Agent shall be fully justified in using its discretion in failing to take or in taking any action hereunder and thereunder.

d. *Consultation with Experts*

The Administrative Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

e. *Liability of Administrative Agent; Credit Decision*

Neither the Administrative Agent nor any of its directors, officers, agents, or employees shall be liable for any action taken or not taken by it in connection with the Credit Documents (i) with the consent or at the request of the Required Banks, or (ii) in the absence of its own gross negligence or willful misconduct (as proven by the final, non-appealable judgment of a court of competent jurisdiction). Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement, warranty or representation made in connection with this Agreement, any other Credit Document or any Credit Event; (ii) the performance or observance of any of the covenants or agreements of the Borrower or any other party contained herein or in any other Credit Document; (iii) the satisfaction of any condition specified in Section 6 hereof; or (iv) the validity, effectiveness, genuineness, enforceability, perfection, value, worth or collectibility

hereof or of any other Credit Document or of any other documents or writing furnished in connection with any Credit Document; and the Administrative Agent makes no representation of any kind or character with respect to any such matter mentioned in this sentence. The Administrative Agent may execute any of its duties under any of the Credit Documents by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Banks, the Borrower, or any other Person for the default or misconduct of any such agents or attorneys-in-fact selected with reasonable care. The Administrative Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, other document or statement (whether written or oral) believed by it to be genuine or to be sent by the proper party or parties. In particular and without limiting any of the foregoing, the Administrative Agent shall have no responsibility for confirming the accuracy of any Compliance Certificate or other document or instrument received by it under the Credit Documents. The Administrative Agent may treat the payee of any Note as the holder thereof until written notice of transfer shall have been filed with the Administrative Agent signed by such payee in form satisfactory to the Administrative Agent. Each Bank acknowledges that it has independently and without reliance on the Administrative Agent or any other Bank, and based upon such information, investigations and inquiries as it deems appropriate, made its own credit analysis and decision to extend credit to the Borrower in the manner set forth in the Credit Documents. It shall be the responsibility of each Bank to keep itself informed as to the creditworthiness of the Borrower and any other relevant Person, and the Administrative Agent shall have no liability to any Bank with respect thereto.

f. *Indemnity*

The Banks shall ratably, in accordance with their respective Percentages, indemnify and hold the Administrative Agent, and its directors, officers, employees, agents and representatives harmless from and against any liabilities, losses, costs or expenses suffered or incurred by it under any Credit Document or in connection with the transactions contemplated thereby, regardless of when asserted or arising, except to the extent the Administrative Agent is promptly reimbursed for the same by the Borrower and except to the extent that any event giving rise to a claim was caused by the gross negligence or willful misconduct of the party seeking to be indemnified. The obligations of the Banks under this Section 10.6 shall survive termination of this Agreement.

g. *Resignation of Administrative Agent and Successor Administrative Agent*

The Administrative Agent may resign at any time by giving written notice thereof to the Banks and the Borrower. Upon any such resignation of the Administrative Agent, the Required Banks shall have the right to appoint a successor Administrative Agent with the consent of the Borrower. If no successor Administrative Agent shall have been so appointed by the Required Banks, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be any Bank or any commercial bank organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least \$200,000,000. Upon the acceptance of its appointment as the Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Administrative Agent under the Credit Documents, and the retiring Administrative Agent shall be discharged from its duties and obligations thereunder; provided, if the Administrative Agent shall notify the Borrower and the Banks 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, (2) all payments (other than agency fees (as defined in the

Fee Letters)), communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Bank directly, until such time as the Required Banks appoint a successor Administrative Agent as provided for above and (3) the agency fees shall be waived for the period from the effective date of the resignation of the resigning Administrative Agent until the effective date of the appointment of its successor. After any retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Section 10 and all protective provisions of the other Credit Documents shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent.

h. *Certain ERISA Matters*

i. .

1. Each Bank (x) represents and warrants, as of the date such Person became a Bank party hereto, to, and (y) covenants, from the date such Person became a Bank party hereto to the date such Person ceases being a Bank party hereto, for the benefit of the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:
 - a. such Bank is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Bank's entrance into, participation in, administration and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,
 - b. 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 Bank's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,
 - c. (A) such Bank 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 Bank to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Bank, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Bank's entrance into, participation in,
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administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

- d. such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Bank.
 2. In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Bank or (2) a Bank has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Bank further (x) represents and warrants, as of the date such Person became a Bank party hereto, to, and (y) covenants, from the date such Person became a Bank party hereto to the date such Person ceases being a Bank party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the none of the Administrative Agent or any Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Bank involved in such Bank'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 Credit Document or any documents related hereto or thereto).
 - j. *Erroneous Payments*
 - k. .
 1. If the Administrative Agent notifies a Bank or Issuing Agent, or any Person who has received funds on behalf of a Bank, or Issuing Agent (any such Bank, Issuing Agent or other recipient, a "*Payment Recipient*"), that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously received by, such Payment Recipient (whether or not such error is known to such Bank, Issuing Agent or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "*Erroneous Payment*") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Bank or Issuing Agent shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in
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respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

2. Without limiting the immediately preceding clause (a), each Bank and Issuing Agent hereby further agrees that if any Payment Recipient receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) that (x) is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part):
 - a. (A) in the case of immediately preceding clause (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) in the case of immediately preceding clause (z), an error has been made, in each case, with respect to such payment, prepayment or repayment; and
 - b. such Payment Recipient shall promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 10.9(b).
 3. Each Bank or Issuing Agent hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Bank or Issuing Agent under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Bank or Issuing Agent from any source, against any amount due to the Administrative Agent under the immediately preceding clause (a) or under the indemnification provisions of this Agreement.
 4. An Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations, except to the extent such Erroneous Payment comprises funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.
 5. To the extent permitted by applicable law, each Payment Recipient hereby agrees not to assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim,
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defense or right of set-off or recoupment, including without limitation any defense based on “discharge for value” or any similar doctrine, with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment.

6. Each party’s agreements under this Section 10.9 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Bank or Issuing Agent, the termination of the Commitments, or the repayment, satisfaction or discharge of any or all Obligations.

6. MISCELLANEOUS.

a. *Taxes*

1. *Defined Terms.* For purposes of this Section 11.1, the term “applicable law” includes FATCA.
 2. *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Borrower under any Credit Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Administrative Agent or Bank receives an amount equal to the sum it would have received had no such deduction or withholding been made.
 3. *Payment of Other Taxes by the Borrower.* The Borrower shall timely pay to the relevant governmental authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
 4. *Indemnification by the Borrower.* The Borrower shall indemnify each Administrative Agent or Bank, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Administrative Agent or Bank or required to be withheld or deducted from a payment to such Administrative Agent or Bank and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Bank (with a copy to the
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Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Bank, shall be conclusive absent manifest error.

5. *Indemnification by the Banks.* Each Bank shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Bank (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Bank's failure to comply with the provisions of Section 11.10 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Bank, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Bank by the Administrative Agent shall be conclusive absent manifest error. Each Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Bank under any Credit Document or otherwise payable by the Administrative Agent to the Bank from any other source against any amount due to the Administrative Agent under this paragraph (e).
 6. *Evidence of Payments.* As soon as practicable after any payment of Taxes by the Borrower to a governmental authority pursuant to this Section 11.1, the Borrower 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.
 7. *Status of Banks.* (i) Any Bank that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Bank, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Bank is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 11.1(g) (ii)(A), (ii)(B) and (ii) (D) below) shall not be required if in the Bank's reasonable judgment such completion, execution or submission would subject such Bank to any material unreimbursed cost or expense or would materially prejudice the legal or
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commercial position of such Bank; (ii) Without limiting the generality of the foregoing, (A) any Bank that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Bank becomes a Bank under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Bank is exempt from U.S. Federal backup withholding tax; (B) any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Bank becomes a Bank under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable: (1) in the case of a Foreign Bank 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 Credit Document, executed copies of IRS Form W-8BEN or IRS Form 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 Credit 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; (2) executed copies of IRS Form W-8ECI; (3) in the case of a Foreign Bank 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 F-1 to the effect that such Foreign Bank is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or (4) to the extent a Foreign Bank is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Bank is a partnership and one or more direct or indirect partners of such Foreign Bank are claiming the portfolio interest exemption, such Foreign Bank may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner; (C) any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Bank becomes a lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or

a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and (D) if a payment made to a Bank under any Credit Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Bank 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 Bank shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Bank has complied with such Bank's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

8. *Treatment of Certain Refunds.* If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 11.1 (including by the payment of additional amounts pursuant to this Section 11.1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant governmental authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant governmental authority) in the event that such indemnified party is required to repay such refund to such governmental authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.
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9. *FATCA*. For purposes of determining withholding Taxes imposed under FATCA, from and after the Effective Date, the Borrower and the Administrative Agent shall treat (and the Banks hereby authorize the Administrative Agent to treat) the Credit Documents as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).
10. *Survival*. Each party’s obligations under this Section 11.1 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

b. *No Waiver of Rights*

No delay or failure on the part of the Administrative Agent or any Bank or on the part of the holder or holders of any Note in the exercise of any power or right under any Credit Document shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise thereof preclude any other or further exercise of any other power or right, and the rights and remedies hereunder of the Administrative Agent, the Banks and the holder or holders of any Notes are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have.

c. *Non-Business Day*

If any payment of principal or interest on any Loan or of any other Obligation shall fall due on a day which is not a Business Day, interest or fees (as applicable) at the rate, if any, such Loan or other Obligation bears for the period prior to maturity shall continue to accrue on such Obligation from the stated due date thereof to and including the next succeeding Business Day, on which the same shall be payable.

d. *Documentary Taxes*

The Borrower agrees that it will pay any documentary, stamp or similar taxes payable in respect to any Credit Document, including interest and penalties, in the event any such taxes are assessed, irrespective of when such assessment is made and whether or not any credit is then in use or available hereunder.

e. *Survival of Representations*

All representations and warranties made herein or in certificates given pursuant hereto shall survive the execution and delivery of this Agreement and the other Credit Documents, and shall continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

f. *Survival of Indemnities*

All indemnities and all other provisions relative to reimbursement to the Banks of amounts sufficient to protect the yield of the Banks with respect to the Loans, including, but not limited to, Section 2.11, Section 9.3 and Section 11.13 hereof, shall survive the termination of this Agreement and the other Credit Documents and the payment of the Loans and all other Obligations.

g. *Set-Off*

1. 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, and subject to the prior written approval of the Administrative Agent, each Bank and each subsequent holder of any Note is hereby authorized by the Borrower at any time or from time to time, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, Indebtedness evidenced by certificates of deposit, whether matured or unmatured, or otherwise fully matured, and in whatever currency denominated) and any other Indebtedness at any time held or owing by that Bank or that subsequent holder to or for the credit or the account of the Borrower, whether or not matured, against and on account of the obligations and liabilities of the Borrower to that Bank or that subsequent holder under the Credit Documents, including, but not limited to, all claims of any nature or description arising out of or connected with the Credit Documents, irrespective of whether or not (a) that Bank or that subsequent holder shall have made any demand hereunder or (b) the principal of or the interest on the Loans or Notes and other amounts due hereunder shall have become due and payable pursuant to Section 8 hereof and although said obligations and liabilities, or any of them, may be contingent or unmatured.
2. Each Bank agrees with each other Bank a party hereto that if such Bank shall receive and retain any payment, whether by set-off or application of deposit balances or otherwise, on any of the Loans or Reimbursement Obligations in excess of its ratable share of payments on all such obligations then outstanding to the Banks, then such Bank shall purchase for cash at face value, but without recourse, ratably from each of the other Banks such amount of the Loans or Reimbursement Obligations, or participations therein, held by each such other Banks (or interest therein) as shall be necessary to cause such Bank to share such excess payment ratably with all the other Banks; provided, however, that if any such purchase is made by any Bank, and if such excess payment or part thereof is thereafter recovered from such purchasing Bank, the related purchases from the other Banks shall be rescinded ratably and the purchase price restored as to the portion of such excess payment so recovered, but without interest. For purposes of this Section 11.7(b), amounts owed to or recovered by, an Issuing Agent in connection with Reimbursement Obligations in which Banks have been required to fund their participation shall be treated as amounts owed to or recovered by such Issuing Agent as a Bank hereunder.

h. *Notices*

(a) Except as otherwise specified herein, all notices under the Credit Documents shall be in writing (including facsimile or by using Electronic Systems) and shall be given to a party hereunder at its address or facsimile number set forth below or such other address or facsimile number as such party may hereafter specify by notice to the Administrative Agent and the

Borrower, given by courier, by United States certified or registered mail, by other telecommunication device capable of creating a written record of such notice and its receipt or, to the extent permitted in Section 11.8(b) hereof, Electronic Systems. Notices under the Credit Documents to the Banks shall be addressed to their respective addresses, facsimile or telephone numbers set forth on their respective Administrative Questionnaires or in the assignment agreement which any assignee bank executes pursuant to Section 11.12 hereof, and to the Borrower and to the Administrative Agent to:

If to the Borrower:

If by courier or overnight delivery:

Black Hills Corporation
7001 Mt. Rushmore Rd
Rapid City, South Dakota 57702
Attention: Kimberly F. Nooney
Telephone: 605.721.2370

If by any other means:

Black Hills Corporation
PO Box 1400
Rapid City, South Dakota 57709
Attention: Kimberly F. Nooney
Telephone: 605.721.2370
Email: Kim.Nooney@blackhillscorp.com

with copies to:

If by courier or overnight delivery:

Black Hills Corporation
7001 Mt. Rushmore Rd
Rapid City, South Dakota 57702
Attention: Brian G. Iverson
Telephone: 605.721.2305

If by any other means:

Black Hills Corporation
PO Box 1400
Rapid City, South Dakota 57709
Attention: Brian G. Iverson
Telephone: 605.721.2305
Email: Brian.Iverson@blackhillscorp.com

If to the Administrative Agent:

Notices shall be sent to the applicable address set forth on Part B of **Schedule 4** hereto.

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Section 11.8 or in the applicable Administrative Questionnaire and a confirmation of receipt of such facsimile has been received by the sender, (ii) if given by courier, when delivered, (iii) if given by mail, three (3) Business Days after such communication is deposited in the mail, registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified or referred to in this Section 11.8; *provided* that any notice given pursuant to Section 2 hereof shall be effective only upon receipt during the recipient's normal business hours. Notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Banks hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Bank. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

i. *Counterparts; Electronic Execution*

This Agreement may be executed in any number of counterpart signature pages, and by the different parties on different counterparts, each of which when executed shall be deemed an original but all such counterparts taken together shall constitute one and the same instrument. Without notice to or consent of the Borrower, the Administrative Agent and each Bank may create electronic images of any Credit Documents and destroy paper originals of any such imaged documents. Such images have the same legal force and effect as the paper originals and are enforceable against the Borrower and any other parties thereto. If the Administrative Agent agrees, in its sole discretion, to accept delivery by telecopy or PDF of an executed counterpart of a signature page of any Credit Document or other document required to be delivered under the Credit Documents, such delivery will be valid and effective as delivery of an original manually executed counterpart of such document for all purposes. If the Administrative Agent agrees, in its sole discretion, to accept any electronic signatures of any Credit Document or other document required to be delivered under the Credit Documents, the words “execution,” “signed,” and “signature,” and words of like import, in or referring to any document so signed will be deemed to include electronic signatures and/or the keeping of records in electronic form, which will be of the same legal effect, validity and enforceability as a manually executed signature and/or the use of a paper-based recordkeeping system, 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. The Administrative Agent and each Bank may rely on any such electronic signatures without further inquiry.

j. *Successors and Assigns*

1. *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign any of its rights or obligations under any Credit Document unless such assignation occurs in connection with a merger or acquisition by the Borrower which is otherwise permitted under the terms of this Agreement and the appropriate Credit Documents, if applicable, and the Borrower obtains the prior written consent of all of the Banks, which consent shall be in form and substance satisfactory to the Administrative Agent. No Bank may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (g) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this
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Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Banks) any legal or equitable right, remedy or claim under or by reason of this Agreement.

2. *Assignments by Banks.* Any Bank may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that
 - a. except in the case of an assignment of the entire remaining amount of the assigning Bank's Commitment and the Loans at the time owing to it or in the case of an assignment to a Bank or an Affiliate of a Bank or an Approved Fund with respect to a Bank, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Bank 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) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower, otherwise consents (each such consent not to be unreasonably withheld or delayed);
 - b. each partial assignment shall be made as an assignment of a proportionate part of all the assigning Bank's rights and obligations under this Agreement with respect to the Loan, L/C Obligations or the Commitment assigned;
 - c. any assignment of a Commitment must be approved by (i) the Administrative Agent (not to be unreasonably withheld), the Issuing Agents and the Swing Line Bank and (ii) unless the Person that is the proposed assignee is itself a Bank with a Commitment or an Affiliate of a Bank (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee) and/or an Event of Default has occurred and is continuing, the Borrower (not to be unreasonably withheld); provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and
 - d. the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, and the Eligible Assignee, if it shall not be a Bank, shall deliver to the Administrative Agent an Administrative Questionnaire and any relevant tax forms.
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Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, 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 Bank under this Agreement, and the assigning Bank 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 Bank's rights and obligations under this Agreement, such Bank shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 9.3 and 9.4 hereof with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Bank of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Bank of a participation in such rights and obligations in accordance with paragraph (d) of this Section. The Borrower shall execute and deliver to the assignee a Note upon written request from such assignee. The assignor shall promptly return to the Borrower its Note if after giving effect to such assignment such assignor has no Commitment and no Obligations are owing to such assignor.

3. *Register.* The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Banks, and the Commitments of, and principal amounts of the Loans owing to, each Bank pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Banks may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Bank hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and, as to its commitments only, any Bank, at any reasonable time and from time to time upon reasonable prior notice.
 4. *Participations.* Any Bank may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Issuing Agents or Swing Line Bank, sell participations to any Person (other than an Ineligible Institution) (each, a "*Participant*") in all or a portion of such Bank's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Bank's obligations under this Agreement shall remain unchanged, (ii) such Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Banks shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement. Each Bank that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in such Bank's Loans or other obligations under this Agreement (the "*Participant Register*"); provided that no Bank shall have any obligation to disclose all or any
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portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any this Agreement) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Bank shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as the Administrative Agent) shall have no responsibility for maintaining a Participant Register.

5. *Participants' Rights.* Any agreement or instrument pursuant to which a Bank sells such a participation shall provide that such Bank 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 Bank will not, without the consent of the Participant, agree to any amendment, modification or waiver of the type described in Section 11.11(i) hereof that affects such Participant. Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 9.3 and 9.4 hereof to the same extent as if it were a Bank and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.7(a) hereof as though it were a Bank, provided such Participant agrees to be subject to Section 11.7(b) hereof as though it were a Bank.
 6. *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under Sections 9.3 and 9.4 hereof than the applicable Bank would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Bank if it were a Bank shall not be entitled to the benefits of Section 9.4 hereof 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 9.4 hereof as though it were a Bank.
 7. *Certain Pledges.* Any Bank may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Bank, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central banking authority; provided that no such pledge or assignment shall release such Bank from any of its obligations hereunder or substitute any such pledgee or assignee for such Bank as a party hereto.
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8. *Certain Funding Arrangements.* Notwithstanding anything to the contrary contained herein, any Bank (a “*Granting Bank*”) may grant to a special purpose funding vehicle which is an Affiliate of such Bank (a “*SPC*”), identified as such in writing from time to time by the Granting Bank to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Bank would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Bank shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Bank to the same extent, and as if, such Loan were made by such Granting Bank. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Bank). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 11.10, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Bank or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This Section may not be amended without the written consent of the SPC.
 9. *Farm Credit System.* Notwithstanding anything in Section 11.10(d) to the contrary, any Participant that is a Farm Credit Lender that (i) has purchased a participation in a minimum amount of \$10,000,000.00 (ii) has been designated as a voting Participant (a “*Voting Participant*”) in a notice (a “*Voting Participant Notice*”) sent by the relevant Bank (including any existing Voting Participant) to the Administrative Agent and (iii) receives, prior to becoming a Voting Participant, the consent of the Administrative Agent (such consent to be required only to the extent and under the circumstances it would be required if such Voting Participant were to become a Bank pursuant to an assignment in accordance with Section 11.10(b) and such consent is not required for an assignment to an existing Voting Participant), shall be entitled to vote as if such Voting Participant were a Bank on all matters subject to
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a vote by the Banks, and the voting rights of the selling Bank (including any existing Voting Participant) shall be correspondingly reduced, on a dollar-for-dollar basis. Each Voting Participant Notice shall include, with respect to each Voting Participant, the information that would be included by a prospective Bank in an Assignment and Assumption. Notwithstanding the foregoing, each Farm Credit Lender designated as a Voting Participant in Schedule 11.10(i) shall be a Voting Participant without delivery of a Voting Participation Notification and without the prior written consent of the Administrative Agent. The Administrative Agent shall be entitled to conclusively rely on information contained in Voting Participant Notices and all other notices delivered pursuant hereto. The voting rights of each Voting Participant are solely for the benefit of such Voting Participant.

k. *Amendments*

Any provision of the Credit Documents may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by (a) the Borrower, (b) the Required Banks, (c) if the rights or duties of the Administrative Agent are affected thereby, the Administrative Agent, (d) if the rights or duties of any Issuing Agent are affected thereby, such Issuing Agent and (e) if the rights or duties of the Swing Line Bank are affected thereby, the Swing Line Bank; *provided* that no amendment or waiver pursuant to this Section 11.11 shall:

- a. (A) increase, decrease or extend any Commitment of any Bank without the consent of such Bank or (B) reduce the amount of or, except to the extent set forth in Section 2.15, postpone any fixed date for payment of any principal of or interest on any Loan or Reimbursement Obligation (including the Termination Date) or of any fee or other Obligation payable hereunder without the consent of each Bank; and
- b. unless signed by each Bank, change this Section 11.11, or the definition of Required Banks, or affect the number of Banks required to take any action under the Credit Documents or, with respect to the pro rata sharing of payments, amend the second sentence of the definition of "Borrowing", Section 2.8(b), Section 4.1, Section 8.6 or Section 11.7(b) hereof or any other provision hereof relating to the pro rata sharing of payments.

l. *Headings*

Section headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

m. *Legal Fees, Other Costs and Indemnification*

The Borrower agrees to pay all reasonable and properly documented out-of-pocket costs and expenses of the Arrangers and the Administrative Agent in connection with the preparation and negotiation of the Credit Documents (including past and future reasonable out-of-pocket expenses incurred by the Arrangers and the Administrative Agent in connection with the syndication of the transaction), including without limitation, the reasonable fees, charges and disbursements of counsel to the Administrative Agent, in connection with the preparation and execution of the Credit Documents, and any amendment, waiver or consent related hereto,

whether or not the transactions contemplated herein are consummated. The Borrower further agrees to indemnify each Bank, the Administrative Agent, the Swing Line Bank and the Issuing Agents, and their respective Affiliates, directors, agents, advisors, officers and employees, against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor, whether or not the indemnified Person is a party thereto, and whether brought by a third-party or by the Borrower or any of its Affiliates) which any of them may incur or reasonably pay arising out of or relating to any Credit Document (including any relating to a misrepresentation by the Borrower under any Credit Document) or any of the transactions contemplated thereby or the direct or indirect application or proposed application of the proceeds of any Loan or Letter of Credit, other than to the extent arising from the gross negligence or willful misconduct of the party claiming indemnification as determined in a final, non-appealable judgment by a court of competent jurisdiction. The Borrower, upon demand by any of the Administrative Agent, the Swing Line Bank, an Issuing Agent or a Bank at any time, shall reimburse the Administrative Agent, the Swing Line Bank, such Issuing Agent or Bank for any reasonable legal or other expenses (including allocable fees and expenses of in-house counsel) incurred in connection with investigating or defending against any of the foregoing except if the same is directly due to the gross negligence or willful misconduct of the party to be indemnified as determined in a final, non-appealable judgment by a court of competent jurisdiction, provided that with respect to legal costs and expenses incurred in connection with the enforcement of the rights of the Administrative Agent, the Swing Line Bank, each Issuing Agent and the Banks under this Section 11.13, the Borrower shall only be obligated to pay the legal fees of the Administrative Agent and not of any Issuing Agent or other Bank. To the fullest extent permitted by applicable law, the Borrower shall not assert, and the Borrower hereby waives, any claim against the Administrative Agent, each Issuing Agent, the Swing Line Bank, each Bank and each of their respective Affiliates, directors, agents, advisors, officers and employees, 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 Credit 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.

n. *Entire Agreement*

The Credit Documents constitute the entire understanding of the parties thereto with respect to the subject matter thereof and any prior or contemporaneous agreements, whether written or oral, with respect thereto are superseded thereby.

o. *Construction*

The parties hereto acknowledge and agree that neither this Agreement nor the other Credit Documents shall be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation of this Agreement and the other Credit Documents.

p. *Governing Law*

This Agreement and the other Credit Documents, and the rights and duties of the parties hereto, shall be construed and determined in accordance with the internal laws of the State of New York.

q. ***SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL***

THE BORROWER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. THE BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

r. *Replacement of Bank*

Each Bank agrees that, upon the occurrence of any event set forth in Sections 9.1, 9.3 and 11.1 hereof, such Bank will use reasonable efforts to book and maintain its Loans through a different Lending Office or to transfer its Loans to an Affiliate with the objective of avoiding or minimizing the consequences of such event; provided that such booking or transfer is not otherwise disadvantageous to such Bank as determined by such Bank in its sole and absolute discretion. If any Bank has demanded to be paid additional amounts pursuant to Sections 9.1, 9.3 and 11.1 hereof, and the payment of such additional amounts are, and are likely to continue to be, more onerous in the reasonable judgment of the Borrower than with respect to the other Banks, then the Borrower shall have the right at any time when no Default or Event of Default shall have occurred and be continuing to seek one or more financial institutions which are not Affiliates of the Borrower (each, a “*Replacement Bank*”) to purchase with the written consent of the Administrative Agent (which consent shall not be (x) required if such proposed Replacement Bank is already a Bank, or an Affiliate of a Bank, or (y) unreasonably delayed or withheld) the outstanding Loans and Commitments of such Bank (the “*Affected Bank*”), and if the Borrower locates a Replacement Bank, the Affected Bank shall, upon

1. prior written notice to the Administrative Agent,
 2. (i) payment to the Affected Bank of the purchase price agreed between it and the Replacement Bank (or, failing such agreement, a purchase price in the amount of the outstanding principal amount of the Affected Bank’s Loans and accrued interest thereon to the date of payment) by the Replacement Bank plus (ii) payment by the Borrower of all Obligations (other than principal and interest with respect to Loans) then due to the Affected Bank or accrued for its account hereunder or under any other Credit Document,
 3. satisfaction of the provisions set forth in Section 11.10 hereof, and
 4. payment by the Borrower to the Affected Bank and the Administrative Agent of all reasonable out-of-pocket expenses in connection with such assignment and
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assumption (including the recordation fee described in Section 11.10 hereof), be deemed without any further action to have assigned and delegated all its rights and obligations under this Agreement and any other Credit Document to which it is a party (including its outstanding Loans) to the Replacement Bank (such assignment to be made without recourse, representation or warranty), and the Replacement Bank shall assume such rights and obligations, whereupon the Replacement Bank shall in accordance with Section 11.10 hereof become a party to each Credit Document to which the Affected Bank is a party and shall have the rights and obligations of a Bank thereunder and the Affected Bank shall be released from its obligations hereunder and each other Credit Document to the extent of such assignment and delegation. Notwithstanding the foregoing, with respect to a Bank that is a Defaulting Bank or an Impacted Bank, the Borrower or the Administrative Agent may obtain a Replacement Bank and execute an Assignment on behalf of such Defaulting Bank or an Impacted Bank at any time and without prior notice to such Defaulting Bank or an Impacted Bank and cause its Loans and Commitments to be sold and assigned at par. Upon any such assignment and payment and compliance with the other provisions of Section 11.10 hereof, such replaced Bank shall no longer constitute a “Bank” for purposes hereof; provided, any rights of such replaced Bank to indemnification hereunder shall survive.

s. *Confidentiality*

The Administrative Agent and the Banks shall hold all non-public information provided to them by the Borrower pursuant to or in connection with this Agreement in accordance with their customary procedures for handling confidential information of this nature, but may make disclosure to any of their agents, attorneys-in-fact, examiners, regulators, non-governmental self-regulatory authorities, Affiliates, outside auditors, counsel and other professional advisors in connection with this Agreement or any other Credit Document or as reasonably required by any potential bona fide transferee, participant or assignee, or in connection with the exercise of remedies under a Credit Document, or to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty’s professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 11.19), or to any nationally recognized rating agency that requires access to information about a Bank’s investment portfolio in connection with ratings issued with respect to such Bank, or as requested by any governmental agency, non-governmental self-regulatory authority or representative thereof or pursuant to legal or regulatory process, or to any other party to this Agreement, or with the consent of the Borrower, or to the extent constituting information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided, however, that unless specifically prohibited by applicable law or court order, or in connection with any supervising examination, the Administrative Agent and each Bank shall use reasonable efforts to promptly notify the Borrower of any request by any governmental agency or representative thereof (other than any such request in connection with an examination of the financial condition of the Administrative Agent or such Bank by such governmental agency) for disclosure of any such non-public information and, where practicable, prior to disclosure of such information. Prior to any such disclosure pursuant to this Section 11.19, the Administrative Agent and each Bank shall require any such bona fide transferee, participant and assignee receiving a disclosure of non-public information to agree, for the benefit of the Borrower, in writing to be bound by this Section 11.19; and to require such Person to require any other Person to whom such Person discloses such non-public information to be similarly bound by this Section 11.19. Notwithstanding anything herein to the contrary, “confidential information” shall not include, and the Administrative Agent and each Bank may disclose to any and all persons, without

limitation of any kind, (i) any information with respect to the U.S. Federal income tax treatment and U.S. Federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Administrative Agent or such Bank relating to such tax treatment and tax structure, (ii) information that has been publicly disclosed or has become public without breach of this Section 11.19 and (iii) information that now or hereafter becomes available to such Bank on a non-confidential basis from a source other than the Borrower.

EACH BANK ACKNOWLEDGES THAT CONFIDENTIAL INFORMATION AS DEFINED IN THE IMMEDIATELY PRECEDING PARAGRAPH FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, 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 ABOUT THE BORROWER AND ITS RELATED PARTIES OR ITS RESPECTIVE SECURITIES. ACCORDINGLY, EACH BANK 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 LAW.

t. *Rights and Liabilities of the Syndication Agent, Co-Documentation Agents and Arrangers*

Neither the Syndication Agent, any Co-Documentation Agent nor any Arranger has any special rights, powers, obligations, liabilities, responsibilities or duties under this Agreement as a result of acting in the capacity of Syndication Agent, Co-Documentation Agent or Arranger, as applicable, other than those applicable to them in their capacity as Banks hereunder (if any). Without limiting the foregoing, neither the Syndication Agent, any Co-Documentation Agent nor any Arranger shall have or be deemed to have a fiduciary relationship with any Bank. Each Bank hereby makes the same acknowledgments and undertakings with respect to the Syndication Agent, each Co-Documentation Agent and each Arranger as it makes with respect to the Administrative Agent and any directors, officers, agents and employees of the Administrative Agent in Section 10.5 hereof.

u. *Relationship*

Neither the Administrative Agent, any Issuing Agent, the Swing Line Bank nor any Bank has any fiduciary relationship or duty to the Borrower or any of its Subsidiaries arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Administrative Agent, any Issuing Agent, the Swing Line Bank or any Bank and the Borrower or any of its Subsidiaries by virtue of, any Credit Document or any transaction contemplated

therein. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each of the Banks and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

The Borrower and each of its Subsidiaries understand that the Administrative Agent, the Issuing Agents, the Swing Line Bank, each Bank and their respective affiliates (the Administrative Agent or such Bank, as the case may be, together with its affiliates, each referred to herein as a “**Group**”) are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research). Members of each Group and businesses within each Group generally act independently of each other, both for their own account and for the account of clients. Accordingly, there may be situations where parts of a Group and/or their clients either now have or may in the future have interests, or take actions, that may conflict with the interests of the Borrower or one of its Subsidiaries. For example, a Group may, in the ordinary course of business, engage in trading in financial products or undertake other investment businesses for their own account or on behalf of other clients, including without limitation, trading in or holding long, short or derivative positions in securities, loans or other financial products of the Borrower, its Subsidiaries or its affiliates or other entities connected with the Loans or the transactions contemplated hereby.

In recognition of the foregoing, the Borrower, for itself and on behalf of its Subsidiaries, agrees no Group is required to restrict its activities as a result of this Agreement and that each Group may undertake any business activity without further consultation with or notification to the Borrower or any of its Subsidiaries. Neither this Agreement nor the receipt by the Administrative Agent, any Issuing Agent, the Swing Line Bank or any Bank of confidential information nor any other matter will give rise to any fiduciary, equitable or contractual duties (including but not limited to any duty of trust or confidence) that would prevent or restrict a Group from acting on behalf of other customers or for its own account. Furthermore, the Borrower, for itself and on behalf of its Subsidiaries, agrees that no Group and no member or business of a Group is under a duty to disclose to the Borrower or any of its Subsidiaries or use on behalf of the Borrower or any of its Subsidiaries any information whatsoever about or derived from those activities or to account for any revenue or profits obtained in connection with such activities. However, consistent with each Group’s long-standing policy to hold in confidence the affairs of its customers, no Group will use confidential information obtained from the Borrower or any of its Subsidiaries except in connection with its services to, and its relationship with, the Borrower and its Subsidiaries; *provided*, that each Group will be free to disclose information in any manner as required by law, regulation, regulatory authority or other applicable judicial or government order.

v. *[Reserved]*

w. *Severability of Provisions*

Any provision in this Agreement or any other Credit Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Agreement and the other Credit Documents are declared to be severable.

x. *Patriot Act Notice*

Each Bank that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Bank) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Bank or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act.

y. *Amendment and Restatement*

The Borrower, the Banks and the Administrative Agent agree that, upon (i) the execution and delivery of this Agreement by each of the parties hereto and (ii) satisfaction (or waiver by the aforementioned parties) of the conditions precedent set forth in Sections 6.1 and 6.2, the terms and provisions of the Existing Credit Agreement shall be and hereby are amended, superseded and restated in their entirety by the terms and provisions of this Agreement and each Departing Bank shall cease to be a party to the Existing Credit Agreement as evidenced by its execution and delivery of its Departing Bank Signature Page. This Agreement is not intended to and shall not constitute a novation, payment and reborrowing or termination of the Obligations under the Existing Credit Agreement and the other Credit Documents as in effect prior to the date hereof or the Indebtedness created thereunder. All "Loans" made and "Obligations" incurred under (and defined in) the Existing Credit Agreement which are outstanding on the Effective Date shall constitute Loans and Obligations, respectively, under (and shall be governed by the terms of) this Agreement and the other Credit Documents. The commitment of each Bank that is a party to the Existing Credit Agreement shall, on the date hereof, automatically be deemed amended and the only commitments shall be those hereunder. Without limiting the foregoing, upon the effectiveness hereof: (a) all references in the "Credit Documents" (as defined in the Existing Credit Agreement) to the "Credit Agreement" and the "Credit Documents" shall be deemed to refer to this Agreement and the Credit Documents, (b) all obligations constituting "Obligations" under the Existing Credit Agreement with any Bank or any Affiliate of any Bank which are outstanding on the date hereof shall continue as Obligations under this Agreement and the other Credit Documents, and (c) the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Bank's credit and loan exposure under the Existing Credit Agreement as are necessary in order that Obligations in respect of Loans, Letters of Credit, interest and fees due and payable to a Bank hereunder reflect such Bank's Commitments on the date hereof, and the Borrower hereby agrees to compensate each Bank and each Departing Bank for any and all losses, costs and expenses incurred by such Bank or Departing Bank in connection with the sale and assignment of any Term SOFR Loan on the terms and in the manner set forth in Section 2.11 hereof and (d) the existing "Loans" under the Existing Credit Agreement of each Departing Bank shall be repaid in full (accompanied by any accrued and unpaid interest and fees thereon), each Departing Bank's "Commitment" under the Existing Credit Agreement shall be terminated and each Departing Bank shall not be a Bank hereunder.

z. *Acknowledgement and Consent to Bail-In of Affected Financial Institutions*

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties thereto, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Credit 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:

1. the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
2. the effects of any Bail-In Action on any such liability, including, if applicable:
 - a. a reduction in full or in part or cancellation of any such liability;
 - b. 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 Credit Document; or
 - c. 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.

aa. *Acknowledgement Regarding Any Supported QFCs*

To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Derivative Obligations 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 Credit 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 Credit 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 Credit 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.

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EXHIBIT E-1

FORM OF BORROWING NOTICE

TO: U.S. Bank National Association, as administrative agent (the “Administrative Agent”) under that Fourth Amended and Restated Credit Agreement dated as of July 19, 2021, among, *inter alia*, Black Hills Corporation, a South Dakota corporation (the “Borrower”); the Administrative Agent; JPMorgan Chase Bank, N.A., as Syndication Agent; Bank of America, N.A. and Wells Fargo Bank, National Association, as Co-Documentation Agents; and the financial institutions party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”).

Capitalized terms used herein shall have the meanings ascribed to such terms in the Credit Agreement.

The undersigned Borrower hereby gives to the Administrative Agent a request for Borrowing pursuant to Section 2.5(a) of the Credit Agreement, and the Borrower hereby requests to borrow on [____], 20[____]:

(a) from the Banks, on a pro rata basis, an aggregate principal amount of \$[____] in Revolving Loans as:

1. a Base Rate Loan
2. a Term SOFR Borrowing with an Interest Period of [____] months(s)

(b) from the Swing Line Bank, a Swing Line Loan of \$[____] bearing interest at:

1. Base Rate plus [____]^[1]% per annum
2. Daily Term SOFR Base Rate

The undersigned hereby requests that such funds be deposited to the following account:

Bank: [____]

Address: [____]

ABA Number: [____]

Account Number: [____]

Account Name: [____]

Reference: [____]

The undersigned hereby certifies to the Administrative Agent and the Banks that (i) each of the representations and warranties set forth in Section 5 of the Credit Agreement (except with respect to representations contained in the first sentence of Section 5.2 thereof which are untrue as the result of information on **Schedule 5.2** which has not yet been required to be updated pursuant to Section 7.6(c) thereof) shall be and remain true and correct in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of the date hereof, except that if any

such representation or warranty relates solely to an earlier date it need only remain true in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of such date; and (ii) no Default or Event of Default shall have occurred and be continuing or would occur as a result of the Borrowing contemplated hereby.

IN WITNESS WHEREOF, the undersigned has caused this Borrowing Notice to be executed by its authorized officer as of the date set forth below.

Dated: _____, 20__

BLACK HILLS CORPORATION

By:
Name:
Title:

EXHIBIT E-2

FORM OF CONVERSION/CONTINUATION NOTICE

TO: U.S. Bank National Association, as administrative agent (the “Administrative Agent”) under that Fourth Amended and Restated Credit Agreement dated as of July 19, 2021, among, *inter alia*, Black Hills Corporation, a South Dakota corporation (the “Borrower”); the Administrative Agent; JPMorgan Chase Bank, N.A., as Syndication Agent; Bank of America, N.A. and Wells Fargo Bank, National Association, as Co-Documentation Agents; and the financial institutions party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”).

Capitalized terms used herein shall have the meanings ascribed to such terms in the Credit Agreement.

Pursuant to Section 2.5(a) of the Credit Agreement, the undersigned Borrower hereby requests to [continue] [convert] the interest rate on a portion of its Loan in the outstanding principal amount of \$[_____] on [_____] 20[___] as follows:

to convert such Term SOFR Loan to a Base Rate Loan of the same type as of the last day of the current Interest Period for such Term SOFR Borrowing.

to convert such Base Rate Loan to a Term SOFR Loan of the same type with an Interest Period of [_____] month(s).

to continue such Term SOFR Loan on the last day of its current Interest Period as a Term SOFR Loan of the same type with an Interest Period of [_____] month(s).

The undersigned hereby certifies to the Administrative Agent and the Banks that (i) each of the representations and warranties set forth in Section 5 of the Credit Agreement (except with respect to representations contained in the first sentence of Section 5.2 thereof which are untrue as the result of information on **Schedule 5.2** which has not yet been required to be updated pursuant to Section 7.6(c) thereof) shall be and remain true and correct in all material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of the date hereof, except that if any such representation or warranty relates solely to an earlier date it need only remain true in all

material respects (unless such representation or warranty is already qualified with respect to materiality, in which case it shall be and remain true and correct in all respects) as of such date; and (ii) no Default or Event of Default shall have occurred and be continuing or would occur as a result of the [continuation] [conversion] contemplated hereby.

IN WITNESS WHEREOF, the undersigned has caused this Borrowing Notice to be executed by its authorized officer as of the date set forth below.

Dated: _____, 20__

BLACK HILLS CORPORATION

By:
Name:
Title:

EXHIBIT E-3

FORM OF PAYDOWN NOTICE

TO: U.S. Bank National Association, as administrative agent (the “Administrative Agent”) under that Fourth Amended and Restated Credit Agreement dated as of July 19, 2021, among, *inter alia*, Black Hills Corporation, a South Dakota corporation (the “Borrower”); the Administrative Agent; JPMorgan Chase Bank, N.A., as Syndication Agent; Bank of America, N.A. and Wells Fargo Bank, National Association, as Co-Documentation Agents; and the financial institutions party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”).

Capitalized terms used herein shall have the meanings ascribed to such terms in the Credit Agreement.

Pursuant to Section 2.8(a) of the Credit Agreement, the undersigned Borrower hereby notifies the Administrative Agent of its intent to make a prepayment of a portion of its [Term SOFR] [Base Rate] [Swing Line] Loan in the amount of \$[_____] on [_____] , 20[___].

IN WITNESS WHEREOF, the undersigned has caused this Borrowing Notice to be executed by its authorized officer as of the date set forth below.

Dated: _____, 20__

BLACK HILLS CORPORATION

By:
Name:
Title:

SCHEDULE 1

PRICING GRID

If the Level Status Is	The Commitment Fee Rate (in basis points per annum) is:	The Term SOFR Margin (in basis points per annum) is:	The Base Rate Margin (in basis points per annum) is:	The L/C Fee Rate (in basis points per annum) is:
Level I Status	10.0	87.5	0.0	87.5
Level II Status	12.5	100.0	0.0	100.0
Level III Status	17.5	112.5	12.5	112.5
Level IV Status	20.0	125.0	25.0	125.0
Level V Status	25.0	150.0	50.0	150.0

The Reference Rating is initially determined (i) in the case of Base Rate Loans, on the Effective Date, and (ii) in the case of any Term SOFR Loans, on the second Business Day prior to the borrowing of such Term SOFR Loans. Changes in the Applicable Margin resulting from a change in any Reference Rating from S&P, Moody's or Fitch shall become effective on the fifth Business Day after the effective date of any change in such Reference Rating.

If two or more Reference Ratings are unavailable as of the date any determination of the Applicable Margin is to occur, Borrower and the Banks will negotiate in good faith to agree on an alternative method for establishing the Applicable Margin for any affected Advances. Until the earlier of (i) the time at which such an alternative method is agreed upon or (ii) 30 days after the date on which the Reference Rating became unavailable (such 30-day period, the "Negotiation Period"), the interest payable per annum with respect to Term SOFR Loans and Base Rate Loans (to the extent the Applicable Margin thereon is greater than zero) in the affected borrowing will be based upon the Applicable Margin calculated using the last available quote of the two Reference Ratings most recently available.

In the event any Reference Rating shall occur in a different level than the other applicable Reference Ratings, the Commitment Fee, Letter of Credit Fees, and Applicable Margin will be based upon the (a) if Reference Ratings exist by all three rating agencies and the respective ratings issued by two of the rating agencies are the same and one differs, the pricing level shall be determined based on the two ratings that are the same, (b) if Reference Ratings exist by all three rating agencies and none of the respective ratings are the same, then the pricing level shall

be determined based on the middle Reference Rating, (c) if only two Reference Ratings exist and they differ by one level, then the pricing level for the higher of such ratings shall apply; and (d) if only two Reference Ratings exist and they differ by more than one level, then the pricing level that is one level lower than the pricing level of the higher Reference Rating shall apply.

^[1]Margin to be agreed between Borrower and Swing Line Bank.

CERTIFICATION

I, Linden R. Evans, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: August 3, 2023

/s/ Linden R. Evans

Linden R. Evans

President and Chief Executive Officer

CERTIFICATION

I, Kimberly F. Nooney, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: August 3, 2023

/s/ Kimberly F. Nooney

Kimberly F. Nooney

Senior Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Linden R. Evans, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 3, 2023

/s/ Linden R. Evans

Linden R. Evans

President and Chief Executive Officer

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kimberly F. Nooney, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 3, 2023

/s/ Kimberly F. Nooney

Kimberly F. Nooney

Senior Vice President and Chief Financial Officer

Information concerning mine safety violations or other regulatory matters required by Sections 1503(a) of Dodd-Frank is included below.

Mine Safety and Health Administration Safety Data

Safety is a core value at Black Hills Corporation and at each of its subsidiary operations. We have in place a comprehensive safety program that includes extensive health and safety training for all employees, site inspections, emergency response preparedness, crisis communications training, incident investigation, regulatory compliance training and process auditing, as well as an open dialogue between all levels of employees. The goals of our processes are to eliminate exposure to hazards in the workplace, ensure that we comply with all mine safety regulations, and support regulatory and industry efforts to improve the health and safety of our employees along with the industry as a whole.

Under the recently enacted Dodd-Frank Act, each operator of a coal or other mine is required to include certain mine safety results in its periodic reports filed with the SEC. Our mining operation, consisting of Wyodak Coal Mine, is subject to regulation by the federal Mine Safety and Health Administration ("MSHA") under the Federal Mine Safety and Health Act of 1977 (the "Mine Act"). Below we present the following information regarding certain mining safety and health matters for the three month period ended June 30, 2023. In evaluating this information, consideration should be given to factors such as: (i) the number of citations and orders will vary depending on the size of the coal mine, (ii) the number of citations issued will vary from inspector to inspector and mine to mine, and (iii) citations and orders can be contested and appealed, and in that process, are often reduced in severity and amount, and are sometimes dismissed. The information presented includes:

- Total number of violations of mandatory health and safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Mine Act for which we have received a citation from MSHA;
- Total number of orders issued under section 104(b) of the Mine Act;
- Total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health and safety standards under section 104(d) of the Mine Act;
- Total number of imminent danger orders issued under section 107(a) of the Mine Act; and
- Total dollar value of proposed assessments from MSHA under the Mine Act.

The table below sets forth the total number of citations and/or orders issued by MSHA to BHE – Wyodak Mine under the indicated provisions of the Mine Act, together with the total dollar value of proposed MSHA assessments received during the three months ended June 30, 2023 and legal actions pending before the Federal Mine Safety and Health Review Commission, together with the Administrative Law Judges thereof, for BHE – Wyodak Mine, our only mining complex. All citations were abated within 24 hours of issue.

Mine/ MSHA Identification Number	Mine Act Section 104 S&S Citations issued during three months ended June 30, 2023	Mine Act Section 104(b) Orders (#)	Mine Act Section 104(d) Citations and Orders (#)	Mine Act Section 110(b) (2) Violations (#)	Mine Act Section 107(a) Imminent Danger Orders (#)	Total Dollar Value of Proposed MSHA Assessments (a)	Total Number of Mining Related Fatalities (#)	Received Notice of Potential to Have Pattern Under Section 104(e) (yes/no)	Legal Actions Pending as of Last Day of Period (#)	Legal Actions Initiated During Period (#)	Legal Actions Resolved During Period (#)
Wyodak Coal Mine - 4800083	0	0	0	0	0	\$ 1,144	0	No	0	0	0

(a) The types of proceedings by class: (1) Contests of citations and orders – none; (2) contests of proposed penalties – none; (3) complaints for compensation – none; (4) complaints of discharge, discrimination or interference under Section 105 of the Mine Act – none; (5) applications for temporary relief – none; and (6) appeals of judges' decisions or orders to the FMSHRC – none.

