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

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2021
OR
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-36559

Via Renewables, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**46-5453215**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

12140 Wickchester Ln, Suite 100
Houston, Texas 77079

(Address of principal executive offices)

(713) 600-2600
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbols	Name of exchange on which registered
Class A common stock, par value $0.01 per share	VIA	The NASDAQ Global Select Market
8.75% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Stock, par value $0.01 per share	VIASP	The NASDAQ Global Select Market

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

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

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

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

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

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

Large accelerated filer ☐ Accelerated filer ☒
Non-accelerated filer ☐ Smaller reporting company ☐
Emerging Growth Company ☐

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

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

The aggregate market value of common stock held by non-affiliates of the registrant on June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, based on the closing price on that date of $11.33, was approximately $135 million. The registrant, solely for the purpose of this required presentation, deemed its Board of Directors and Executive Officers to be affiliates, and deducted their stockholdings in determining the aggregate market value.

There were 15,659,683 shares of Class A common stock, 20,000,000 shares of Class B common stock and 3,567,543 shares of Series A Preferred Stock outstanding as of March 1, 2022.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement in connection with the 2022 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

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Cautionary Note Regarding Forward Looking Statements

This Annual Report on Form 10-K (this "Annual Report") contains forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond our control. These forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act") can be identified by the use of forward-looking terminology including "may," "should," "likely," "will," "believe," "expect," "anticipate," "estimate," "continue," "plan," "intend," "project," or other similar words. All statements, other than statements of historical fact included in this Annual Report, regarding the impacts of COVID-19 and the 2021 severe weather event, strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans, objectives and beliefs of management are forward-looking statements. Forward-looking statements appear in a number of places in this Annual Report and may include statements about business strategy and prospects for growth, customer acquisition costs, legal proceedings, ability to pay cash dividends, cash flow generation and liquidity, availability of terms of capital, competition and government regulation and general economic conditions. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we cannot give any assurance that such expectations will prove correct.

The forward-looking statements in this Annual Report are subject to risks and uncertainties. Important factors that could cause actual results to materially differ from those projected in the forward-looking statements include, but are not limited to:

- evolving risks, uncertainties and impacts relating to COVID-19, including the geographic spread, the severity of the disease, the scope and duration of the COVID-19 outbreak, actions that may be taken by governmental authorities to contain the COVID-19 outbreak or to treat its impact, and the potential for continuing negative impacts of COVID-19 on economies and financial markets;
- the ultimate impact of the 2021 severe weather event, including future benefits or costs related to ERCOT market Securitization efforts, and any corrective action by the State of Texas, ERCOT, the Railroad Commission of Texas, or the Public Utility Commission of Texas;
- changes in commodity prices;
- the sufficiency of risk management and hedging policies and practices;
- the impact of extreme and unpredictable weather conditions, including hurricanes and other natural disasters;
- federal, state and local regulations, including the industry's ability to address or adapt to potentially restrictive new regulations that may be enacted by public utility commissions;
- our ability to borrow funds and access credit markets;
- restrictions in our debt agreements and collateral requirements;
- credit risk with respect to suppliers and customers;
- changes in costs to acquire customers as well as actual attrition rates;
- accuracy of billing systems;
- our ability to successfully identify, complete, and efficiently integrate acquisitions into our operations;
- significant changes in, or new changes by, the independent system operators ("ISOs") in the regions we operate;
- competition; and
- the "risk factors" described in "Item 1A— Risk Factors" of this Annual Report.

You should review the risk factors and other factors noted throughout or incorporated by reference in this Annual Report that could cause our actual results to differ materially from those contained in any forward-looking statement. All forward-looking statements speak only as of the date of this Annual Report. Unless required by law, we disclaim any obligation to publicly update or revise these statements whether as a result of new information, future events or otherwise. It is not possible for us to predict all risks, nor can we assess the impact of all factors on the business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Risk Factor Summary

Our business, financial condition, cash flows, results of operations and ability to pay dividends on our Class A common stock and Series A Preferred Stock could be materially and adversely affected by, and the price of our Class A common stock and Series A Preferred Stock could decline due to a number of factors, whether currently known or unknown, including but not limited to those summarized below. You should carefully consider the risk factors summarized below and described in more detail in Item 1A. — Risk Factors, together with the other information contained in this Annual Report.

Risks Related to Our Business and Our Industry

- We are subject to commodity price risk.
- We face risks related to health epidemics, pandemics and other outbreaks, including COVID-19.
- Our financial results may be adversely impacted by weather conditions and changes in consumer demand.
- Our risk management policies and hedging procedures may not mitigate risk as planned, and we may fail to fully or effectively hedge our commodity supply and price risk.
- ESCOs face risks due to increased and rapidly changing regulations and increasing monetary fines by the state regulatory agencies.
- The retail energy business is subject to a high level of federal, state and local regulations, which are subject to change.
- Liability under the TCPA has increased significantly in recent years, and we face risks if we fail to comply.
- We are, and in the future may become, involved in legal and regulatory proceedings and, as a result, may incur substantial costs.
- Our business is dependent on retaining licenses in the markets in which we operate.
- We may be subject to risks in connection with acquisitions, which could cause us to fail to realize many of the anticipated benefits of such acquisitions.
- Pursuant to our cash dividend policy, we distribute a significant portion of our cash through regular quarterly dividends, and our ability to grow and make acquisitions with cash on hand could be limited.
- We may not be able to manage our growth successfully.
- Our financial results fluctuate on a seasonal, quarterly and annual basis.
- We may have difficulty retaining our existing customers or obtaining a sufficient number of new customers, due to competition and for other reasons.
- Increased collateral requirements in connection with our supply activities may restrict our liquidity.
- We are subject to direct credit risk for certain customers who may fail to pay their bills as they become due.
- We depend on the accuracy of data in our information management systems, which subjects us to risks.
- Cyberattacks and data security breaches could adversely affect our business.
- Our success depends on key members of our management, the loss of whom could disrupt our business operations.
- We rely on third party vendors for our customer acquisition verification, billing and transactions platform that exposes us to third party performance risk and other risk
- A large portion of our current customers are concentrated in a limited number of states, making us vulnerable to customer concentration risks.
- Increases in state renewable portfolio standards or an increase in the cost of renewable energy credit and carbon offsets may adversely impact the price, availability and marketability of our products.
- Our access to marketing channels may be contingent upon the viability of our telemarketing and door-to-door agreements with our vendors.
- Our vendors may expose us to risks.

Risks Related to Our Capital Structure and Capital Stock

- Our indebtedness could adversely affect our ability to raise additional capital to fund our operations or pay dividends. It could also expose us to the risk of increased interest rates and limit our ability to react to changes in the economy or our industry as well as impact our cash available for distribution.
- We cannot assure you that we will be able to continue paying our targeted quarterly dividend to the holders of our Class A common stock or dividends to the holders of our Series A Preferred Stock in the future.

- We are a holding company. Our sole material asset is our equity interest in Spark HoldCo, LLC ("Spark HoldCo") and we are accordingly dependent upon distributions from Spark HoldCo to pay dividends on the Class A common stock and Series A Preferred Stock.
- The Class A common stock and Series A Preferred Stock are subordinated to our existing and future debt obligations.
- Numerous factors may affect the trading price of the Class A common stock and Series A Preferred Stock.
- There may not be an active trading market for the Class A common stock or Series A Preferred Stock, which may in turn reduce the market value and your ability to transfer or sell your shares of Class A common stock or Series A Preferred Stock.
- Our Founder holds a substantial majority of the voting power of our common stock.
- Holders of Series A Preferred Stock have extremely limited voting rights.
- We have engaged in transactions with our affiliates in the past and expect to do so in the future. The terms of such transactions and the resolution of any conflicts that may arise may not always be in our or our stockholders' best interests.
- Our amended and restated certificate of incorporation and amended and restated bylaws, as well as Delaware law, contain provisions that could discourage acquisition bids or merger proposals, which may adversely affect the market price of our Class A common stock.
- Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.
- Future sales of our Class A common stock and Series A Preferred Stock in the public market could reduce the price of the Class A common stock and Series A Preferred Stock, and may dilute your ownership in us.
- We have issued preferred stock and may continue to do so, and the terms of such preferred stock could adversely affect the voting power or value of our Class A common stock.
- Our amended and restated certificate of incorporation limits the fiduciary duties of one of our directors and certain of our affiliates and restricts the remedies available to our stockholders for actions taken by our Founder or certain of our affiliates that might otherwise constitute breaches of fiduciary duty.
- The Series A Preferred Stock represent perpetual equity interests in us, and investors should not expect us to redeem the Series A Preferred Stock on the date the Series A Preferred Stock becomes redeemable by us or on any particular date afterwards.
- The Series A Preferred Stock is not rated.
- The Change of Control Conversion Right may make it more difficult for a party to acquire us or discourage a party from acquiring us.
- Changes in the method of determining the London Interbank Offered Rate ("LIBOR"), or the replacement of LIBOR with an alternative reference rate, may adversely affect interest rates under our Senior Credit Facility and the floating dividend rate of our Series A Preferred Stock.
- If we are unable to redeem the Series A Preferred Stock on or after April 15, 2022, a substantial increase in the Three-Month LIBOR Rate or an alternative rate could negatively impact our ability to pay dividends on the Series A Preferred Stock and Class A common stock.
- We may not have sufficient earnings and profits in order for dividends on the Series A Preferred Stock to be treated as dividends for U.S. federal income tax purposes.
- You may be subject to tax if we make or fail to make certain adjustments to the conversion rate of the Series A Preferred Stock even though you do not receive a corresponding cash dividend.
- We are a "controlled company" under NASDAQ Global Select Market rules, and as such we are entitled to an exemption from certain corporate governance standards of the NASDAQ Global Select Market, and you may not have the same protections afforded to shareholders of companies that are subject to all of the NASDAQ Global Market corporate governance requirements.

PART I.

Items 1 & 2. Business and Properties

General

We are an independent retail energy services company founded in 1999 and are organized as a Delaware corporation that provides residential and commercial customers in competitive markets across the United States with an alternative choice for their natural gas and electricity. We purchase our electricity and natural gas supply from a variety of wholesale providers and bill our customers monthly for the delivery of electricity and natural gas based on their consumption at either a fixed or variable price. Electricity and natural gas are then distributed to our customers by local regulated utility companies through their existing infrastructure.

Our business consists of two operating segments:

- *Retail Electricity Segment*. In this segment, we purchase electricity supply through physical and financial transactions with market counterparties and ISOs and supply electricity to residential and commercial consumers pursuant to fixed-price and variable-price contracts.

- *Retail Natural Gas Segment*. In this segment, we purchase natural gas supply through physical and financial transactions with market counterparties and supply natural gas to residential and commercial consumers pursuant to fixed-price and variable-price contracts.

Our Operations

As of December 31, 2021, we operated in 100 utility service territories across 19 states and the District of Columbia and had approximately 408,000 residential customer equivalents (“RCEs”). An RCE is an industry standard measure of natural gas or electricity usage with each RCE representing annual consumption of 100 MMBtu of natural gas or 10 MWh of electricity. We serve natural gas customers in fifteen states (Arizona, California, Colorado, Connecticut, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Ohio and Pennsylvania) and electricity customers in twelve states (Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania and Texas) and the District of Columbia using seven brands (Electricity Maine, Electricity N.H., Major Energy, Provider Power Mass, Respond Power, Spark Energy, and Verde Energy).

COVID-19 Impact

The outbreak of the novel coronavirus ("COVID-19") adversely impacted economic activity worldwide. In response to the COVID-19 pandemic, we deployed a remote working strategy in March 2020 that enabled our employees to work from home, provided timely communication to team members, implemented protocols for team members' safety, and initiated strategies for monitoring and responding to local COVID-19 impacts. Our preparedness efforts, coupled with quick and decisive plan implementation, resulted in minimal impacts to our workforce. Our workforce resumed normal work schedules at our corporate headquarters in May 2021, however with the rise of different variants, most recently the omicron variant, we have implemented adjusted work from home policies for certain employees.

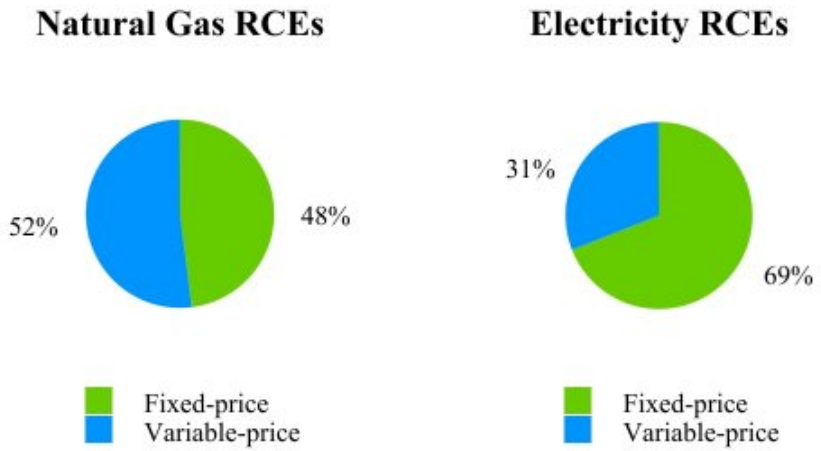
Please see "Item 1A — Risk Factors" and "Item 7. — Management's Discussion and Analysis" for further discussion.

Customer Contracts and Product Offerings

Fixed and variable-price contracts

We offer a variety of fixed-price and variable-price service options to our natural gas and electricity customers. Under our fixed-price service options, our customers purchase natural gas and electricity at a fixed price over the life of the customer contract, which provides our customers with protection against increases in natural gas and electricity prices. Our fixed-price contracts typically have a term of one to two years for residential customers and up to four years for commercial customers, and most provide for an early termination fee in the event that the customer terminates service prior to the expiration of the contract term. In a typical market, we offer fixed-price electricity plans for 6, 12 and 24 months and fixed-price natural gas plans from 12 to 24 months, which may or may not provide for a monthly service fee and/or a termination fee, depending on the market and customer type. Our variable-price service options carry a month-to-month term and are priced based on our forecasts of underlying commodity prices and other market and business factors, including the competitive landscape in the market and the regulatory environment, and may also include a monthly service fee depending on the market and customer type. Our variable plans may or may not provide for a termination fee, depending on the market and customer type.

The fixed/variable splits of our RCEs were as follows as of December 31, 2021:



Green products and renewable energy credits

The reduction of carbon emission has become a major focus around the world. We offer renewable and carbon neutral ("green") products in several markets. Green energy products are a growing market opportunity and typically provide increased unit margins as a result of improved customer satisfaction. Renewable electricity products allow customers to choose electricity sourced from wind, solar, hydroelectric and biofuel sources, through the purchase of renewable energy credits ("RECs"). A REC is a market-based instrument that represents the realized renewable attributes of renewable-based power generation. When we procure RECs on behalf of our customers, we are claiming their share of renewable generation that was delivered to the electric grid, directly supporting renewable generators.

Carbon neutral natural gas products give customers the option to reduce or eliminate the carbon footprint associated with their energy usage through the purchase of carbon offset credits. These products typically provide for fixed or variable prices and generally follow the same terms as our other products with the added benefit of carbon reduction and reduced environmental impact.

We utilize RECs to offset customer volumes related to customers enrolled in renewable energy plans. As of December 31, 2021, approximately 30% of our customers utilized green products. Also, as a key element of our corporate rebranding and our commitment to sustainability, we began offsetting 100% of customer volume beginning in the second quarter of 2021, by procuring RECs on behalf of our customers.

In addition to the RECs we purchase to satisfy our voluntary requirements under the terms of our green contracts with our customers and to support our corporate sustainability initiatives, we must also purchase a specified number

of RECs based on the amount of electricity we sell in a state in a year pursuant to individual state renewable portfolio standards. We forecast the price for the required RECs at the end of each month and incorporate this cost component into our customer pricing models.

Customer Acquisition and Retention

Our customer acquisition strategy consists of customer growth obtained through traditional sales channels complemented by customer portfolio and business acquisitions. We make decisions on how best to deploy capital based on a variety of factors, including cost to acquire customers, availability of opportunities and our view of commodity pricing in particular regions.

We strive to maintain a disciplined approach to recovery of our customer acquisition costs within a 12-month period. We capitalize and amortize our customer acquisition costs over a two-year period, which is based on our estimate of the expected average length of a customer relationship. We factor in the recovery of customer acquisition costs in determining which markets we enter and the pricing of our products in those markets. Accordingly, our results are significantly influenced by our customer acquisition costs.

As a result of the COVID-19 pandemic, certain public utility commissions, regulatory agencies, and other governmental authorities in all of our markets have issued orders that impact the way we have historically acquired customers, such as door to door marketing. Our reduced marketing resulted in significantly reduced customer acquisition costs during 2021 compared to historical amounts. As these orders have largely expired, we expect our customer acquisition costs with respect to door to door marketing to slowly return to historic levels. We are unable to predict our future customer acquisition costs at this time. Please see “Item 1A—Risk Factors” in this “Annual Report.”

We are currently focused on growing through organic sales channels; however, we continue to evaluate opportunities to acquire customers through acquisitions and pursue such acquisitions when it makes sense economically or strategically.

Organic Growth

We use organic sales strategies to both maintain and grow our customer base by offering products providing options for term flexibility, price certainty, variable rates and/or green product offerings. We manage growth on a market-by-market basis by developing price curves in each of the markets we serve and create product offerings in which our targeted customer segments find value. The attractiveness of a product from a consumer’s standpoint is based on a variety of factors, including overall pricing, price stability, contract term, sources of generation and environmental impact and whether or not the contract provides for termination and other fees. Product pricing is also based on several other factors, including the cost to acquire customers in the market, the competitive landscape and supply issues that may affect pricing.

Once a product has been created for a particular market, we then develop a marketing campaign. We identify and acquire customers through a variety of sales channels, including our inbound customer care call center, outbound calling, online marketing, opt-in web-based leads, email, direct mail, door-to-door sales, affinity programs, direct sales, brokers and consultants. For residential customers, we have historically used indirect sales brokers, web based solicitation, door-to-door sales, outbound calling, and other methods. For 2021, the largest channels were telemarketing and web-based sales. We typically use brokers or direct marketing to obtain C&I customers, which are typically larger and have greater natural gas and electricity requirements. At December 31, 2021, our customer base was 73% residential and 27% C&I customers. In our sales practices, we typically employ multiple vendors under short-term contracts and have not entered into any exclusive marketing arrangements with sales vendors. Our marketing team continuously evaluates the effectiveness of each customer acquisition channel and makes adjustments in order to achieve targeted growth and manage customer acquisition costs. We strive to maintain a disciplined approach to recovery of our customer acquisition costs within defined periods.

Acquisitions

We actively monitor acquisition opportunities that may arise in the domestic acquisition market, and seek to acquire both portfolios of customers as well as retail energy companies utilizing some combination of cash and borrowings under our senior secured borrowing base credit facility ("Senior Credit Facility), the issuance of common or preferred stock, or other financing arrangements. Historically, our customer acquisition strategy has been executed using both third parties and through affiliated relationships. See "—Relationship with our Founder, Majority Shareholder and Chief Executive Officer" for a discussion of affiliate relationships.

The following table provides a summary of our acquisitions over the past five years:

Company / Portfolio	Date Completed	RCEs	Segment	Acquisition Source
Perigee Energy, LLC	April 2017	17,000	Natural Gas Electricity	Affiliate
Verde Companies [(1)]	July 2017	145,000	Electricity	Third Party
Customer Portfolio	October 2017	44,000	Electricity	Third Party
HIKO Energy, LLC	March 2018	29,000	Natural Gas Electricity	Third Party
Customer Portfolio	December 2018	35,000	Natural Gas Electricity	Affiliate
Customer Portfolio	May 2019	60,000	Natural Gas Electricity	Third Party
Customer Portfolio	May 2021	45,000	Electricity	Third Party
Customer Portfolio	July 2021	33,000	Natural Gas	Third Party

(1) Included Verde Energy USA, Inc.; Verde Energy USA Commodities, LLC; Verde Energy USA Connecticut, LLC; Verde Energy USA DC, LLC; Verde Energy USA Illinois, LLC; Verde Energy USA Maryland, LLC; Verde Energy USA Massachusetts, LLC; Verde Energy USA New Jersey, LLC; Verde Energy USA New York, LLC; Verde Energy USA Ohio, LLC; Verde Energy USA Pennsylvania, LLC; Verde Energy USA Texas Holdings, LLC; Verde Energy USA Trading, LLC; and Verde Energy Solutions, LLC (collectively, the "Verde Companies").

Please see "Item 1A — Risk Factors" in this Annual Report for a discussion of risks related to our acquisition strategy and ability to finance such transactions.

Retaining customers and maximizing customer lifetime value

Following the acquisition of a customer, we devote significant attention to customer retention. We have developed a disciplined renewal communication process, which is designed to effectively reach our customers prior to the end of the contract term, and employ a team dedicated to managing this renewal communications process. Customers are contacted in each utility prior to the expiration of the customer's contract. We may contact the customer through additional channels such as outbound calls or email. We also apply a proprietary evaluation and segmentation process to optimize value to both us and the customer. We analyze historical usage, attrition rates and consumer behaviors to specifically tailor competitive products that aim to maximize the total expected return from energy sales to a specific customer, which we refer to as customer lifetime value.

We actively monitor unit margins from energy sales. We use this information to assess the results of products and to guide business decisions, including whether to engage in pro-active non-renewal of lower margin customers.

Commodity Supply

We hedge and procure our energy requirements from various wholesale energy markets, including both physical and financial markets, through short- and long-term contracts. Our in-house energy supply team is responsible for

managing our commodity positions (including energy procurement, capacity, transmission, renewable energy, and resource adequacy requirements) within our risk management policies. We procure our natural gas and electricity requirements at various trading hubs, city-gates and load zones. When we procure commodities at trading hubs, we are responsible for delivery to the applicable local regulated utility for distribution.

In most markets, we hedge our electricity exposure with financial products and then purchase the physical power directly from the ISO for delivery. Alternatively, we may use physical products to hedge our electricity exposure rather than buying physical electricity in the day-ahead market from the ISO. During the year ended December 31, 2021, we transacted physical and financial settlements of electricity with approximately 11 suppliers.

We are assessed monthly for ancillary charges such as reserves and capacity in the electricity sector by the ISOs. For example, the ISOs will charge all retail electricity providers for monthly reserves that the ISO determines are necessary to protect the integrity of the grid. Many of the utilities we serve also allocate natural gas transportation and storage assets to us as a part of their competitive choice program. We are required to fill our allocated storage capacity with natural gas, which creates commodity supply and price risk. Sometimes we cannot hedge the volumes associated with these assets because they are too small compared to the much larger bulk transaction volumes required for trades in the wholesale market or it is not economically feasible to do so.

We periodically adjust our portfolio of purchase/sale contracts in the wholesale natural gas market based upon analysis of our forecasted load requirements. Natural gas is then delivered to the local regulated utility city-gate or other specified delivery point where the local regulated utility takes control of the natural gas and delivers it to individual customer locations. Additionally, we hedge our natural gas price exposure with financial products. During the year ended December 31, 2021, we transacted physical and financial settlements of natural gas with approximately 83 wholesale counterparties.

We also enter into back-to-back wholesale transactions to optimize our credit lines with third-party energy suppliers. With each of our third-party energy suppliers, we have certain contracted credit lines, which allow us to purchase energy supply from these counterparties. If we desire to purchase supply beyond these credit limits, we are required to post collateral in the form of either cash or letters of credit. As we begin to approach the limits of our credit line with one supplier, we may purchase energy supply from another supplier and sell that supply to the original counterparty in order to reduce our net position with that counterparty and open up additional credit to procure supply in the future. Our sales of gas pursuant to these activities also enable us to optimize our credit lines with third-party energy suppliers by decreasing our net buy position with those suppliers.

Asset Optimization

Part of our business includes asset optimization activities in which we identify opportunities in the wholesale natural gas markets in conjunction with our retail procurement and hedging activities. Many of the competitive pipeline choice programs in which we participate require us and other retail energy suppliers to take assignment of and manage natural gas transportation and storage assets upstream of their respective city-gate delivery points. In our allocated storage assets, we are obligated to buy and inject gas in the summer season (April through October) and sell and withdraw gas during the winter season (November through March). These injection and purchase obligations require us to take a seasonal long position in natural gas. Our asset optimization group determines whether market conditions justify hedging these long positions through additional derivative transactions. We also contract with third parties for transportation and storage capacity in the wholesale market and are responsible for reservation and demand charges attributable to both our allocated and third-party contracted transportation and storage assets. Our asset optimization group utilizes these allocated and third-party transportation and storage assets in a variety of ways to either improve profitability or optimize supply-side counterparty credit lines.

We frequently enter into spot market transactions in which we purchase and sell natural gas at the same point or we purchase natural gas at one location and ship it using our pipeline capacity for sale at another location, if we are able to capture a margin. We view these spot market transactions as low risk because we enter into the buy and sell transactions on a back-to-back basis. We also act as an intermediary for market participants who need assistance

with short-term procurement requirements. Consumers and suppliers contact us with a need for a certain quantity of natural gas to be bought or sold at a specific location. When this occurs, we are able to use our contacts in the wholesale market to source the requested supply and capture a margin in these transactions.

Our risk policies require that optimization activities be limited to back-to-back purchase and sale transactions, or open positions subject to aggregate net open position limits, which are not held for a period longer than two months. Furthermore, all additional capacity procured outside of a utility allocation of retail assets must be approved by a risk committee. Hedges of our firm transportation obligations are limited to two years or less and hedging of interruptible capacity is prohibited.

Risk Management

We operate under a set of corporate risk policies and procedures relating to the purchase and sale of electricity and natural gas, general risk management and credit and collections functions. Our in-house energy supply team is responsible for managing our commodity positions (including energy, capacity, transmission, renewable energy, and resource adequacy requirements) within our risk management policies. We attempt to increase the predictability of cash flows by following our hedging strategies.

Our risk committee has control and authority over all of our risk management activities. The risk committee establishes and oversees the execution of our credit risk management policy and our commodity risk policy. The risk management policies are reviewed at least annually by the risk management committee and such committee typically meets quarterly to assure that we have followed these policies. The risk committee also seeks to ensure the application of our risk management policies to new products that we may offer. The risk committee is comprised of our Chief Executive Officer and our Chief Financial Officer, who meet on a regular basis to review the status of the risk management activities and positions. Our risk team reports directly to our Chief Financial Officer and their compensation is unrelated to trading activity. Commodity positions are typically reviewed and updated daily based on information from our customer databases and pricing information sources. The risk policy sets volumetric limits on intra-day and end of day long and short positions in natural gas and electricity. With respect to specific hedges, we have established and approved a formal delegation of authority policy specifying each trader's authorized volumetric limits based on instrument type, lead time (time to trade flow), fixed price volume, index price volume and tenor (trade flow) for individual transactions. The risk team reports to the risk committee any hedging transactions that exceed these delegated transaction limits. The various risks we face in our risk management activities are discussed below.

Commodity Price and Volumetric Risk

Because our contracts require that we deliver full natural gas or electricity requirements to our customers and because our customers' usage can be impacted by factors such as weather, we may periodically purchase more or less commodity than our aggregate customer volumetric needs. In buying or selling excess volumes, we may be exposed to commodity price volatility. In order to address the potential volumetric variability of our monthly deliveries for fixed-price customers, we implement various hedging strategies to attempt to mitigate our exposure.

Our commodity risk management strategy is designed to hedge substantially all of our forecasted volumes on our fixed-price customer contracts, as well as a portion of the near-term volumes on our variable-price customer contracts. We use both physical and financial products to hedge our fixed-price exposure. The efficacy of our risk management program may be adversely impacted by unanticipated events and costs that we are not able to effectively hedge, including abnormal customer attrition and consumption, certain variable costs associated with electricity grid reliability, pricing differences in the local markets for local delivery of commodities, unanticipated events that impact supply and demand, such as extreme weather, and abrupt changes in the markets for, or availability or cost of, financial instruments that help to hedge commodity price.

Variability in customer demand is primarily impacted by weather. We use utility-provided historical and/or forward projected customer volumes as a basis for our forecasted volumes and mitigate the risk of seasonal volume

fluctuation for some customers by purchasing excess fixed-price hedges within our volumetric tolerances. Should seasonal demand exceed our weather-normalized projections, we may experience a negative impact on our financial results.

From time to time, we also take further measures to reduce price risk and optimize our returns by: (i) maximizing the use of natural gas storage in our daily balancing market areas in order to give us the flexibility to offset volumetric variability arising from changes in winter demand; (ii) entering into daily swing contracts in our daily balancing markets over the winter months to enable us to increase or decrease daily volumes if demand increases or decreases; and (iii) purchasing out-of-the-money call options for contract periods with the highest seasonal volumetric risk to protect against steeply rising prices if our customer demands exceed our forecast. Being geographically diversified in our delivery areas also permits us, from time to time, to employ assets not being used in one area to other areas, thereby mitigating potential increased costs for natural gas that we otherwise may have had to acquire at higher prices to meet increased demand.

We utilize New York Mercantile Exchange (“NYMEX”) settled financial instruments to offset price risk associated with volume commitments under fixed-price contracts. The valuation for these financial instruments is calculated daily based on the NYMEX Exchange published closing price, and they are settled using the NYMEX Exchange’s published settlement price at their maturity.

Basis Risk

We are exposed to basis risk in our operations when the commodities we hedge are sold at different delivery points from the exposure we are seeking to hedge. For example, if we hedge our natural gas commodity price with Chicago basis but physical supply must be delivered to the individual delivery points of specific utility systems around the Chicago metropolitan area, we are exposed to the risk that prices may differ between the Chicago delivery point and the individual utility system delivery points. These differences can be significant from time to time, particularly during extreme, unforecasted cold weather conditions. Similarly, in certain of our electricity markets, customers pay the load zone price for electricity, so if we purchase supply to be delivered at a hub, we may have basis risk between the hub and the load zone electricity prices due to local congestion that is not reflected in the hub price. We attempt to hedge basis risk where possible, but hedging instruments are occasionally not economically feasible or available in the smaller quantities that we require.

Customer Credit Risk

Our credit risk management policies are designed to limit customer credit exposure. Credit risk is managed through participation in purchase of receivables ("POR") programs in utility service territories where such programs are available. In these markets, we monitor the credit ratings of the local regulated utilities and the parent companies of the utilities that purchase our customer accounts receivable. We also periodically review payment history and financial information for the local regulated utilities to ensure that we identify and respond to any deteriorating trends. In non-POR markets, we assess the creditworthiness of new applicants, monitor customer payment activities and administer an active collection program. Using risk models, past credit experience and different levels of exposure in each of the markets, we monitor our receivable aging, bad debt forecasts and actual bad debt expenses and adjust as necessary.

In territories where POR programs have been established, the local regulated utility purchases our receivables, and then becomes responsible for billing and collecting payment from the customer. In return for their assumption of risk, we receive slightly discounted proceeds on the receivables sold. POR programs result in substantially all of our credit risk being linked to the applicable utility and not to our end-use customers in these territories. For the year ended December 31, 2021, approximately 59% of our retail revenues were derived from territories in which substantially all of our credit risk was directly linked to local regulated utility companies, all of which had investment grade ratings. During the same period, we paid these local regulated utilities a weighted average discount of approximately 0.9% of total revenues for customer credit risk. In certain of the POR markets in which we operate, the utilities limit their collections exposure by retaining the ability to transfer a delinquent account back

to us for collection when collections are past due for a specified period. If our subsequent collection efforts are unsuccessful, we return the account to the local regulated utility for termination of service to the extent the ability to terminate service has not been limited as a result of regulatory orders (including those related to COVID-19). Under these service programs, we are exposed to credit risk related to payment for services rendered during the time between when the customer is transferred to us by the local regulated utility and the time we return the customer to the utility for termination of service, which is generally one to two billing periods. We may also realize a loss on fixed-price customers in this scenario due to the fact that we will have already fully hedged the customer's expected commodity usage for the life of the contract.

In non-POR markets (and in POR markets where we may choose to direct bill our customers), we manage customer credit risk through formal credit review in the case of commercial customers, and credit score screening, deposits and disconnection for non-payment, in the case of residential customers. Economic conditions (including impacts from COVID-19) may affect our customers' ability to pay bills in a timely manner, which could increase customer delinquencies and may lead to an increase in bad debt expense. We maintain an allowance for doubtful accounts, which represents our estimate of potential credit losses associated with accounts receivable from customers within these markets.

We assess the adequacy of the allowance for doubtful accounts through review of an aging of customer accounts receivable and general economic conditions in the markets that we serve. Our bad debt expense for the year ended December 31, 2021 was $0.4 million, or 0.1% of retail revenues. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Drivers of Our Business—Customer Credit Risk" for a more detailed discussion of our bad debt expense for the year ended December 31, 2021.

We do not have high concentrations of sales volumes to individual customers. For the year ended December 31, 2021, our largest customer accounted for less than 1% of total retail energy sales.

Counterparty Credit Risk in Wholesale Markets

We do not independently produce natural gas and electricity and depend upon third parties for our supply, which exposes us to wholesale counterparty credit risk in our retail and asset optimization activities. If the counterparties to our supply contracts are unable to perform their obligations, we may suffer losses, including those that occur as a result of being unable to secure replacement supplies of natural gas or electricity on a timely or cost-effective basis or at all. At December 31, 2021, approximately $6.6 million of our total exposure of $7.2 million was either with a non-investment grade counterparty or otherwise not secured with collateral or a guarantee.

Operational Risk

As with all companies, we are at risk from cyber-attacks (breaches, unauthorized access, misuse, computer viruses, or other malicious code or other events) that could materially adversely affect our business, or otherwise cause interruptions or malfunctions in our operations. We mitigate these risks through multiple layers of security controls including policy, hardware, and software security solutions. We also have engaged third parties to assist with both external and internal vulnerability scans and continually enhance awareness through employee education and accountability. During 2021, we did not experience any material loss related to cyber-attacks or other information security breaches.

Relationship with our Founder, Majority Shareholder, and Chief Executive Officer

We have historically leveraged our relationship with affiliates of our founder, majority shareholder and Chief Executive Officer, W. Keith Maxwell III (our "Founder"), to execute our strategy, including sourcing acquisitions, financing, and operations support. Our Founder owns NG&E, which was formed for the purpose of purchasing retail energy companies and retail customer books that may ultimately be resold to us. This relationship has afforded us access to opportunities that may not have otherwise been available to us due to our size and availability of capital.

We may engage in additional transactions with NG&E in the future and expect that any such transactions would be funded by a combination of cash, subordinated debt, or the issuance of Class A or Class B common stock. Actual consideration paid for the assets would depend, among other things, on our capital structure and liquidity at the time of any transaction. Although we believe our Founder would be incentivized to offer us additional acquisition opportunities, he and his affiliates are under no obligation to do so, and we are under no obligation to buy assets from them. Any acquisition activity involving NG&E or any other affiliate of our Founder will be subject to negotiation and approval by a special committee of our Board of Directors consisting solely of independent directors. Please see “Item 1A — Risk Factors” in this Annual Report for risks related to acquisitions and transactions with our affiliates.

On November 2, 2020, the Board of Directors (the "Board") of the Company appointed W. Keith Maxwell III as Chief Executive Officer.

Competition

The markets in which we operate are highly competitive. Our primary competition comes from the incumbent utility and other independent retail energy companies. In the electricity sector, these competitors include larger, well-capitalized energy retailers such as Calpine Energy Solutions, LLC, Constellation Energy Group, Inc., NRG Energy, Inc., and Vistra Energy Corp. We also compete with small local retail energy providers in the electricity sector that are focused exclusively on certain markets. Each market has a different group of local retail energy providers. In the natural gas sector, our national competitors are primarily NRG, Inc. Energy and Constellation Energy Group, Inc. Our national competitors generally have diversified energy platforms with multiple marketing approaches and broad geographic coverage similar to us. Competition in each market is based primarily on product offering, price and customer service. The number of competitors in our markets varies. In well-established markets in the Northeast and Texas we have hundreds of competitors, while in other markets the competition is limited to several participants. Markets that offer POR programs are generally more competitive than those markets in which retail energy providers bear customer credit risk.

Our ability to compete depends on our ability to convince customers to switch to our products and services, renew services with customers upon expiration of their contract terms, and our ability to offer products at attractive prices. Many local regulated utilities and their affiliates may possess the advantages of name recognition, longer operating histories, long-standing relationships with their customers and access to financial and other resources, which could pose a competitive challenge to us. As a result of our competitors' advantages, many customers of these local regulated utilities may decide to stay with their longtime energy provider if they have been satisfied with their service in the past. In addition, competitors may choose to offer more attractive short-term pricing to increase their market share.

Seasonality of Our Business

Our overall operating results fluctuate substantially on a seasonal basis depending on: (i) the geographic mix of our customer base; (ii) the relative concentration of our commodity mix; (iii) weather conditions, which directly influence the demand for natural gas and electricity and affect the prices of energy commodities; and (iv) variability in market prices for natural gas and electricity. These factors can have material short-term impacts on monthly and quarterly operating results, which may be misleading when considered outside of the context of our annual operating cycle.

Our accounts payable and accounts receivable are impacted by seasonality due to the timing differences between when we pay our suppliers for accounts payable versus when we collect from our customers on accounts receivable. We typically pay our suppliers for purchases of natural gas on a monthly basis and electricity on a weekly basis. However, it takes approximately two months from the time we deliver the electricity or natural gas to our customers before we collect from our customers on accounts receivable attributable to those product deliveries. This timing difference affects our cash flows, especially during peak cycles in the winter and summer months.

Natural gas accounted for approximately 19% of our retail revenues for the year ended December 31, 2021, which exposes us to a high degree of seasonality in our cash flows and income earned throughout the year as a result of the high concentration of heating load in the winter months. We utilize a considerable amount of cash from operations and borrowing capacity to fund working capital, which includes inventory purchases from April through October each year. We sell our natural gas inventory during the months of November through March of each year. We expect that the significant seasonality impacts to our cash flows and income will continue in future periods.

Regulatory Environment

We operate in the highly regulated natural gas and electricity retail sales industry in all of our respective jurisdictions, and must comply with the legislation and regulations in these jurisdictions in order to maintain our licenses to operate. We must also comply with the applicable regulations in order to obtain the necessary licenses in jurisdictions in which we plan to compete. Licensing requirements vary by state, but generally involve regular, standardized reporting in order to maintain a license in good standing with the state commission responsible for regulating retail electricity and gas suppliers. We believe there is potential for changes to state legislation and regulatory measures addressing licensing requirements that may impact our business model in the applicable jurisdictions. In addition, as further discussed below, our marketing activities and customer enrollment procedures are subject to rules and regulations at the state and federal levels, and failure to comply with requirements imposed by federal and state regulatory authorities could impact our licensing in a particular market. See "Risk Factors—We face risks due to increasing regulation of the retail energy industry at the state level."

New Jersey and Connecticut

Certain state commissions have begun efforts to restrict the ability of retail suppliers to “pass through” costs to customers associated with certain changes in law or regulatory requirements. For example, on January 22, 2019, the New Jersey Board of Public Utilities (“NJ BPU”) sent a cease and desist letter to third party suppliers (“TPS”) in New Jersey instructing that a TPS may not charge a customer rate that is higher than the fixed rate applicable during the period for which that rate was fixed. The letter notified TPS that such increases were prohibited and instructed TPS to refund customers amounts charged in excess of the applicable fixed rate. Parties have challenged the NJ BPU’s letter and it is not clear at this time whether refunds will be required. Similarly, the Connecticut Public Utilities Regulatory Authority (“PURA”) opened a docket after receiving complaints regarding increases by suppliers to certain fixed-price supplier contracts due to change in law triggers. PURA will consider whether suppliers’ actions constitute unfair and deceptive trade practices or otherwise violates applicable laws. These state actions provide examples where the Company may be required to assume costs that it otherwise would pass on to customers under its change in law provisions and potentially provide refunds to certain customers.

Other Regulations

Our marketing efforts to consumers, including but not limited to telemarketing, door-to-door sales, direct mail and online marketing, are subject to consumer protection regulation including state deceptive trade practices acts, Federal Trade Commission ("FTC") marketing standards, and state utility commission rules governing customer solicitations and enrollments, among others. By way of example, telemarketing activity is subject to federal and state do-not-call regulation and certain enrollment standards promulgated by state regulators. Door-to-door sales are governed by the FTC’s “Cooling-Off Rule" as well as state-specific regulation in many jurisdictions. In markets in which we conduct customer credit checks, these checks are subject to the requirements of the Fair Credit Reporting Act. Violations of the rules and regulations governing our marketing and sales activity could impact our license to operate in a particular market, result in suspension or otherwise limit our ability to conduct marketing activity in certain markets, and potentially lead to private actions against us. Moreover, there is potential for changes to legislation and regulatory measures applicable to our marketing measures that may impact our business models.

Recent interpretations of the Telephone Consumer Protection Act of 1991 (the “TCPA”) by the Federal Communications Commission (“FCC”) have introduced confusion regarding what constitutes an “autodialer” for

purposes of determining compliance under the TCPA. Also, additional restrictions have been placed on wireless telephone numbers making compliance with the TCPA more costly. See “Risk Factors—Risks Related to Our Business and Our Industry—Liability under the TCPA has increased significantly in recent years, and we face risks if we fail to comply.”

As compliance with the federal TCPA regulations and state telemarketing regulations becomes increasingly costly and as door-to-door marketing becomes increasingly risky both from a regulatory compliance perspective, and from the risk of such activities drawing class action litigation claims, we and our peers who rely on these sales channels will find it more difficult than in the past to engage in direct marketing efforts. In response to these risks, we are experimenting with new technologies, such as a web-based application to process door-to-door sales enrollments with direct input by the consumer. This application can be accessed using tablets or any smart phone device, which enhances and expands the opportunities to market directly to customers.

Our participation in natural gas and electricity wholesale markets to procure supply for our retail customers and hedge pricing risk is subject to regulation by the Commodity Futures Trading Commission (the "CFTC"), including regulation pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. In order to sell electricity, capacity and ancillary services in the wholesale electricity markets, we are required to have market-based rate authorization, also known as “MBR Authorization,” from the Federal Energy Regulatory Commission ("FERC"). We are required to make status update filings to FERC to disclose any affiliate relationships and quarterly filings to FERC regarding volumes of wholesale electricity sales in order to maintain our MBR Authorization. We are also required to seek prior approval by FERC to the extent any direct or indirect change in control occurs with respect to entities that hold MBR Authorization.

The transportation and sale for resale of natural gas in interstate commerce are regulated by agencies of the U.S. federal government, primarily FERC under the Natural Gas Act of 1938, the Natural Gas Policy Act of 1978 and regulations issued under those statutes. FERC regulates interstate natural gas transportation rates and service conditions, which affects our ability to procure natural gas supply for our retail customers and hedge pricing risk. Since 1985, FERC has endeavored to make natural gas transportation more accessible to natural gas buyers and sellers on an open and non-discriminatory basis. FERC’s orders do not attempt to directly regulate natural gas retail sales. As a shipper of natural gas on interstate pipelines, we are subject to those interstate pipelines' tariff requirements and FERC regulations and policies applicable to shippers.

Changes in law and to FERC policies and regulations may adversely affect the availability and reliability of firm and/or interruptible transportation service on interstate pipelines, and we cannot predict what future action FERC will take. We do not believe, however, that any regulatory changes will affect us in a way that materially differs from the way they will affect other natural gas marketers and local regulated utilities with which we compete.

In December 2007, FERC issued Order 704, a final rule on the annual natural gas transaction reporting requirements, as amended by subsequent orders on rehearing. Under Order 704, wholesale buyers and sellers of more than 2.2 million MMBtus of physical natural gas in the previous calendar year, including natural gas gatherers and marketers, are required to report, on May 1 of each year, aggregate volumes of natural gas purchased or sold at wholesale in the prior calendar year to the extent such transactions utilize, contribute to, or may contribute to the formation of price indices. It is the responsibility of the reporting entity to determine which individual transactions should be reported based on the guidance of Order 704. Order 704 also requires market participants to indicate whether they report prices to any index publishers, and if so, whether their reporting complies with FERC’s policy statement on price reporting. As a wholesale buyer and seller of natural gas, we are subject to the reporting requirements of Order 704.

Employees

As of December 31, 2021, we employed 169 full-time employees. Our employees are not represented by a collective bargaining unit. We have not experienced any strikes or work stoppages and consider our relations with our employees to be satisfactory.

We are dedicated to attracting and retaining talent across a variety of backgrounds, with varying experiences, perspectives and ideas, while having an inclusive culture. As of December 31, 2021, approximately 51% of our workforce was male and 49% female. We encourage and support the development of our employees wherever possible, and seek to fill positions through promotions and transfers within the organization. Continued learning and career development is advanced through ongoing performance and development conversations with employees and internally developed training programs.

We provide competitive compensation and benefits programs to our employees. These programs include, subject to eligibility policies, a 401(k) Plan, healthcare and insurance benefits, long term incentive awards in the form of restricted stock units to certain employees, health savings and flexible spending accounts, paid time off, family leave and employee assistance programs.

We strive to be good corporate citizen by being involved with numerous local community and charitable organizations through financial contributions and volunteer events. To encourage volunteerism, we offer paid time off to employees to volunteer in the community during work hours.

Facilities

Our corporate headquarters is located in Houston, Texas.

Available Information

Our website is located at www.viarenewables.com. We make available our periodic reports and other information filed with or furnished to the Securities and Exchange Commission (the "SEC"), including our annual reports on Form 10-K, our quarterly reports on Form 10-Q, our current reports on Form 8-K, and all amendments to those reports, free of charge through our website, as soon as reasonably practicable after those reports and other information are electronically filed with or furnished to the SEC. Any materials filed with the SEC may be read and copied at the SEC's website at www.sec.gov.

Item 1A. Risk Factors

Our business, financial condition, cash flows, results of operations and ability to pay dividends on our Class A common stock and Series A Preferred Stock could be materially and adversely affected by, and the price of our Class A common stock and Series A Preferred Stock could decline due to a number of factors, whether currently known or unknown, including but not limited to those described below. You should carefully consider these risk factors together with the other information contained in this Annual Report.

Risks Related to Our Business and Our Industry

We are subject to commodity price risk.

Our financial results are largely dependent on the prices at which we can acquire the commodities we resell. The prevailing market prices for natural gas and electricity are unpredictable and tend to fluctuate substantially. Changes in market prices for natural gas and electricity may result from many factors that are outside of our control, including:

- weather conditions; including extreme weather conditions, seasonal fluctuations, and the effects of climate change;
- demand for energy commodities and general economic conditions;
- disruption of natural gas or electricity transmission or transportation infrastructure or other constraints or inefficiencies;
- reduction or unavailability of generating capacity, including temporary outages, mothballing, or retirements;
- the level of prices and availability of natural gas and competing energy sources, including the impact of changes in environmental regulations impacting suppliers;
- the creditworthiness or bankruptcy or other financial distress of market participants;
- changes in market liquidity;
- natural disasters, wars, embargoes, acts of terrorism and other catastrophic events;
- significant changes in the pricing methods in the wholesale markets in which we operate;
- changes in regulatory policies concerning how markets are structured, how compensation is provided for service, and the kinds of different services that can or must be offered;
- federal, state, foreign and other governmental regulation and legislation; and
- demand side management, conservation, alternative or renewable energy sources.

For example, in February 2021, the U.S. experienced winter storm Uri, an unprecedented storm bringing extreme cold temperatures to the central U.S., including Texas. As a result of increased power demand for customers across the state of Texas and power generation disruptions during the weather event, power and ancillary costs in the Electric Reliability Counsel of Texas (“ERCOT”) service area experienced extreme volatility and price increases beyond the maximum allowed clearing prices. Less extreme price fluctuations can also occur as a result of routine winter weather fluctuations.

In the event of price fluctuations, we may not be able to pass along changes to the prices we pay to acquire commodities to our customers as such pricing fluctuations can attract consumer class actions as well as state and federal regulatory actions.

We face risks related to health epidemics, pandemics and other outbreaks, including COVID-19.

The ongoing COVID-19 pandemic is an evolving situation around the globe that continues to adversely impact economic activity and conditions worldwide. In particular, efforts to control the spread of COVID-19 have led to governmental shutdowns, business closures, and disruptions to supply chains and consumer behaviors around the world. We are continuing to monitor developments involving our workforce, customers and suppliers and cannot predict whether COVID-19, or any particular variant of COVID–19, will have a future material impact on our business, financial condition or results of operations. However, an extended slowdown of the United States' economic growth, demand for commodities and/or material changes in governmental policy could result in lower economic growth and lower demand for natural gas and electricity in our key markets as well as the ability of

various employees, customers, contractors, suppliers and other business partners to fulfill their obligations, which could have a material adverse effect on our business, financial condition or results of operations.

Our financial results may be adversely impacted by weather conditions and changes in consumer demand.

Weather conditions directly influence the demand for and availability of natural gas and electricity and affect the prices of energy commodities. Generally, on most utility systems, demand for natural gas peaks in the winter and demand for electricity peaks in the summer. Typically, when winters are warmer or summers are cooler, demand for energy is lower than expected, resulting in less natural gas and electricity consumption than forecasted. When demand is below anticipated levels due to weather patterns, we may be forced to sell excess supply at prices below our acquisition cost, which could result in reduced margins or even losses.

Conversely, when winters are colder or summers are warmer, consumption may outpace the volumes of natural gas and electricity against which we have hedged, and we may be unable to meet increased demand with storage or swing supply. In these circumstances, such as with winter storm Uri, we may experience reduced margins or even losses if we are required to purchase additional supply at higher prices. We may fail to accurately anticipate demand due to fluctuations in weather or to effectively manage our supply in response to a fluctuating commodity price environment.

Further, extreme weather conditions such as hurricanes, droughts, heat waves, winter storms and severe weather associated with climate change could cause these seasonal fluctuations to be more pronounced. Destruction caused by severe weather events, such as hurricanes, tornadoes, severe thunderstorms, snow and ice storms, can result in lost operating revenues.

Our risk management policies and hedging procedures may not mitigate risk as planned, and we may fail to fully or effectively hedge our commodity supply and price risk.

To provide energy to our customers, we purchase commodities in the wholesale energy markets, which are often highly volatile. Our commodity risk management strategy is designed to hedge substantially all of our forecasted volumes on our fixed-price customer contracts, as well as a portion of the near-term volumes on our variable-price customer contracts. We use both physical and financial products to hedge our exposure. The efficacy of our risk management program may be adversely impacted by unanticipated events and costs that we are not able to effectively hedge, including abnormal customer attrition and consumption, certain variable costs associated with electricity grid reliability, pricing differences in the local markets for local delivery of commodities, unanticipated events that impact supply and demand, such as extreme weather, and abrupt changes in the markets for, or availability or cost of, financial instruments that help to hedge commodity price.

We are exposed to basis risk in our operations when the commodities we hedge are sold at different delivery points from the exposure we are seeking to hedge. For example, if we hedge our natural gas commodity price with Chicago basis but physical supply must be delivered to the individual delivery points of specific utility systems around the Chicago metropolitan area, we are exposed to basis risk between the Chicago basis and the individual utility system delivery points. These differences can be significant from time to time, particularly during extreme, unforecasted cold weather conditions. Similarly, in certain of our electricity markets, customers pay the load zone price for electricity, so if we purchase supply to be delivered at a hub, we may have basis risk between the hub and the load zone electricity prices due to local congestion that is not reflected in the hub price. We attempt to hedge basis risk where possible, but hedging instruments are sometimes not economically feasible or available in the smaller quantities that we require.

Additionally, assumptions that we use in establishing our hedges may reduce the effectiveness of our hedging instruments. Considerations that may affect our hedging policies include, but are not limited to, human error, assumptions about customer attrition, the relationship of prices at different trading or delivery points, assumptions about future weather, and our load forecasting models.

Our derivative instruments are subject to mark-to-market accounting requirements and are recorded on the consolidated balance sheet at fair value with changes in fair value resulting from fluctuations in the underlying commodity prices immediately recognized in earnings. As a result, the Company's quarterly and annuals results are subject to significant fluctuations caused by the changes in market price.

In addition, we incur costs monthly for ancillary charges such as reserves and capacity in the electricity sector by ISOs. For example, the ISOs will charge all retail electricity providers for monthly reserves that the ISO determines are necessary to protect the integrity of the grid. We may be unable to fully pass the higher cost of ancillary reserves and reliability services through to our customers, and increases in the cost of these ancillary reserves and reliability services could negatively impact our results of operations.

Many of the natural gas utilities we serve allocate a share of transportation and storage capacity to us as a part of their competitive market operations. We are required to fill our allocated storage capacity with natural gas, which creates commodity supply and price risk. Sometimes we cannot hedge the volumes associated with these assets because they are too small compared to the much larger bulk transaction volumes required for trades in the wholesale market or it is not economically feasible to do so. In some regulatory programs or under some contracts, this capacity may be subject to recall by the utilities, which could have the effect of us being required to access the spot market to cover such a recall.

ESCOs face risks due to increased and rapidly changing regulations and increasing monetary fines by the state regulatory agencies.

The retail energy industry is highly regulated. Regulations may be changed or reinterpreted and new laws and regulations applicable to our business could be implemented in the future. To the extent that the competitive restructuring of retail electricity and natural gas markets is reversed, altered or discontinued, such changes could have a detrimental impact on our business and overall financial condition.

Some states are beginning to increase their regulation of their retail electricity and natural gas markets in an effort to increase consumer disclosures and ensure marketing practices are not misleading to consumers. In addition, the fines against ESCOs that regulators are seeking have increased dramatically in recent years. For example, in 2015 the Connecticut Legislature passed legislation providing that licensed electric suppliers in Connecticut could no longer offer variable rate products as Connecticut regulators believed that a variable rate product was inappropriate for residential consumers; however, no other state to date has followed Connecticut's legislation.

The retail energy business is subject to a high level of federal, state and local regulations, which are subject to change.

Many governmental bodies regulate aspects of our operations, and our failure to comply with these legal requirements can result in substantial penalties. In addition, new laws and regulations, including executive orders, or changes to or new interpretations of existing laws and regulations by courts or regulatory authorities occur regularly, but are difficult to predict. Changes under a new president, administration and Congress in the U.S. are also difficult to predict. Any such variation could negatively impact the retail energy business, including our business, could substantially increase costs to achieve compliance or otherwise could have a material adverse effect on our cash flow, results of operations and financial condition.

For example, many electricity markets have rate caps, and changes to these rate caps by regulators can impact future price exposure. Similarly, regulatory changes can result in new fees or charges that may not have been anticipated when existing retail contracts were drafted, which can create financial exposure. Our ability to manage cost increases that result from regulatory changes will depend, in part, on how the "change in law provisions" of our contracts are interpreted and enforced, among other factors.

Liability under the TCPA has increased significantly in recent years, and we face risks if we fail to comply.

Our outbound telemarketing efforts and use of mobile messaging to communicate with our customers, which has increased in recent years, subjects us to regulation under the TCPA. Over the last several years, companies have been subject to significant liabilities as a result of violations of the TCPA, including penalties, fines and damages under class action lawsuits. Our failure to effectively monitor and comply with our activities that are subject to the TCPA could result in significant penalties and the adverse effects of having to defend and ultimately suffer liability in a class action lawsuit related to such non-compliance.

We are also subject to liability under the TCPA for actions of our third party vendors who are engaging in outbound telemarketing efforts on our behalf. The issue of vicarious liability for the actions of third parties in violation of the TCPA remains unclear and has been the subject of conflicting precedent in the federal appellate courts. There can be no assurance that we may be subject to significant damages as a result of a class action lawsuit for actions of our vendors that we may not be able to control.

We are, and in the future may become, involved in legal and regulatory proceedings and, as a result, may incur substantial costs.

We are subject to lawsuits, claims and regulatory proceedings arising in the ordinary course of our business from time to time, including several purported class action lawsuits involving sales practices, telemarketing and TCPA claims, as well as contract disclosure claims and breach of contract claims. These are in various stages and are subject to substantial uncertainties concerning the outcome.

A negative outcome for any of these matters could result in significant costs, may divert management's attention from other business issues or harm our reputation with customers.

For additional information regarding the nature and status of certain proceedings, see Note 13 "Commitments and Contingencies" to the audited consolidated financial statements.

Our business is dependent on retaining licenses in the markets in which we operate.

Our business model is dependent on continuing to be licensed in existing markets. We may have a license revoked or not be granted a renewal of a license, or our license could be adversely conditioned or modified (e.g., by increased bond posting obligations). For example, recently, an ESCO was banned by the Public Utilities Commission of Ohio from operating in Ohio for five years in response to allegations of misleading and deceptive marketing practices.

We may be subject to risks in connection with acquisitions, which could cause us to fail to realize many of the anticipated benefits of such acquisitions.

We have grown our business in part through strategic acquisition opportunities from third parties and from affiliates of our majority shareholder and may continue to do so in the future. Achieving the anticipated benefits of these transactions depends in part upon our ability to identify accretive acquisition targets, accurately assess the benefits and risks of the acquisition prior to undertaking it, and the ability to integrate the acquired businesses in an efficient and effective manner. When we identify an acquisition candidate, there is a risk that we may be unable to negotiate terms that are beneficial to us. Additionally, even if we identify an accretive acquisition target, the successful acquisition of that business requires estimating anticipated cash flow and accretive value, evaluating potential regulatory challenges, retaining customers and assuming liabilities. The accuracy of these estimates is inherently uncertain and our assumptions may turn out to be incorrect.

Furthermore, when we make an acquisition, we may not be able to accomplish the integration process smoothly or successfully. The integration process could take longer than anticipated and could result in the loss of valuable employees, the disruption of our business, processes and systems or inconsistencies in standards, controls, procedures, practices, policies, compensation arrangements, distraction of management and significant costs, any of which could adversely affect our ability to achieve the anticipated benefits of the acquisitions. Further, we may have difficulty addressing possible differences in corporate cultures and management philosophies.

In many of our acquisition agreements, we are entitled to indemnification from the counterparty for various matters, including breaches of representations, warranties and covenants, tax matters, and litigation proceedings. We generally obtain security to provide assurances that the counterparty could perform its indemnification obligations, which may be in the form of escrow accounts, payment withholding or other methods. However, to the extent that we do not obtain security, or the security turns out to be inadequate, there is a risk that the counterparty may fail to perform on its indemnification obligations, which could result in the losses being incurred by us.

Our ability to grow at levels experienced historically may be constrained if the market for acquisition candidates is limited and we are unable to make acquisitions of portfolios of customers and retail energy companies on commercially reasonable terms.

Pursuant to our cash dividend policy, we distribute a significant portion of our cash through regular quarterly dividends, and our ability to grow and make acquisitions with cash on hand could be limited.

Pursuant to our cash dividend policy, we have historically distributed and intend in the future to distribute, a significant portion of our cash through regular quarterly dividends to holders of our Class A common stock and dividends on our Series A Preferred Stock. As such, our growth may not be as fast as that of businesses that reinvest their available cash to expand ongoing operations, and we may have to rely upon external financing sources, including the issuance of debt, equity securities, convertible subordinated notes and borrowings under our Senior Credit Facility and Subordinated Facility. These sources may not be available, and our ability to grow and maintain our business may be limited.

We may have liquidity needs that would prevent us from continuing our historical practice as it relates to the payment of dividends on our Class A common stock and Series A Preferred Stock. The primary factor that would lead to a change in the dividend policy would be decreased liquidity due to decreasing customer book.

We may not be able to manage our growth successfully.

The growth of our operations will depend upon our ability to expand our customer base in our existing markets and to enter new markets in a timely manner at reasonable costs, organically or through acquisitions. In order for us to recover expenses incurred in entering new markets and obtaining new customers, we must attract and retain customers on economic terms and for extended periods. Customer growth depends on several factors outside of our control, including economic and demographic conditions, such as population changes, job and income growth, housing starts, new business formation and the overall level of economic activity. We may experience difficulty managing our growth and implementing new product offerings, integrating new customers and employees, and complying with applicable market rules and the infrastructure for product delivery.

State regulations may adversely impact customer acquisition and renewal revenue and profitability, and organic growth. For example, New York State limits the types of services energy retailer marketers may offer new customers or renewals, in terms of pricing for non-renewable commodities and renewable product offerings.

Expanding our operations also may require continued development of our operating and financial controls and may place additional stress on our management and operational resources. We may be unable to manage our growth and development successfully.

Our financial results fluctuate on a seasonal, quarterly and annual basis.

Our overall operating results fluctuate substantially on a seasonal, quarterly and annual basis depending on: (1) the geographic mix of our customer base; (2) the relative concentration of our commodity mix; (3) weather conditions, which directly influence the demand for natural gas and electricity and affect the prices of energy commodities; and (4) variability in market prices for natural gas and electricity. These factors can have material short-term impacts on monthly and quarterly operating results, which may be misleading when considered outside of the context of our annual operating cycle. In addition, our accounts payable and accounts receivable are impacted by seasonality due

to the timing differences between when we pay our suppliers for accounts payable versus when we collect from our customers on accounts receivable. We typically pay our suppliers for purchases of natural gas on a monthly basis and electricity on a weekly basis. However, it takes approximately two months from the time we deliver the electricity or natural gas to our customers before we collect from our customers on accounts receivable attributable to those product deliveries. This timing difference could affect our cash flows, especially during peak cycles in the winter and summer months. Furthermore, as a result of the seasonality of our business, we may reserve a portion of our excess cash available for distribution in the first and fourth quarters in order to fund our second and third quarter distributions.

Additionally, we enter into a variety of financial derivative and physical contracts to manage commodity price risk, and we use mark-to-market accounting to account for this hedging activity. Under the mark-to-market accounting method, changes in the fair value of our hedging instruments that are not qualifying or not designated as hedges under accounting rules are recognized immediately in earnings. As a result of this accounting treatment, changes in the forward prices of natural gas and electricity cause volatility in our quarterly and annual earnings, which we are unable to fully anticipate.

We could also incur volatility from quarter to quarter associated with gains and losses on settled hedges relating to natural gas held in inventory if we choose to hedge the summer-winter spread on our retail allocated storage capacity. We typically purchase natural gas inventory and store it from April to October for withdrawal from November through March. Since a portion of the inventory is used to satisfy delivery obligations to our fixed-price customers over the winter months, we hedge the associated price risk using derivative contracts. Any gains or losses associated with settled derivative contracts are reflected in the statement of operations as a component of retail cost of sales and net asset optimization.

We may have difficulty retaining our existing customers or obtaining a sufficient number of new customers, due to competition and for other reasons.

The markets in which we compete are highly competitive, and we may face difficulty retaining our existing customers or obtaining new customers due to competition. We encounter significant competition from local regulated utilities or their retail affiliates and traditional and new retail energy providers. Competitors may offer different products, lower prices, and other incentives, which may attract customers away from our business. Many of these competitors or potential competitors are larger than us, have access to more significant capital resources, have stronger vendor relationships, have more well-established brand names and have larger existing installed customer bases.

Additionally, existing customers may switch to other retail energy service providers during their contract terms in the event of a significant decrease in the retail price of natural gas or electricity in order to obtain more favorable prices. Although we generally have a right to collect a termination fee from each customer on a fixed-price contract who terminates their contract early, we may not be able to collect the termination fees in full or at all. Our variable-price contracts can typically be terminated by our customers at any time without penalty. We may be unable to obtain new customers or maintain our existing customers due to competition or otherwise.

Increased collateral requirements in connection with our supply activities may restrict our liquidity.

Our contractual agreements with certain local regulated utilities and our supplier counterparties require us to maintain restricted cash balances or letters of credit as collateral for credit risk or the performance risk associated with the future delivery of natural gas or electricity. These collateral requirements may increase as we grow our customer base. Collateral requirements will increase based on the volume or cost of the commodity we purchase in any given month and the amount of capacity or service contracted for with the local regulated utility. Significant changes in market prices also can result in fluctuations in the collateral that local regulated utilities or suppliers require.

The effectiveness of our operations and future growth depend in part on the amount of cash and letters of credit available to enter into or maintain these contracts. The cost of these arrangements may be affected by changes in

credit markets, such as interest rate spreads in the cost of financing between different levels of credit ratings. These liquidity requirements may be greater than we anticipate or are able to meet.

We are subject to direct credit risk for certain customers who may fail to pay their bills as they become due.

We bear direct credit risk related to customers located in markets that have not implemented POR programs as well as indirect credit risk in those POR markets that pass collection efforts along to us after a specified non-payment period. For the year ended December 31, 2021, customers in non-POR markets represented approximately 41% of our retail revenues. We generally have the ability to terminate contracts with customers in the event of non-payment, but in most states in which we operate we cannot disconnect their natural gas or electricity service. In POR markets where the local regulated utility has the ability to return non-paying customers to us after specified periods, we may realize a loss for one to two billing periods until we can terminate these customers' contracts. We may also realize a loss on fixed-price customers in this scenario due to the fact that we will have already fully hedged the customer's expected commodity usage for the life of the contract and we also remain liable to our suppliers of natural gas and electricity for the cost of our supply commodities. Furthermore, in the Texas market, we are responsible for billing the distribution charges for the local regulated utility and are at risk for these charges, in addition to the cost of the commodity, in the event customers fail to pay their bills. Changing economic factors, such as rising unemployment rates and energy prices also result in a higher risk of customers being unable to pay their bills when due.

In addition, the ongoing COVID-19 pandemic has caused regulatory agencies and other governmental authorities to take, and potentially continue to take, emergency or other actions in light of the pandemic that continue to impact us, including prohibiting the termination of service for non-payment during the current COVID-19 pandemic, requiring deferred payment plans for certain customers unable to pay their bill, and utilities increasing POR fees they charge us in an effort to recoup their bad debts losses. Because of the time lag between the delivery of electricity and natural gas, the issuance of an invoice, and the customer's payment due date, there may be a substantial lag in time before we are able to determine specific trends in bad debt expense as a result of COVID-19. These actions taken by regulatory agencies and governmental authorities may impact our financial results, cash flow and liquidity and the duration of these changes are unknown. At this time, we are unable to predict the impact that this or other related events may have on our collection efforts due to non-payment.

We depend on the accuracy of data in our information management systems, which subjects us to risks.

We depend on the accuracy and timeliness of our information management systems for billing, collections, consumption and other important data. We rely on many internal and external sources for this information, including:

- our marketing, pricing and customer operations functions; and
- various local regulated utilities and ISOs for volume or meter read information, certain billing rates and billing types (e.g., budget billing) and other fees and expenses.

Inaccurate or untimely information, which may be outside of our direct control, could result in:

- inaccurate and/or untimely bills sent to customers;
- incorrect tax remittances;
- reduced effectiveness and efficiency of our operations;
- inability to adequately hedge our portfolio;
- increased overhead costs;
- inaccurate accounting and reporting of customer revenues, gross margin and accounts receivable activity;
- inaccurate measurement of usage rates, throughput and imbalances;
- customer complaints; and
- increased regulatory scrutiny.

We are also subject to disruptions in our information management systems arising out of events beyond our control, such as natural disasters, pandemics, epidemics, failures in hardware or software, power fluctuations, telecommunications and other similar disruptions.

Cyberattacks and data security breaches could adversely affect our business.

Cybersecurity risks have increased in recent years as a result of the proliferation of new technologies and the increased sophistication, magnitude and frequency of cyberattacks and data security breaches. A cyber-attack on our information management systems or those of our vendors could severely disrupt business operations, preventing us from billing and collecting revenues, and could result in significant expenses to investigate and repair security breaches or system damage, lead to litigation, fines, other remedial action, heightened regulatory scrutiny, diminished customer confidence and damage to our reputation. Although we maintain cyber-liability insurance that covers certain damage caused by cyber events, it may not be sufficient to cover us in all circumstances.

Our success depends on key members of our management, the loss of whom could disrupt our business operations.

We depend on the continued employment and performance of key management personnel. A number of our senior executives have substantial experience in consumer and energy markets that have undergone regulatory restructuring and have extensive risk management and hedging expertise. We believe their experience is important to our continued success. We do not maintain key life insurance policies for our executive officers. Our key executives may not continue in their present roles and may not be adequately replaced.

We rely on third party vendors for our customer acquisition verification, billing and transactions platform that exposes us to third party performance risk and other risk.

We have outsourced our back office customer billing and transactions platforms to third party vendors, and we rely heavily on the continued performance of the vendors under our current outsourcing agreement. Our vendors may fail to operate in accordance with the terms of the outsourcing agreement, be subject to cyber-security attacks, or a bankruptcy or other event may prevent them from performing under our outsourcing agreement.

For example, on November 1, 2021, we were informed by one of our vendors that we use for third party verification services that it was the target of a ransomware attack. We use third party verification services to review and confirm a customer's non-financial information for accuracy at the time of enrollment. Upon learning of this event, we immediately worked with the vendor to confirm the nature and scope of the attack and the data at issue, including how it relates to our customers and operations. After a thorough investigation, we believe that there was no impact to us. However, we remain subject to risk through our vendors and future events or additional developments that could have a material adverse impact on us.

A large portion of our current customers are concentrated in a limited number of states, making us vulnerable to customer concentration risks.

As of December 31, 2021, approximately 64% of our RCEs were located in five states. Specifically, 17%, 16%, 13%, 9% and 8% of our customers on an RCE basis were located in TX, PA, NY, MA, and NJ respectively. If we are unable to increase our market share across other competitive markets or enter into new competitive markets effectively, we may be subject to continued or greater customer concentration risk. The states that contain a large percentage of our customers could reverse regulatory restructuring or change the regulatory environment in a manner that causes us to be unable to operate economically in that state.

Increases in state renewable portfolio standards or an increase in the cost of renewable energy credit and carbon offsets may adversely impact the price, availability and marketability of our products.

Pursuant to state renewable portfolio standards, we must purchase a specified amount of RECs based on the amount of electricity we sell in a state in a year. In addition, we have contracts with certain customers that require us to

purchase RECs or carbon offsets and as part of sustainability efforts have made a corporate commitment to fully offset 100% of customer volume beginning on April 1, 2021 with RECS or carbon offsets. If a state increases its renewable portfolio standards, the demand for RECs within that state will increase and therefore the market price for RECs could increase. We attempt to forecast the price for the required RECs and carbon offsets at the end of each month and incorporate this forecast into our customer pricing models, but the price paid for RECs and carbon offsets may be higher than forecasted. We may be unable to fully pass the higher cost of RECs through to our customers, and increases in the price of RECs may decrease our results of operations and affect our ability to compete with other energy retailers that have not contracted with customers to purchase RECs or carbon offsets. Further, a price increase for RECs or carbon offsets may require us to decrease the renewable portion of our energy products, which may result in a loss of customers. A further reduction in benefits received by local regulated utilities from production tax credits in respect of renewable energy may adversely impact the availability to us, and marketability by us, of renewable energy under our brands.

Our access to marketing channels may be contingent upon the viability of our telemarketing and door-to-door agreements with our vendors.

Our vendors are essential to our telemarketing and door-to-door sales activities. Our ability to increase revenues in the future will depend significantly on our access to high quality vendors. If we are unable to attract new vendors and retain existing vendors to achieve our marketing targets, our growth may be materially reduced. There can be no assurance that competitive conditions will allow these vendors and their independent contractors to continue to successfully sign up new customers. Further, if our products are not attractive to, or do not generate sufficient revenue for our vendors, we may lose our existing relationships. In addition, the decline in landlines reduces the number of potential customers that may be reached by our telemarketing efforts and, as a result, our telemarketing sales channel may become less viable and we may be required to use more door-to-door marketing. Door-to-door marketing is continually under scrutiny by state regulators and legislators, which may lead to new rules and regulations that impact our ability to use these channels.

Due to the COVID-19 pandemic, certain public utility commissions, regulatory agencies, and other governmental authorities in most of our markets continue to maintain orders prohibiting energy services companies from door-to-door marketing, and in some cases telemarketing, during the pandemic, which has restricted some of the manners we use to market for organic sales. In response, the Company has focused on development of products and channels, partners for web sales, as well as accelerating its telemarketing sales quality programs. In November, 2020, the Company began active door-to-door marketing activities in certain markets where allowed by states' regulations. We believe that the telemarketing and door-to-door restrictions will continue to lessen over time, but we cannot provide any certainty that these marketing channels will not undergo future restrictions.

Our vendors may expose us to risks.

We are subject to reputational risks that may arise from the actions of our vendors and their independent contractors that are wholly or partially beyond our control, such as violations of our marketing policies and procedures as well as any failure to comply with applicable laws and regulations. If our vendors engage in marketing practices that are not in compliance with local laws and regulations, we may be in breach of applicable laws and regulations that may result in regulatory proceedings, disadvantageous conditioning of our energy retailer license, or the revocation of our energy retailer license. Unauthorized activities in connection with sales efforts by agents of our vendors, including calling consumers in violation of the TCPA and predatory door-to-door sales tactics and fraudulent misrepresentation could subject us to class action lawsuits against which we will be required to defend. Such defense efforts will be costly and time consuming. In addition, the independent contractors of our vendors may consider us to be their employer and seek compensation.

We rely on third party vendors for our customer billing and transactions platform that exposes us to third party performance risk and cyber-security risk. We have outsourced our back office customer verification, billing and transactions platforms to third party vendors, and we rely heavily on the continued performance of the vendors under our current outsourcing agreement. Our vendors may fail to operate in accordance with the terms of the

outsourcing agreement or a bankruptcy or other event may prevent them from performing under our outsourcing agreement.

Risks Related to Our Capital Structure and Capital Stock

Our indebtedness could adversely affect our ability to raise additional capital to fund our operations or pay dividends. It could also expose us to the risk of increased interest rates and limit our ability to react to changes in the economy or our industry as well as impact our cash available for distribution.

We have $135.0 million of indebtedness outstanding and $27.7 million in issued letters of credit under our Senior Credit Facility, and zero of indebtedness outstanding under our Subordinated Facility as of December 31, 2021. Debt we incur under our Senior Credit Facility, Subordinated Facility or otherwise could have negative consequences, including:

- increasing our vulnerability to general economic and industry conditions;
- requiring cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing or eliminating our ability to pay dividends to holders of our Class A common stock and Series A Preferred Stock, or to use our cash flow to fund our operations, capital expenditures and future business opportunities;
- limiting our ability to fund future acquisitions or engage in other activities that we view as in our long-term best interest;
- restricting our ability to make certain distributions with respect to our capital stock and the ability of our subsidiaries to make certain distributions to us, in light of restricted payment and other financial covenants, including requirements to maintain certain financial ratios, in our credit facilities and other financing agreements;
- exposing us to the risk of increased interest rates because certain of our borrowings are at variable rates of interest;
- limiting our ability to obtain additional financing for working capital including collateral postings, capital expenditures, debt service requirements, acquisitions and general corporate or other purposes; and
- limiting our ability to adjust to changing market conditions and placing us at a competitive disadvantage compared to our competitors who have less debt.

If we are unable to satisfy financial covenants in our debt instruments, it could result in an event of default that, if not cured or waived, may entitle the lenders to demand repayment or enforce their security interests. Our Senior Credit Facility will mature in October 13, 2023, and we cannot assure that we will be able to negotiate a new credit arrangement on commercially reasonable terms.

In addition, our ability to arrange financing and the costs of such capital, are dependent on numerous factors, including:

- general economic and capital market conditions;
- credit availability from banks and other financial institutions;
- investor confidence;
- our financial performance and the financial performance of our subsidiaries;
- our level of indebtedness and compliance with covenants in debt agreements;
- maintenance of acceptable credit ratings;
- cash flow; and
- provisions of tax and securities laws that may impact raising capital.

We may not be successful in obtaining additional capital for these or other reasons. The failure to obtain additional capital from time to time may have a material adverse effect on its business and operations.

We cannot assure you that we will be able to continue paying our targeted quarterly dividend to the holders of our Class A common stock or dividends to the holders of our Series A Preferred Stock in the future.

The amount of our cash available for distribution principally depends upon the amount of cash we generate from our operations, which fluctuates from quarter to quarter based on, among other things:

- changes in commodity prices, which may be driven by a variety of factors, including, but not limited to, weather conditions, seasonality and demand for energy commodities and general economic conditions;
- the level and timing of customer acquisition costs we incur;
- the level of our operating and general and administrative expenses;
- seasonal variations in revenues generated by our business;
- our debt service requirements and other liabilities;
- fluctuations in our working capital needs;
- our ability to borrow funds and access capital markets;
- restrictions contained in our debt agreements (including our Senior Credit Facility);
- management of customer credit risk;
- abrupt changes in regulatory policies; and,
- other business risks affecting our cash flows.

As a result of these and other factors, we cannot guarantee that we will have sufficient cash generated from operations to pay the dividends on our Series A Preferred Stock or to pay a specific level of cash dividends to holders of our Class A common stock. Further, we could be prevented from paying cash dividends under Delaware law if certain capital requirements are not met.

The amount of cash available for distribution depends primarily on our cash flow, and is not solely a function of profitability, which is affected by non-cash items. We may incur other expenses or liabilities during a period that could significantly reduce or eliminate our cash available for distribution and, in turn, impair our ability to pay dividends to holders of our Class A common stock and Series A Preferred Stock during the period. Additionally, the dividends paid on Series A Preferred Stock reduce the amount of cash we have available to pay dividends on our Class A common stock.

Each new share of Class A common stock and Series A Preferred Stock issued increases the cash required to continue to pay cash dividends. Any Class A common stock or preferred stock (whether Series A Preferred Stock or a new series of preferred stock) that may in the future be issued to finance acquisitions, upon exercise of stock options or otherwise, would have a similar effect.

Finally, dividends to holders of our Class A common stock are paid at the discretion of our board of directors. Holders of shares of Class A common stock and Series A Preferred Stock do not have a right to dividends on such shares unless declared or set aside for payment by our board of directors. Our board of directors may decrease the level of or entirely discontinue payment of dividends.

We are a holding company. Our sole material asset is our equity interest in Spark HoldCo, LLC ("Spark HoldCo") and we are accordingly dependent upon distributions from Spark HoldCo to pay dividends on the Class A common stock and Series A Preferred Stock.

We are a holding company and have no material assets other than our equity interest in Spark HoldCo, and have no independent means of generating revenue. Therefore, we depend on distributions from Spark HoldCo to meet our debt service and other payment obligations, and to pay dividends on our Class A common stock and Series A Preferred Stock. Spark HoldCo or its subsidiaries may be restricted from making distributions to us under applicable law or regulation or under the terms of their financing arrangements, or may otherwise be unable to provide such funds.

The Class A common stock and Series A Preferred Stock are subordinated to our existing and future debt obligations.

The Class A common stock and Series A Preferred Stock are subordinated to all of our existing and future indebtedness (including indebtedness outstanding under the Senior Credit Facility). Therefore, if we become bankrupt, liquidate our assets, reorganize or enter into certain other transactions, assets will be available to pay our obligations with respect to the Series A Preferred Stock only after we have paid all of our existing and future indebtedness in full. The Class A common stock will only receive assets to the extent all existing and future indebtedness and obligations under the Series A Preferred Stock is paid in full. If any of these events were to occur, there may be insufficient assets remaining to make any payments to holders of the Series A Preferred Stock or Class A common stock.

Additionally, none of our subsidiaries have guaranteed or otherwise become obligated with respect to the Class A common stock or Series A Preferred Stock. As a result, the Class A common stock and Series A Preferred Stock effectively rank junior to all existing and future indebtedness and other liabilities of our subsidiaries, including our operating subsidiaries, and any capital stock of our subsidiaries not held by us. Accordingly, our right to receive assets from any of our subsidiaries upon our bankruptcy, liquidation or reorganization, and the right of holders of shares of Class A common stock and Series A Preferred Stock to participate in those assets, is also structurally subordinated to claims of that subsidiary's creditors, including trade creditors. Even if we were a creditor of any of our subsidiaries, our rights as a creditor would be subordinate to any security interest in the assets of that subsidiary and any indebtedness of that subsidiary senior to that held by us.

Numerous factors may affect the trading price of the Class A common stock and Series A Preferred Stock.

The trading price of the Class A common stock and Series A Preferred Stock may depend on many factors, some of which are beyond our control, including:

- prevailing interest rates;
- the market for similar securities;
- general economic and financial market conditions;
- our issuance of debt or other preferred equity securities; and
- our financial condition, results of operations and prospects.

One of the factors that will influence the price of the Class A common stock and Series A Preferred Stock will be the distribution yield of the securities (as a percentage of the then market price of the securities) relative to market interest rates. Increases in market interest rates, which have been at low levels relative to historical rates, may lead prospective purchasers of shares of Class A common stock or Series A Preferred Stock to expect a higher distribution yield, and cause them to sell their Class A common stock or Series A Preferred Stock. Accordingly, higher market interest rates could cause the market price of the Class A common stock and Series A Preferred Stock to decrease.

In addition, over the last several years, prices of equity securities in the U.S. trading markets have been experiencing extreme price fluctuations. As a result of these and other factors, investors holding our Class A common stock and Series A Preferred Stock may experience a decrease in the value of their securities, which could be substantial and rapid, and could be unrelated to our financial condition, performance or prospects.

There may not be an active trading market for the Class A common stock or Series A Preferred Stock, which may in turn reduce the market value and your ability to transfer or sell your shares of Class A common stock or Series A Preferred Stock.

There are no assurances that there will be an active trading market for our Class A common stock or Series A Preferred Stock. The liquidity of any market for the Class A common stock and Series A Preferred Stock depends upon the number of stockholders, our results of operations and financial condition, the market for similar securities, the interest of securities dealers in making a market in the Class A common stock and Series A Preferred Stock, and

other factors. To the extent that an active trading market is not maintained, the liquidity and trading prices for the Class A common stock and Series A Preferred Stock may be harmed.

Furthermore, because the Series A Preferred Stock does not have any stated maturity and is not subject to any sinking fund or mandatory redemption, stockholders seeking liquidity will be limited to selling their respective shares of Series A Preferred Stock in the secondary market. Active trading markets for the Series A Preferred Stock may not exist at such times, in which case the trading price of your shares of our Series A Preferred Stock could be reduced and your ability to transfer such shares could be limited.

Our Founder holds a substantial majority of the voting power of our common stock.

Holders of Class A and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law or our certificate of incorporation and bylaws. Our Founder controls 65.8% of the combined voting power of the Class A and Class B common stock as of December 31, 2021 through his direct and indirect ownership in us.

Affiliated owners are entitled to act separately with respect to their investment in us, and they have the ability to elect all of the members of our board of directors, and thereby to control our management and affairs. In addition, affiliates are able to determine the outcome of all matters requiring Class A common stock and Class B common stock shareholder approval, including mergers and other material transactions, and is able to cause or prevent a change in the composition of our board of directors or a change in control of our company that could deprive our stockholders of an opportunity to receive a premium for their Class A common stock as part of a sale of our company. The existence of a significant shareholder, such as our Founder, may also have the effect of deterring hostile takeovers, delaying or preventing changes in control or changes in management, or limiting the ability of our other stockholders to approve transactions that they may deem to be in the best interests of our company.

So long as affiliates continue to control a significant amount of our common stock, they will continue to be able to strongly influence all matters requiring shareholder approval, regardless of whether other stockholders believe that a potential transaction is in their own best interests. In any of these matters, the interests of affiliates may differ or conflict with the interests of our other stockholders. Moreover, this concentration of stock ownership may also adversely affect the trading price of our Class A common stock or Series A Preferred Stock to the extent investors perceive a disadvantage in owning stock of a company with a controlling shareholder.

Holders of Series A Preferred Stock have extremely limited voting rights.

Voting rights of holders of shares of Series A Preferred Stock are extremely limited. Our Class A common stock and our Class B common stock are the only classes of our securities carrying full voting rights. Holders of the Series A Preferred Stock generally have no voting rights.

We have engaged in transactions with our affiliates in the past and expect to do so in the future. The terms of such transactions and the resolution of any conflicts that may arise may not always be in our or our stockholders' best interests.

We have engaged in transactions and expect to continue to engage in transactions with affiliated companies. We have acquired companies and books of customers from our affiliates and may do so in the future. We will continue to enter into back-to-back transactions for purchases of commodities and derivatives on behalf of our affiliate. We will also continue to pay certain expenses on behalf of several of our affiliates for which we will seek reimbursement. We will also continue to share our corporate headquarters with certain affiliates. We cannot assure that our affiliates will reimburse us for the costs we have incurred on their behalf or perform their obligations under any of these contracts.

Our amended and restated certificate of incorporation and amended and restated bylaws, as well as Delaware law, contain provisions that could discourage acquisition bids or merger proposals, which may adversely affect the market price of our Class A common stock.

Our amended and restated certificate of incorporation authorizes our board of directors to issue preferred stock without shareholder approval. On September 20, 2019, we filed a registration statement under the Securities Act on Form S-3 allowing us to offer and sell, from time to time, among other securities, shares of preferred stock. The registration statement was declared effective on October 18, 2019. The election by our board of directors to issue preferred stock with anti-takeover provisions could make it more difficult for a third party to acquire us.

In addition, some provisions of our amended and restated certificate of incorporation and amended and restated bylaws could make it more difficult for a third party to acquire control of us, even if the change of control would be beneficial to our stockholders. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws:

- provide for our board of directors to be divided into three classes of directors, with each class as nearly equal in number as possible, serving staggered three year terms. Our staggered board may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for shareholders to replace a majority of the directors;
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that all vacancies in our board, including newly created directorships, may, except as otherwise required by law or, if applicable, the rights of holders of a series of preferred stock, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- provide our board of directors the ability to authorize undesignated preferred stock. This ability makes it possible for our board of directors to issue, without shareholder approval, preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company;
- provide that at any time after the first date upon which W. Keith Maxwell III no longer beneficially owns more than fifty percent of the outstanding Class A common stock and Class B common stock, any action required or permitted to be taken by the shareholders must be effected at a duly called annual or special meeting of shareholders and may not be effected by any consent in writing in lieu of a meeting of such shareholders, subject to the rights of the holders of any series of preferred stock with respect to such series (prior to such time, such actions may be taken without a meeting by written consent of holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting);
- provide that at any time after the first date upon which W. Keith Maxwell III no longer beneficially owns more than fifty percent of the outstanding Class A common stock and Class B common stock, special meetings of our shareholders may only be called by the board of directors, the chief executive officer or the chairman of the board (prior to such time, special meetings may also be called by our Secretary at the request of holders of record of fifty percent of the outstanding Class A common stock and Class B common stock);
- provide that our amended and restated certificate of incorporation and amended and restated bylaws may be amended by the affirmative vote of the holders of at least two-thirds of our outstanding stock entitled to vote thereon;
- provide that our amended and restated bylaws can be amended by the board of directors; and
- establish advance notice procedures with regard to shareholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our shareholders. These procedures provide that notice of shareholder proposals must be timely given in writing to our corporate secretary prior to the meeting at which the action is to be taken. These requirements may preclude shareholders from bringing matters before the shareholders at an annual or special meeting.

In addition, in our amended and restated certificate of incorporation, we have elected not to be subject to the provisions of Section 203 of the Delaware General Corporation Law (the "DGCL") regulating corporate takeovers until the date on which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifteen percent of the outstanding Class A common stock and Class B common stock. On and after such date, we will be subject to the provisions of Section 203 of the DGCL.

Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders, (iii) any action asserting a claim against us or any director or officer or other employee of ours arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our bylaws, or (iv) any action asserting a claim against us or any director or officer or other employee of ours that is governed by the internal affairs doctrine, in each such case subject to such Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. This exclusive forum provision would not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. To the extent that any such claims may be based upon federal law claims, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of, and consented to, the provisions of our amended and restated certificate of incorporation described in the preceding sentence. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and such persons. Alternatively, if a court were to find these provisions of our amended and restated certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition or results of operations.

Future sales of our Class A common stock and Series A Preferred Stock in the public market could reduce the price of the Class A common stock and Series A Preferred Stock, and may dilute your ownership in us.

On September 20, 2019, we filed a registration statement under the Securities Act on Form S-3 registering the primary offer and sale, from time to time, of Class A common stock, preferred stock, depositary shares and warrants. The registration statement also registers the Class A common stock held by our affiliates, Retailco and NuDevco (including Class A common stock that may be obtained upon conversion of Class B common stock). All of the shares of Class A common stock held by Retailco and NuDevco and registered on the registration statement may be immediately resold. The registration statement was declared effective on October 18, 2019.

We cannot predict the size of future issuances of our Class A common stock or securities convertible into Class A common stock or the effect, if any, that future issuances or sales of shares of our Class A common stock will have on the market price of our Class A common stock. Sales of substantial amounts of our Class A common stock (including shares issued in connection with an acquisition), or the perception that such sales could occur, may adversely affect prevailing market prices of our Class A common stock.

We may also in the future sell additional shares of preferred stock, including shares of Series A Preferred Stock, on terms that may differ from those we have previously issued. Such shares could rank on parity with or, subject to the voting rights referred to above (with respect to issuances of new series of preferred stock), senior to the Series A Preferred Stock as to distribution rights or rights upon liquidation, winding up or dissolution. The subsequent issuance of additional shares of Series A Preferred Stock, or the creation and subsequent issuance of additional classes of preferred stock on parity with the Series A Preferred Stock, could dilute the interests of the holders of Series A Preferred Stock, and could affect our ability to pay distributions on, redeem or pay the liquidation preference on the Series A Preferred Stock. Any issuance of preferred stock that is senior to the Series A Preferred Stock would not only dilute the interests of the holders of Series A Preferred Stock, but also could affect our ability to pay distributions on, redeem or pay the liquidation preference on the Series A Preferred Stock.

Furthermore, subject to compliance with the Securities Act or exemptions therefrom, employees who have received Class A common stock as equity awards may also sell their shares into the public market.

We have issued preferred stock and may continue to do so, and the terms of such preferred stock could adversely affect the voting power or value of our Class A common stock.

Our certificate of incorporation authorizes us to issue, without the approval of our stockholders, one or more classes or series of preferred stock having such designations, preferences, limitations and relative rights, including preferences over our Class A common stock with respect to dividends and distributions, as our board of directors may determine. Through December 31, 2021, we have issued an aggregate of 3,567,543 shares of Series A Preferred Stock.

The terms of the preferred stock we offer or sell could adversely impact the voting power or value of our Class A common stock. For example, we might grant holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we might assign to holders of preferred stock, such as the Series A Preferred Stock, could affect the residual value of the Class A common stock.

Our amended and restated certificate of incorporation limits the fiduciary duties of one of our directors and certain of our affiliates and restricts the remedies available to our stockholders for actions taken by our Founder or certain of our affiliates that might otherwise constitute breaches of fiduciary duty.

Our amended and restated certificate of incorporation contains provisions that we renounce any interest in existing and future investments in other entities by, or the business opportunities of, NuDevco Partners, LLC, NuDevco Partners Holdings, LLC and W. Keith Maxwell III, or any of their officers, directors, agents, shareholders, members, affiliates and subsidiaries (other than a director or officer who is presented an opportunity solely in his capacity as a director or officer). Because of this provision, these persons and entities have no obligation to offer us those investments or opportunities that are offered to them in any capacity other than solely as an officer or director. If one of these persons or entities pursues a business opportunity instead of presenting the opportunity to us, we will not have any recourse against such person or entity for a breach of fiduciary duty.

The Series A Preferred Stock represent perpetual equity interests in us, and investors should not expect us to redeem the Series A Preferred Stock on the date the Series A Preferred Stock becomes redeemable by us or on any particular date afterwards.

The Series A Preferred Stock represents a perpetual equity interest in us, and the securities have no maturity or mandatory redemption date and are not redeemable at the option of investors under any circumstances. As a result, unlike our indebtedness, the Series A Preferred Stock will not give rise to a claim for payment of a principal amount at a particular date. As a result, holders of the Series A Preferred Stock may be required to bear the financial risks of an investment in the Series A Preferred Stock for an indefinite period of time. In addition, the Series A Preferred Stock will rank junior to all our current and future indebtedness (including indebtedness outstanding under the Senior Credit Facility) and other liabilities. The Series A Preferred Stock will also rank junior to any other preferred

stock ranking senior to the Series A Preferred Stock we may issue in the future with respect to assets available to satisfy claims against us.

The Series A Preferred Stock is not rated.

We have not sought to obtain a rating for the Series A Preferred Stock, and the Series A Preferred Stock may never be rated. It is possible, however, that one or more rating agencies might independently determine to assign a rating to the Series A Preferred Stock or that we may elect to obtain a rating of the Series A Preferred Stock in the future. In addition, we may elect to issue other securities for which we may seek to obtain a rating. If any ratings are assigned to the Series A Preferred Stock in the future or if we issue other securities with a rating, such ratings, if they are lower than market expectations or are subsequently lowered or withdrawn, could adversely affect the market for or the market value of the Series A Preferred Stock. Ratings only reflect the views of the issuing rating agency or agencies and such ratings could at any time be revised downward or withdrawn entirely at the discretion of the issuing rating agency. A rating is not a recommendation to purchase, sell or hold any particular security, including the Series A Preferred Stock. Ratings do not reflect market prices or suitability of a security for a particular investor and any future rating of the Series A Preferred Stock may not reflect all risks related to us and our business, or the structure or market value of the Series A Preferred Stock.

The Change of Control Conversion Right may make it more difficult for a party to acquire us or discourage a party from acquiring us.

The Change of Control Conversion Right of the Series A Preferred Stock provided in the Certificate of Designation may have the effect of discouraging a third party from making an acquisition proposal for us or of delaying, deferring or preventing certain of our change of control transactions under circumstances that otherwise could provide the holders of our Series A Preferred Stock with the opportunity to realize a premium over the then-current market price of such equity securities or that stockholders may otherwise believe is in their best interests.

Changes in the method of determining the London Interbank Offered Rate ("LIBOR"), or the replacement of LIBOR with an alternative reference rate, may adversely affect interest rates under our Senior Credit Facility and the floating dividend rate of our Series A Preferred Stock.

LIBOR is a basic rate of interest widely used as a global reference for setting interest rates on loans and payment rates on other financial instruments. Our Senior Credit Facility uses LIBOR as the reference rate for Eurodollar denominated borrowings. In addition, on and after April 15, 2022, dividends on the Series A Preferred Stock accrue at a floating rate equal to the sum of: (a) Three-Month LIBOR Rate as calculated on each applicable determination date, plus (b) 6.578%.

In 2017, the United Kingdom's Financial Conduct Authority, which regulates LIBOR, announced that it intends to phase out LIBOR by the end of 2021. It is unclear if LIBOR will cease to exist at that time, if new methods of calculating LIBOR will be established such that it continues to exist after 2021 or whether different reference rates will develop. It is impossible to predict the effect these developments, any discontinuance, modification or other reforms to LIBOR or the establishment of alternative reference rates may have on LIBOR, other benchmark rates or floating rate debt instruments.

Although our Senior Credit Facility and Series A Preferred Stock contain LIBOR alternative provisions and the use of alternative reference rates, new methods of calculating LIBOR or other reforms could cause the interest rates under our Senior Credit Facility or the dividend rate on our Series A Preferred Stock to be materially different than expected, which could have an adverse effect on our business, financial position, and results of operations, and our ability to pay dividends on the Series A Preferred Stock and Class A common stock.

If we are unable to redeem the Series A Preferred Stock on or after April 15, 2022, a substantial increase in the Three-Month LIBOR Rate or an alternative rate could negatively impact our ability to pay dividends on the Series A Preferred Stock and Class A common stock.

If we do not repurchase or redeem our Series A Preferred Stock on or after April 15, 2022, a substantial increase in the Three-Month LIBOR Rate (if it then exists), or a substantial increase in the alternative reference rate, could negatively impact our ability to pay dividends on the Series A Preferred Stock. An increase in the dividends payable on our Series A Preferred Stock would negatively impact dividends on our Class A common stock. We cannot assure you that we will have adequate sources of capital to repurchase or redeem the Series A Preferred Stock on or after April 15, 2022. If we are unable to repurchase or redeem the Series A Preferred Stock and our ability to pay dividends on the Series A Preferred Stock and Class A common stock is negatively impacted, the market value of the Series A Preferred Stock and Class A common stock could be materially adversely impacted.

We may not have sufficient earnings and profits in order for dividends on the Series A Preferred Stock to be treated as dividends for U.S. federal income tax purposes.

The dividends payable by us on the Series A Preferred Stock may exceed our current and accumulated earnings and profits, as calculated for U.S. federal income tax purposes. If this occurs, it will result in the amount of the dividends that exceed such earnings and profits being treated for U.S. federal income tax purposes first as a return of capital to the extent of the beneficial owner's adjusted tax basis in the Series A Preferred Stock, and the excess, if any, over such adjusted tax basis as gain from the sale or exchange of property, which generally results in capital gain. Such treatment will generally be unfavorable for corporate beneficial owners and may also be unfavorable to certain other beneficial owners.

You may be subject to tax if we make or fail to make certain adjustments to the conversion rate of the Series A Preferred Stock even though you do not receive a corresponding cash dividend.

The Conversion Rate as defined in the Certificate of Designation for the Series A Preferred Stock is subject to adjustment in certain circumstances. A failure to adjust (or to adjust adequately) the Conversion Rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. If you are a non-U.S. holder, any deemed dividend may be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty, which may be set off against subsequent payments on the Series A Preferred Stock. In April 2016, the Internal Revenue Service issued new proposed income tax regulations in regard to the taxability of changes in conversion rights that will apply to the Series A Preferred Stock when published in final form and may be applied to us before final publication in certain instances.

We are a "controlled company" under NASDAQ Global Select Market rules, and as such we are entitled to an exemption from certain corporate governance standards of the NASDAQ Global Select Market, and you may not have the same protections afforded to shareholders of companies that are subject to all of the NASDAQ Global Market corporate governance requirements.

We qualify as a "controlled company" within the meaning of NASDAQ Global Select Market corporate governance standards because an affiliated holder controls more than 50% of our voting power. Under NASDAQ Global Select Market rules, a company of which more than 50% of the voting power is held by an individual, a group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements.

Although our board of directors has established a nominating and corporate governance committee and a compensation committee of independent directors, it may determine to eliminate these committees at any time. If these committees were eliminated, you may not have the same protections afforded to shareholders of companies that are subject to all of NASDAQ Global Select Market corporate governance requirements.

Item 1B. Unresolved Staff Comments

None.

Item 3. Legal Proceedings

We are the subject of lawsuits and claims arising in the ordinary course of business from time to time. Management cannot predict the ultimate outcome of such lawsuits and claims. While the lawsuits and claims are asserted for amounts that may be material, should an unfavorable outcome occur, management does not currently expect that any currently pending matters will have a material adverse effect on our financial position or results of operations except as described in Part II, Item 8 “Financial Statements and Supplementary Data,” Note 13 "Commitments and Contingencies" to the audited consolidated financial statements, which are incorporated herein by reference.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

Our Class A common stock is traded on the NASDAQ Global Select Market under the symbol "VIA." There is no public market for our Class B common stock. On March 1, 2022, we had one holder of record of our Class A common stock and two holders of record of our Class B common stock, excluding stockholders for whom shares are held in "nominee" or "street name."

Dividends

We typically pay a cash dividend each quarter to holders of our Class A common stock to the extent we have cash available for distribution and are permitted to do so under the terms of our Senior Credit Facility.

Recent Sales of Unregistered Equity Securities

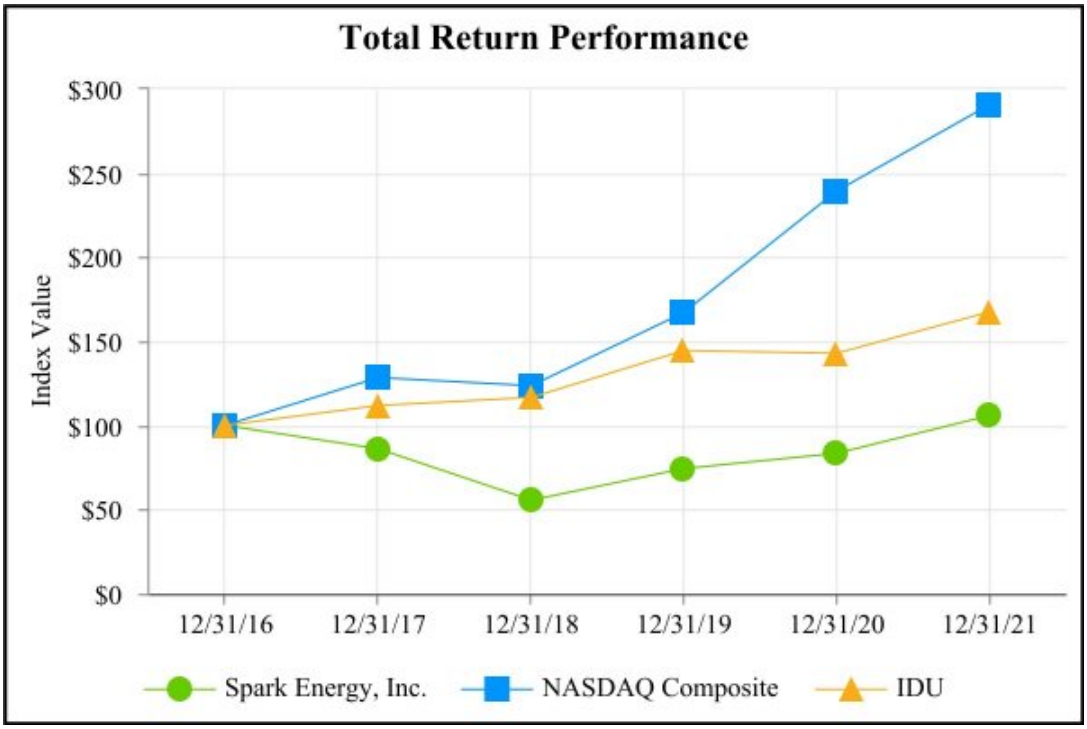
We have not sold any unregistered equity securities other than as previously reported.

Issuer Purchases of Equity Securities

We did not repurchase any equity securities between October 1, 2021 and December 31, 2021.

Stock Performance Graph

The following graph compares the quarterly performance of our Class A common stock to the NASDAQ Composite Index ("NASDAQ Composite") and the Dow Jones U.S. Utilities Index ("IDU"). The chart assumes that the value of the investment in our Class A common stock and each index was $100 at December 31, 2016 and that all dividends were reinvested. The stock performance shown on the graph below is not indicative of future price performance.



The performance graph above and related information shall not be deemed "soliciting material" or to be "filed" with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act or the Exchange Act, except to the extent that we specifically incorporate it by reference.

Item 6. Reserved

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and the related notes thereto included elsewhere in this Annual Report. In this Annual Report, the terms "Via," "Via Renewables," "Spark Energy," "Company," "we," "us" and "our" refer collectively to Via Renewables, Inc. and its subsidiaries.

Overview

We are an independent retail energy services company founded in 1999 that provides residential and commercial customers in competitive markets across the United States with an alternative choice for natural gas and electricity. We purchase our natural gas and electricity supply from a variety of wholesale providers and bill our customers monthly for the delivery of natural gas and electricity based on their consumption at either a fixed or variable price. Natural gas and electricity are then distributed to our customers by local regulated utility companies through their existing infrastructure. As of December 31, 2021, we operated in 100 utility service territories across 19 states and the District of Columbia.

Our business consists of two operating segments:

- *Retail Electricity Segment*. In this segment, we purchase electricity supply through physical and financial transactions with market counterparties and ISOs and supply electricity to residential and commercial consumers pursuant to fixed-price and variable-price contracts. For the years ended December 31, 2021, 2020 and 2019, approximately 81%, 83% and 85%, respectively, of our retail revenues were derived from the sale of electricity.

- *Retail Natural Gas Segment*. In this segment, we purchase natural gas supply through physical and financial transactions with market counterparties and supply natural gas to residential and commercial consumers pursuant to fixed-price and variable-price contracts. For the years ended December 31, 2021, 2020 and 2019, approximately 19%, 17% and 15%, respectively, of our retail revenues were derived from the sale of natural gas.

Recent Developments

Company's Name Change

In August 2021, we changed our name from Spark Energy, Inc. to Via Renewables, Inc.

Senior Credit Facility Amendment

In October 2021, we entered into the Fifth Amendment to our Senior Credit Facility, which, among other things extended the maturity date to October 13, 2023, and terminated the provision for Share Buyback Loans as well as added a provision for loans to fund acquisitions ("Acquisition Loans"), subject to limits as defined in the Fifth Amendment. Refer to Note 9 "Debt" for further discussion.

COVID-19

The outbreak of the novel coronavirus ("COVID-19") adversely impacted economic activity and conditions worldwide. In response to the COVID-19 pandemic, we deployed a remote working strategy in March 2020 that enabled our employees to work from home, provided timely communication to team members, implemented protocols for team members' safety, and initiated strategies for monitoring and responding to local COVID-19 impacts. Our preparedness efforts, coupled with quick and decisive plan implementation, resulted in minimal impacts to our workforce. Our workforce resumed normal work schedules at our corporate headquarters in May

2021 however, with the rise of different variants, most recently the omicron variant, we have implemented adjusted work from home policies for certain employees.

A slower than planned ramp-up of our door-to-door sales channels as COVID-19 restrictions have lifted, and building new vendor relationships and establishing sales teams has significantly impacted our business, financial condition and results of operations during the year ended December 31, 2021. We are continuing to monitor developments involving customers and suppliers and the impact on our operations, business, financial condition, liquidity and results of operations for future periods.

Drivers of Our Business

The success of our business and our profitability are impacted by a number of drivers, the most significant of which are discussed below.

Customer Growth

Customer growth is a key driver of our operations. Our ability to acquire customers organically or by acquisition is important to our success as we experience ongoing customer attrition. Our customer growth strategy includes growing organically through traditional sales channels complemented by customer portfolio and business acquisitions.

We measure our number of customers using residential customer equivalents ("RCEs"). The following table shows our RCEs by segment as of December 31, 2021, 2020 and 2019:

RCEs:

	December 31,		
(In thousands)	**2021**	**2020**	**2019**
Retail Electricity	298	303	533
Retail Natural Gas	110	97	139
Total Retail	**408**	**400**	**672**

The following table details our count of RCEs by geographical location as of December 31, 2021:

RCEs by Geographic Location:

(In thousands)	**Electricity**	**% of Total**	**Natural Gas**	**% of Total**	**Total**	**% of Total**
New England	95	32%	13	11%	108	26%
Mid-Atlantic	104	35%	59	54%	163	40%
Midwest	27	9%	22	20%	49	12%
Southwest	72	24%	16	15%	88	22%
Total	**298**	**100%**	**110**	**100%**	**408**	**100%**

The geographical locations noted above include the following states:

- New England - Connecticut, Maine, Massachusetts and New Hampshire;
- Mid-Atlantic - Delaware, Maryland (including the District of Columbia), New Jersey, New York and Pennsylvania;
- Midwest - Illinois, Indiana, Michigan and Ohio; and
- Southwest - Arizona, California, Colorado, Florida, Nevada and Texas.

Across our market areas, we have operated under a number of different retail brands. We currently operate under six retail brands. During 2021 and 2020, we consolidated certain brands and billing systems in an effort to simplify our business operations where practical.

Our organic sales strategies are designed to offer competitive pricing, price certainty, and/or green product offerings to residential and commercial customers. We manage growth on a market-by-market basis by developing price curves in each of the markets we serve and comparing the market prices to the price offered by the local regulated utility. We then determine if there is an opportunity in a particular market based on our ability to create a competitive product on economic terms that provides customer value and satisfies our profitability objectives. We develop marketing campaigns using a combination of sales channels. Our marketing team continuously evaluates the effectiveness of each customer acquisition channel and makes adjustments in order to achieve desired targets.

During the year ended December 31, 2021, we added approximately 79,000 RCEs through our various organic sales channels. This amount was significantly lower than historical periods primarily due to limitation of our door-to-door marketing as a result of COVID-19 during the majority of 2021, a reduction in targeted organic customer acquisitions as we focused our efforts to improve our organic sales channels, including vendor selection and sales quality, and a slow ramp-up of marketing once restrictions were lifted. As these orders have largely expired, we expect our customer growth to return to historical levels. However, we are unable to predict the ultimate effect on our organic sales, financial results, cash flows, and liquidity at this time.

Due to the COVID-19 pandemic, certain public utility commissions, regulatory agencies, and other governmental authorities in most of our markets continue to maintain orders prohibiting energy services companies from door-to-door marketing and in some cases telemarketing during the pandemic, which has restricted some of the methods we have historically used to market for organic sales. In response, we have focused on development of products and channels, partners for web sales, as well as accelerating its telemarketing sales quality programs. In November 2020, we began active door-to-door marketing activities in certain markets where not prohibited by states' COVID-19 restrictions.

We also acquire companies and portfolios of customers through both external and affiliated channels. During the year ended December 31, 2021, we added approximately 78,000 RCEs as a result of a series of asset purchase agreements entered in May 2021 and July 2021. Refer to Note 16 “Customer Acquisitions” for further discussion. Our ability to realize returns from acquisitions that are acceptable to us is dependent on our ability to successfully identify, negotiate, finance and integrate acquisitions. We will continue to evaluate potential acquisitions during the remainder of 2022.

RCE Activity

The following table shows our RCE activity during the years ended December 31, 2021, 2020 and 2019.

(In thousands)	**Retail Electricity**	**Retail Natural Gas**	**Total**	**% Net Annual Increase (Decrease)**
December 31, 2018	**754**	**154**	**908**	**(13)%**
Additions	189	58	247	
Attrition	(410)	(73)	(483)	
December 31, 2019	**533**	**139**	**672**	**(26)%**
Additions	38	8	46	
Attrition	(268)	(50)	(318)	
December 31, 2020	**303**	**97**	**400**	**(40)%**
Additions	110	47	157	
Attrition	(115)	(34)	(149)	
December 31, 2021	**298**	**110**	**408**	**2%**

In 2020, our attrition exceeded customer additions primarily due to the non-renewal of certain larger C&I customer contracts and limitations on our ability to sell through door-to-door and telemarketing activities as a result of orders by regulatory agencies and governmental authorities' responses to the COVID-19 pandemic. Average monthly attrition rates during 2021, 2020 and 2019 were as follows:

	Year Ended	Quarter Ended			
	December 31	December 31	September 30	June 30	March 31
2019	5.0%	7.0%	4.0%	3.8%	5.4%
2020	5.0%	7.7%	3.0%	3.5%	5.7%
2021	3.3%	3.4%	2.4%	3.3%	4.2%

Customer attrition occurs primarily as a result of: (i) customer initiated switches; (ii) residential moves (iii) disconnection resulting from customer payment defaults and (iv) pro-active non-renewal of contracts. Customer attrition during the year ended December 31, 2021 was lower compared to the prior year due to our pro-active non-renewal of some of our lower-margin large commercial contracts in prior years, which did not re-occur in 2021.

Customer Acquisition Costs

Managing customer acquisition costs is a key component of our profitability. Customer acquisition costs are those costs related to obtaining customers organically and do not include the cost of acquiring customers through acquisitions, which are recorded as customer relationships. For each of the three years ended December 31, 2021, customer acquisition costs were as follows:

	Year Ended December 31,		
(In thousands)	**2021**	**2020**	**2019**
Customer Acquisition Costs	$ 1,415	$ 1,513	$ 18,685

We strive to maintain a disciplined approach to recovery of our customer acquisition costs within a 12 month period. We capitalize and amortize our customer acquisition costs over a two year period, which is based on our estimate of the expected average length of a customer relationship. We factor in the recovery of customer acquisition costs in determining which markets we enter and the pricing of our products in those markets. Accordingly, our results are significantly influenced by our customer acquisition costs. Changes in customer acquisition costs from period to period reflect our focus on growing organically versus growth through acquisitions. We are currently focused on growing through organic sales channels; however, we continue to evaluate opportunities to acquire customers through acquisitions and pursue such acquisitions when it makes sense economically or strategically.

As described above, certain public utility commissions, regulatory agencies, and other governmental authorities in all of our markets have issued orders that impact the way we have historically acquired customers, such as door to door marketing. Our reduced marketing resulted in significantly reduced customer acquisition costs during the twelve months ended December 31, 2021 and 2020, respectively, compared to historical amounts. Our gradual increase of marketing efforts as restrictions have been lifted resulted in increased marketing and customer acquisition costs, although still lower compared to historical amounts. We expect our customer acquisition costs with respect to door to door marketing to slowly return to historic levels. We are incurring costs related to other manners of marketing, such as online marketing.

Customer Credit Risk

Approximately 59% of our revenues are derived from customers in utilities where customer credit risk is borne by the utility in exchange for a discount on amounts billed. Where we have customer credit risk, we record bad debt based on an estimate of uncollectible amounts. Our bad debt expense on non-POR revenues was as follows:

	Year Ended December 31,		
	2021	2020	2019
Total Non-POR Bad Debt as Percent of Revenue	0.2 %	1.6 %	3.3 %

During the year ended December 31, 2021, we experienced lower bad debt expense versus 2020 primarily due to an increased focus on collection efforts, timely billing and credit monitoring for new enrollments in non-POR markets. We have also been able to collect on debts that were previously written off, which has further reduced our bad debt expense during the year ended December 31, 2021.

For the years ended December 31, 2021, 2020 and 2019, approximately 59%, 64% and 67%, respectively, of our retail revenues were collected through POR programs where substantially all of our credit risk was with local regulated utility companies. As of December 31, 2021, 2020 and 2019, all of these local regulated utility companies had investment grade ratings. During these same periods, we paid these local regulated utilities a weighted average discount of approximately 0.9%, 1.2% and 0.8%, respectively, of total revenues for customer credit risk protection.

Weather Conditions

Weather conditions directly influence the demand for natural gas and electricity and affect the prices of energy commodities. Our hedging strategy is based on forecasted customer energy usage, which can vary substantially as a result of weather patterns deviating from historical norms. We are particularly sensitive to this variability in our residential customer segment where energy usage is highly sensitive to weather conditions that impact heating and cooling demand.

Our risk management policies direct that we hedge substantially all of our forecasted demand, which is typically hedged to long-term normal weather patterns. We also attempt to add additional protection through hedging from time to time to protect us from potential volatility in markets where we have historically experienced higher exposure to extreme weather conditions. Because we attempt to match commodity purchases to anticipated demand, unanticipated changes in weather patterns can have a significant impact on our operating results and cash flows from period to period.

Winter Storm Uri

During the first quarter of 2021, the U.S. experienced Winter Storm Uri, an unprecedented storm bringing extreme cold temperatures to the central U.S., including Texas. As a result of increased power demand for customers across the state of Texas and power generation disruptions during the weather event, power and ancillary costs in the ERCOT service area reached or exceeded maximum allowed clearing prices. As of December 31, 2021, we recorded a net loss of approximately $64.4 million as a direct result of Winter Storm Uri. Although our hedge position was 120% of our forecasted demand in Texas for the month of February, we were still required to purchase power at unprecedented prices for an extended period of time during the storm. These price caps imposed by ERCOT for the duration of the storm and beyond have never been experienced in any deregulated market in which we serve. The policies imposed on the electricity markets by ERCOT related to pricing resulted in overall negative impact on our electricity unit margin for 2021.

Asset Optimization

Our asset optimization opportunities primarily arise during the winter heating season when demand for natural gas is typically at its highest. Given the opportunistic nature of these activities and because we account for these activities using the mark to market method of accounting, we experience variability in our earnings from our asset optimization activities from year to year.

Net asset optimization resulted in a loss of $4.2 million, a loss of $0.7 million and a gain of $2.8 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Non-GAAP Performance Measures

We use the Non-GAAP performance measures of Adjusted EBITDA and Retail Gross Margin to evaluate and measure our operating results. These measures for the three years ended December 31, 2021 were as follows:

	Year Ended December 31,		
(in thousands)	**2021**	**2020**	**2019**
Adjusted EBITDA [1]	$ 80,657	$ 106,634	$ 92,404
Retail Gross Margin [2]	$ 132,534	$ 196,473	$ 220,740

(1) Adjusted EBITDA for the year ended December 31, 2021 includes a $60.0 million add back related to Winter Storm Uri and also includes a deduction of $2.2 million non-recurring legal settlement related to an add back in 2019. See discussion below.
(2) Retail Gross Margin for the year ended December 31, 2021 includes a $0.5 million reduction related to the Winter Storm Uri credit settlements received and year ended December 31, 2021 includes a $64.4 million add back related to Winter Storm Uri. See discussion below.

Adjusted EBITDA. We define "Adjusted EBITDA" as EBITDA less (i) customer acquisition costs incurred in the current period, plus or minus (ii) net (loss) gain on derivative instruments, and (iii) net current period cash settlements on derivative instruments, plus (iv) non-cash compensation expense, and (v) other non-cash and non-recurring operating items. EBITDA is defined as net income (loss) before the provision for income taxes, interest expense and depreciation and amortization. This conforms to the calculation of Adjusted EBITDA in our Senior Credit Facility.

We deduct all current period customer acquisition costs (representing spending for organic customer acquisitions) in the Adjusted EBITDA calculation because such costs reflect a cash outlay in the period in which they are incurred, even though we capitalize and amortize such costs over two years. We do not deduct the cost of customer acquisitions through acquisitions of businesses or portfolios of customers in calculating Adjusted EBITDA.

We deduct our net gains (losses) on derivative instruments, excluding current period cash settlements, from the Adjusted EBITDA calculation in order to remove the non-cash impact of net gains and losses on these instruments. We also deduct non-cash compensation expense that results from the issuance of restricted stock units under our long-term incentive plan due to the non-cash nature of the expense.

We adjust from time to time other non-cash or unusual and/or infrequent charges due to either their non-cash nature or their infrequency. We have historically included the financial impact of weather variability in the calculation of Adjusted EBITDA. We will continue this historical approach, but during the first quarter of 2021 we incurred a net pre-tax financial loss of $64.9 million due to Winter Storm Uri, as described above. This loss was incurred due to uncharacteristic extended sub-freezing temperatures across Texas combined with the impact of the pricing caps ordered by ERCOT. We believe this event is unusual, infrequent, and non-recurring in nature.

Our lenders under our Senior Credit Facility allowed $60.0 million of the $64.9 million pre-tax storm loss incurred in the first quarter of 2021 to be added back as a non-recurring item in the calculation of Adjusted EBITDA for our Debt Covenant Calculations. As our Senior Credit Facility is considered a material agreement and Adjusted EBITDA is a key component of our material covenants, we consider our covenant compliance to be material to the understanding of our financial condition and/or liquidity. We will present any credits received related to the storm exceeding $4.9 million as a reduction of the related $60.0 million non-recurring add back to Adjusted EBITDA for consistent presentation. There are no assurances credits will be received.

We believe that the presentation of Adjusted EBITDA provides information useful to investors in assessing our liquidity and financial condition and results of operations and that Adjusted EBITDA is also useful to investors as a financial indicator of our ability to incur and service debt, pay dividends and fund capital expenditures. Adjusted EBITDA is a supplemental financial measure that management and external users of our consolidated financial statements, such as industry analysts, investors, commercial banks and rating agencies, use to assess the following:

- our operating performance as compared to other publicly traded companies in the retail energy industry, without regard to financing methods, capital structure or historical cost basis;
- the ability of our assets to generate earnings sufficient to support our proposed cash dividends;
- our ability to fund capital expenditures (including customer acquisition costs) and incur and service debt; and
- our compliance with financial debt covenants. (Refer to Note 9 "Debt" in the Company's audited consolidated financial statements for discussion of the material terms of our Senior Credit Facility, including the covenant requirements for our Minimum Fixed Charge Coverage Ratio, Maximum Total Leverage Ratio, and Maximum Senior Secured Leverage Ratio.)

The GAAP measures most directly comparable to Adjusted EBITDA are net income (loss) and net cash provided by (used in) operating activities. The following table presents a reconciliation of Adjusted EBITDA to these GAAP measures for each of the periods indicated.

	Year Ended December 31,		
(in thousands)	**2021**	**2020**	**2019**
Reconciliation of Adjusted EBITDA to Net Income (Loss):			
Net (loss) income	$ (3,951)	$ 68,218	$ 14,213
Depreciation and amortization	21,578	30,767	40,987
Interest expense	4,926	5,266	8,621
Income tax expense	3,804	15,736	7,257
EBITDA	26,357	119,987	71,078
Less:			
Net, gain (loss) on derivative instruments	21,200	(23,386)	(67,749)
Net, cash settlements on derivative instruments	(15,692)	37,729	42,820
Customer acquisition costs	1,415	1,513	18,685
Plus:			
Non-cash compensation expense	3,448	2,503	5,487
Non-recurring event - Winter Storm Uri	60,000	—	—
Non-recurring legal and regulatory settlements	(2,225)	—	14,457
Gain on disposal of eRex	—	—	(4,862)
Adjusted EBITDA	$ 80,657	$ 106,634	$ 92,404

The following table presents a reconciliation of Adjusted EBITDA to net cash provided by operating activities for each of the periods indicated.

(in thousands)	Year Ended December 31, 2021	2020	2019
Reconciliation of Adjusted EBITDA to net cash provided by operating activities:			
Net cash provided by operating activities	$ 12,702	$ 91,831	$ 91,735
Amortization of deferred financing costs	(997)	(1,210)	(1,275)
Bad debt expense	(445)	(4,692)	(13,532)
Interest expense	4,926	5,266	8,621
Income tax expense	3,804	15,736	7,257
Non-recurring event - Winter Storm Uri	60,000	—	—
Non-recurring legal settlement	(2,225)	—	—
Changes in operating working capital			
Accounts receivable, prepaids, current assets	(5,117)	(32,820)	(33,475)
Inventory	486	(1,458)	(924)
Accounts payable, accrued liabilities, current liabilities	11,253	36,301	11,534
Other	(3,730)	(2,320)	22,463
Adjusted EBITDA	$ 80,657	$ 106,634	$ 92,404
Cash Flow Data:			
Cash flows provided by operating activities	$ 12,702	$ 91,831	$ 91,735
Cash flows (used in) provided by investing activities	$ (6,510)	$ (2,154)	$ 1,398
Cash flows used in financing activities	$ (2,556)	$ (75,661)	$ (85,103)

Retail Gross Margin. We define retail gross margin as operating income (loss) plus (i) depreciation and amortization expenses and (ii) general and administrative expenses, less (iii) net asset optimization revenues (expenses), (iv) net gains (losses) on non-trading derivative instruments, and (v) net current period cash settlements on non-trading derivative instruments. Retail gross margin is included as a supplemental disclosure because it is a primary performance measure used by our management to determine the performance of our retail natural gas and electricity segments. As an indicator of our retail energy business's operating performance, retail gross margin should not be considered an alternative to, or more meaningful than, operating income (loss), its most directly comparable financial measure calculated and presented in accordance with GAAP.

We believe retail gross margin provides information useful to investors as an indicator of our retail energy business's operating performance.

We have historically included the financial impact of weather variability in the calculation of Retail Gross Margin. We will continue this historical approach, but during the first quarter of 2021 we added back the $64.9 million net financial loss incurred related to Winter Storm Uri, as described above, in the calculation of Retail Gross Margin because the extremity of the Texas storm combined with the impact of unprecedented pricing mechanisms ordered by ERCOT is considered unusual, infrequent, and non-recurring in nature. We received credits totaling $0.5 million related to Winter Storm Uri costs in the third quarter of 2021, which is included in the calculation of retail gross margin for consistent presentation.

The GAAP measure most directly comparable to Retail Gross Margin is operating income (loss). The following table presents a reconciliation of Retail Gross Margin to operating income (loss) for each of the periods indicated.

(in thousands)	Year Ended December 31, 2021	2020	2019
Reconciliation of Retail Gross Margin to Operating Income:			
Operating income	$ 4,409	$ 88,797	$ 23,979
Plus:			
Depreciation and amortization	21,578	30,767	40,987
General and administrative expense	44,279	90,734	133,534
Less:			
Net asset optimization (expense) revenue	(4,243)	(657)	2,771
Gain (Loss) on non-trading derivative instruments	22,130	(23,439)	(67,955)
Cash settlements on non-trading derivative instruments	(15,752)	37,921	42,944
Non-recurring event - Winter Storm Uri	(64,403)	—	—
Retail Gross Margin	$ 132,534	$ 196,473	$ 220,740
Retail Gross Margin - Retail Electricity Segment [(1)]	$ 96,009	$ 143,233	$ 160,540
Retail Gross Margin - Retail Natural Gas Segment	$ 36,525	$ 53,240	$ 60,200

(1) Retail Gross Margin for the year ended December 31, 2021 includes a $0.5 million reduction related to the Winter Storm Uri credit settlements received and includes a $64.4 million add back related to Winter Storm Uri.

Our non-GAAP financial measures of Adjusted EBITDA and Retail Gross Margin should not be considered as alternatives to net income (loss), net cash provided by operating activities, or operating income (loss). Adjusted EBITDA and Retail Gross Margin are not presentations made in accordance with GAAP and have limitations as analytical tools. You should not consider Adjusted EBITDA or Retail Gross Margin in isolation or as a substitute for analysis of our results as reported under GAAP. Because Adjusted EBITDA and Retail Gross Margin exclude some, but not all, items that affect net income (loss), net cash provided by operating activities, and operating income (loss), and are defined differently by different companies in our industry, our definition of Adjusted EBITDA and Retail Gross Margin may not be comparable to similarly titled measures of other companies.

Management compensates for the limitations of Adjusted EBITDA and Retail Gross Margin as analytical tools by reviewing the comparable GAAP measures, understanding the differences between the measures and incorporating these data points into management's decision-making process.

Consolidated Results of Operations

(In Thousands)	Year Ended December 31,		
	2021	2020	2019
Revenues:			
Retail revenues	$ 397,728	$ 555,547	$ 810,954
Net asset optimization (expense) revenues	(4,243)	(657)	2,771
Total Revenues	393,485	554,890	813,725
Operating Expenses:			
Retail cost of revenues	323,219	344,592	615,225
General and administrative expense	44,279	90,734	133,534
Depreciation and amortization	21,578	30,767	40,987
Total Operating Expenses	389,076	466,093	789,746
Operating income	4,409	88,797	23,979
Other (expense)/income:			
Interest expense	(4,926)	(5,266)	(8,621)
Gain on disposal of eRex	—	—	4,862
Interest and other income	370	423	1,250
Total Other (Expenses)/Income	(4,556)	(4,843)	(2,509)
(Loss) income before income tax expense	(147)	83,954	21,470
Income tax expense	3,804	15,736	7,257
Net (loss) income	$ (3,951)	$ 68,218	$ 14,213
Other Performance Metrics:			
Adjusted EBITDA [1] [2]	$ 80,657	$ 106,634	$ 92,404
Retail Gross Margin [1] [3]	$ 132,534	$ 196,473	$ 220,740
Customer Acquisition Costs	$ 1,415	$ 1,513	$ 18,685
RCE Attrition	3.3 %	5.0 %	5.0 %
Distributions paid to Class B non-controlling unit holders and dividends paid to Class A common shareholders	$ (28,423)	$ (40,019)	$ (45,176)

(1) Adjusted EBITDA and Retail Gross Margin are non-GAAP financial measures. See " — Non-GAAP Performance Measures" for a reconciliation of Adjusted EBITDA and Retail Gross Margin to their most directly comparable GAAP financial measures.

(2) Adjusted EBITDA for the year ended December 31, 2021 includes a $60.0 million add back related to Winter Storm Uri and a deduction of $2.2 million non-recurring legal settlement related to an add back in 2019.

(3) Retail Gross Margin for the year ended December 31, 2021 includes a $0.5 million reduction related to the Winter Storm Uri credit settlements received and includes a $64.4 million add back related to Winter Storm Uri.

Total Revenues. Total revenues for the year ended December 31, 2021 were approximately $393.5 million, a decrease of approximately $161.4 million, or 29%, from approximately $554.9 million for the year ended December 31, 2020. This decrease was primarily due to a decrease in electricity and natural gas volumes as a result of a smaller customer book in 2021 as compared to 2020, partially offset by an increase in electricity unit revenue per MWh. Total revenues for the year ended December 31, 2020 decreased approximately $258.8 million, or 32%, from approximately $813.7 million for the year ended December 31, 2019. This decrease was primarily due to a decrease in electricity and natural gas volumes as a result of a smaller C&I customer book in 2020 as compared to 2019 and milder weather, partially offset by an increase in electricity unit revenue per MWh.

Analysis of the impact of changes in prices and volumes between the years ended December 31, 2021, 2020 and 2019 are as follows:

	2021 vs. 2020	2020 vs. 2019
Change in electricity volumes sold	$ (156.3)	$ (254.0)
Change in natural gas volumes sold	(21.1)	(29.0)
Change in electricity unit revenue per MWh	16.6	26.9
Change in electricity unit revenue per MWh - Winter Storm Uri	0.9	—
Change in natural gas unit revenue per MMBtu	2.0	0.7
Change in net asset optimization (expense) revenue	(3.5)	(3.4)
Change in total revenues	$ (161.4)	$ (258.8)

Retail Cost of Revenues. Total retail cost of revenues for the year ended December 31, 2021 was approximately $323.2 million, a decrease of approximately $21.4 million, or 6%, from approximately $344.6 million for the year ended December 31, 2020. This decrease was primarily due to a decrease in electricity and natural gas volumes as a result of a smaller customer book in 2021 as compared to 2020, offset by an increase in electricity and natural gas unit cost, as well as an increase in electricity supply costs due to Winter Storm Uri in the first quarter of 2021. Total retail cost of revenues for the year ended December 31, 2020 decreased approximately $270.6 million, or 44%, from approximately $615.2 million for the year ended December 31, 2019. This decrease was primarily due to a decrease in electricity and natural gas volumes as a result of a smaller customer book in 2020 as compared to 2019, a decrease in electricity and natural gas unit cost, and a change in fair value of our retail derivative portfolio.

Analysis of the impact of changes in prices and volumes between the years ended December 31, 2021, 2020, and 2019 are as follows:

	2021 vs. 2020	2020 vs. 2019
Change in electricity volumes sold	$ (107.8)	$ (194.7)
Change in natural gas volumes sold	(9.2)	(14.7)
Change in electricity unit cost per MWh	15.4	(15.1)
Change in electricity unit cost per MWh - Winter Storm Uri	65.3	—
Change in natural gas unit cost per MMBtu	6.8	(6.6)
Change in value of retail derivative portfolio	8.1	(39.5)
Change in retail cost of revenues	$ (21.4)	$ (270.6)

General and Administrative Expense. General and administrative expense for the year ended December 31, 2021 was approximately $44.3 million, a decrease of approximately $46.4 million, or 51%, as compared to $90.7 million for the year ended December 31, 2020. This decrease was primarily attributable to lower employee costs, lower bad debt expense in 2021 due to improved collection efforts and lower legal costs. General and administrative expense for the year ended December 31, 2020 decreased approximately $42.8 million or 32%, as compared to $133.5 million for the year ended December 31, 2019. This decrease was primarily attributable to legal and regulatory settlements and increased litigation expense in 2019 that did not reoccur in 2020, a decrease in sales and marketing costs in 2020 due to limitations on our door-to-door marketing as a result of COVID-19 and lower bad debt expense in 2020 due to improved collection efforts.

Depreciation and Amortization Expense. Depreciation and amortization expense for the year ended December 31, 2021 was approximately $21.6 million, a decrease of approximately $9.2 million, or 30%, from approximately $30.8 million for the year ended December 31, 2020. This decrease was primarily due to the decreased amortization expense associated with customer relationship intangibles. Depreciation and amortization expense for the year ended December 31, 2020 decreased approximately $10.2 million, or 25%, from approximately $41.0 million for the year ended December 31, 2019. This decrease was primarily due to the decreased amortization expense associated with customer relationship intangibles.

Customer Acquisition Cost. Customer acquisition cost for the year ended December 31, 2021 was approximately $1.4 million, a decrease of approximately $0.1 million, or 6% from approximately $1.5 million for the year ended December 31, 2020. This decrease was primarily due to limitation on our ability to use door-to-door marketing as a result of COVID-19 during most of 2021. Customer acquisition cost for the year ended December 31, 2020 decreased approximately $17.2 million, or 92% from approximately $18.7 million for the year ended December 31, 2019. This decrease was primarily due to limitation on our door-to-door marketing as a result of COVID-19 during majority of 2020 and a reduction in targeted organic customer acquisitions as we focused our efforts to improve our organic sales channels, including vendor selection and sales quality.

Operating Segment Results

	Year Ended December 31,		
	2021	2020	2019
	(in thousands, except volume and per unit operating data)		
Retail Electricity Segment			
Total Revenues	$ 322,594	$ 461,393	$ 688,451
Retail Cost of Revenues	284,794	306,012	552,250
Less: Net Gains (Losses) on non-trading derivatives, net of cash settlements	6,194	12,148	(24,339)
Non-recurring event - Winter Storm Uri	$ (64,403)	$ —	$ —
Retail Gross Margin [1] —Electricity	$ 96,009	$ 143,233	$ 160,540
Volumes—Electricity (MWhs) [3]	2,677,681	4,049,543	6,416,568
Retail Gross Margin [2] [4] —Electricity per MWh	$ 35.86	$ 35.37	$ 25.02
Retail Natural Gas Segment			
Total Revenues	$ 75,134	$ 94,154	$ 122,503
Retail Cost of Revenues	38,425	38,580	62,975
Less: Net Gains (Losses) on non-trading derivatives, net of cash settlements	184	2,334	(672)
Retail Gross Margin [1] —Gas	$ 36,525	$ 53,240	$ 60,200
Volumes—Gas (MMBtus)	8,611,285	11,100,446	14,543,563
Retail Gross Margin [2] —Gas per MMBtu	$ 4.24	$ 4.80	$ 4.14

(1) Reflects the Retail Gross Margin attributable to our Retail Electricity Segment or Retail Natural Gas Segment, as applicable. Retail Gross Margin is a non-GAAP financial measure. See "Non-GAAP Performance Measures" for a reconciliation of Retail Gross Margin to most directly comparable financial measures presented in accordance with GAAP.
(2) Reflects the Retail Gross Margin for the Retail Electricity Segment or Retail Natural Gas Segment, as applicable, divided by the total volumes in MWh or MMBtu, respectively.
(3) Excludes volumes (8,402 MWhs) related to Winter Storm Uri impact for the year ended December 31, 2021.
(4) Retail Gross Margin - Electricity per MWh excludes Winter Storm Uri impact.

Retail Electricity Segment

Total revenues for the Retail Electricity Segment for the year ended December 31, 2021 were approximately $322.6 million, a decrease of approximately $138.8 million, or 30%, from approximately $461.4 million for the year ended December 31, 2020. This decrease was largely due to lower volumes sold, resulting in a decrease of $156.3 million as a result of a smaller customer book in 2021. This decrease was partially offset by higher weighted average electricity rates due to our customer mix shifting away from large commercial customers, which resulted in an increase of $16.6 million and an increase of $0.9 million related to electricity revenue due to Winter Storm Uri. Total revenues for the Retail Electricity Segment for the year ended December 31, 2020 decreased approximately $227.1 million, or 33%, from approximately $688.5 million for the year ended December 31, 2019. This decrease was largely due to lower volumes sold, resulting in a decrease of $254.0 million as a result of a smaller commercial book in 2020. This decrease was partially offset by higher weighted average electricity rates, due to our customer mix shifting away from large commercial customers, which resulted in an increase of $26.9 million.

Retail cost of revenues for the Retail Electricity Segment for the year ended December 31, 2021 was approximately $284.8 million, a decrease of approximately $21.2 million, or 7%, from approximately $306.0 million for the year ended December 31, 2020. This decrease was primarily due to a decrease in volumes, resulting in a decrease of $107.8 million. This was offset by increased electricity supply costs, which resulted in an increase in retail cost of revenues of $15.4 million and increased supply cost of $65.3 million related to Winter Storm Uri. Additionally, there was an increase of $5.9 million due to a change in the value of our retail derivative portfolio used in hedging. Retail cost of revenues for the Retail Electricity Segment for the year ended December 31, 2020 decreased

approximately $246.3 million, or 45%, from approximately $552.3 million for the year ended December 31, 2019. This decrease was primarily due to a decrease in volumes, resulting in a decrease of $194.7 million. This decrease was further impacted by decreased electricity supply costs, which resulted in a decrease in retail cost of revenues of $15.1 million. Additionally, there was an increase of $36.5 million due to a change in the value of our retail derivative portfolio used in hedging.

Retail gross margin for the Retail Electricity Segment for the year ended December 31, 2021 was approximately $96.0 million, a decrease of approximately $47.2 million, or 33%, as compared to the year ended December 31, 2020, and 2020 decreased approximately $17.4 million or 11% as compared to December 31, 2019 as indicated in the table below (in millions).

	2021 vs. 2020	2020 vs. 2019
Change in volumes sold	$ (48.5)	$ (59.2)
Change in gross margin - Winter Storm Uri	64.4	—
Change in unit margin per MWh	(63.1)	41.8
Change in retail electricity segment retail gross margin	$ (47.2)	$ (17.4)

Unit margins were flat in 2021 compared to the prior year. Unit margins were positively impacted in 2020 compared to prior year primarily as a result of the higher volumes from our residential customers, which tend to have higher unit margins than our C&I customers.

The volumes of electricity sold decreased from 4,049,543 MWh for the year ended December 31, 2020 to 2,686,083 MWh for the year ended December 31, 2021. This decrease was primarily due to a smaller customer book in 2021. The volumes of electricity sold decreased from 6,416,568 MWh for the year ended December 31, 2019 to 4,049,543 MWh for the year ended December 31, 2020. This decrease was primarily due to a smaller C&I customer book in 2020 as compared to 2019.

Retail Natural Gas Segment

Total revenues for the Retail Natural Gas Segment for the year ended December 31, 2021 were approximately $75.1 million, a decrease of approximately $19.1 million, or 20%, from approximately $94.2 million for the year ended December 31, 2020. This decrease was primarily attributable to a decrease in volumes of $21.1 million, offset by higher rates, which resulted in an increase in total revenues of $2.0 million. Total revenues for the Retail Natural Gas Segment for the year ended December 31, 2020 decreased by approximately $28.3 million, or 23%, from approximately $122.5 million for the year ended December 31, 2019. This decrease was primarily attributable to a decrease in volumes of $29.0 million, offset by higher rates, which resulted in an increase in total revenues of $0.7 million.

Retail cost of revenues for the Retail Natural Gas Segment for the year ended December 31, 2021 were approximately $38.4 million, a decrease of approximately $0.2 million, or less than 1%, from approximately $38.6 million for the year ended December 31, 2020. The decrease was primarily due to lower volumes of $9.2 million, offset by higher supply costs of $6.8 million, and an increase of $2.2 million due to change in the fair value of our retail derivative portfolio used for hedging. Retail cost of revenues for the Retail Natural Gas Segment for the year ended December 31, 2020 decreased approximately $24.4 million, or 39%, from approximately $63.0 million for the year ended December 31, 2019. This decrease was primarily due to decreased supply costs of $6.6 million, a decrease of $14.7 million related to decreased volumes, and a decrease of $3.0 million due to change in the fair value of our retail derivative portfolio used for hedging.

Retail gross margin for the Retail Natural Gas Segment for the year ended December 31, 2021 was approximately $36.5 million, a decrease of approximately $16.7 million, or 31% from approximately $53.2 million for the year ended December 31, 2020, and 2020 decreased approximately $7.0 million or 12% from approximately $60.2 million for the year ended December 31, 2019 as indicated in the table below (in millions).

	2021 vs. 2020	2020 vs. 2019
Change in volumes sold	$ (12.0)	$ (14.3)
Change in unit margin per MMBtu	(4.9)	7.3
Change in retail natural gas segment retail gross margin	$ (16.9)	$ (7.0)

Unit margins were negatively impacted in 2021 compared to prior year as a result of higher commodity prices and lower volumes sold resulting in higher per unit cost. Unit margins were positively impacted in 2020 compared to the prior year primarily as a result of higher volumes from our residential customers, which tend to have a higher unit margin than our C&I customers.

The volumes of natural gas sold decreased from 11,100,446 MMBtu for the year ended December 31, 2020 to 8,611,285 MMBtu for the year ended December 31, 2021. This decrease was primarily due to milder-than-normal weather in 2021 compared to prior year and smaller customer book throughout most of 2021 compared to 2020. The volumes of natural gas sold decreased from 14,543,563 MMBtu for the year ended December 31, 2019 to 11,100,446 MMBtu for the year ended December 31, 2020. This decrease was primarily due to milder-than-normal weather in 2020 compared to prior year.

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are cash generated from operations and borrowings under our Senior Credit Facility. Our principal liquidity requirements are to meet our financial commitments, finance current operations, fund organic growth and/or acquisitions, service debt and pay dividends. Our liquidity requirements fluctuate with our level of customer acquisition costs, acquisitions, collateral posting requirements on our derivative instruments portfolio, distributions, the effects of the timing between the settlement of payables and receivables, including the effect of bad debts, weather conditions, and our general working capital needs for ongoing operations. We believe that cash generated from operations and our available liquidity sources will be sufficient to sustain current operations and to pay required taxes and quarterly cash distributions, including the quarterly dividends to the holders of the Class A common stock and the Series A Preferred Stock, for the next twelve months. Estimating our liquidity requirements is highly dependent on then-current market conditions, including impacts of the COVID-19 pandemic, weather events, forward prices for natural gas and electricity, market volatility and our then existing capital structure and requirements.

Liquidity Position

The following table details our available liquidity as of December 31, 2021:

($ in thousands)	December 31, 2021
Cash and cash equivalents	$ 68,899
Senior Credit Facility Availability [1]	28,266
Subordinated Debt Facility Availability [2]	25,000
Total Liquidity	**$ 122,165**

(1) Reflects amount of Letters of Credit that could be issued based on existing covenants as of December 31, 2021.
(2) The availability of Subordinated Facility is dependent on our Founder's willingness and ability to lend. See "— Sources of Liquidity — Subordinated Debt Facility."

Borrowings and related posting of letters of credit under our Senior Credit Facility are subject to material variations on a seasonal basis due to the timing of commodity purchases to satisfy natural gas inventory requirements and to meet customer demands during periods of peak usage. Additionally, borrowings are subject to borrowing base and covenant restrictions.

Borrowings and related posting of letters of credit under our Senior Credit Facility are subject to material variations on a seasonal basis due to the timing of commodity purchases to satisfy natural gas inventory requirements and to meet customer demands during periods of peak usage. Additionally, borrowings are subject to borrowing base and covenant restrictions.

Cash Flows

Our cash flows were as follows for the respective periods (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Net cash provided by operating activities	$ 12,702	$ 91,831	$ 91,735
Net cash (used in) provided by investing activities	$ (6,510)	$ (2,154)	$ 1,398
Net cash used in financing activities	$ (2,556)	$ (75,661)	$ (85,103)

Cash Flows Provided by Operating Activities. Cash flows provided by operating activities for the year ended December 31, 2021 decreased by $79.1 million compared to the year ended December 31, 2020. The decrease was primarily the result of the non-recurring Winter Storm Uri related costs of $64.4 million for the year ended December 31, 2021 coupled with other changes in working capital for the year ended December 31, 2021. Cash flows provided by operating activities for the year ended December 31, 2020 increased by $0.1 million compared to the year ended December 31, 2019. The increase was primarily the result of higher net income in 2020 coupled with other changes in working capital for the year ended December 31, 2020.

Cash Flows Used in Investing Activities. Cash flows used in investing activities increased by $4.4 million for the year ended December 31, 2021. The increase was primarily the result of increased capital spending and acquisition of customers for the year ended December 31, 2021. Cash flows used in investing activities increased by $3.6 million for the year ended December 31, 2020. The increase was primarily the result of the proceeds received from the sale of the Company's equity method investment in 2019, less payments to acquire Starion customers, with no corresponding proceeds or acquisitions in 2020.

Cash Flows Used in Financing Activities. Cash flows used in financing activities decreased by $73.1 million for the year ended December 31, 2021. The decrease in cash flows used in financing activities was primarily due to an increased net borrowing of $58.0 million under our Senior Credit Facility and a decrease in distributions to non-controlling unitholders of $12.0 million for the year ended December 31, 2021. Cash flows used in financing activities decreased by $9.4 million for the year ended December 31, 2020. The decrease in cash flows used in financing activities was primarily due to an $11.2 million payment to settle the TRA liability in 2019 and a payment of $2.0 million related to a Verde Promissory Note made during 2019, both of which did not reoccur in 2020.

Sources of Liquidity and Capital Resources

Senior Credit Facility

As of December 31, 2021, we had total commitments of $227.5 million under our Senior Credit Facility, of which $162.7 million was outstanding, including $27.7 million of outstanding letters of credit, with a maturity date of October 13, 2023. On October 15, 2021, we entered into the Fifth Amendment to the Senior Credit Facility, which, among other things extended the maturity date from July 2022 to October 2023, added a provision for Acquisition Loans (subject to limits as defined in the agreement), and terminated the provision allowing for Share Buyback Loans. See Note 9 "Debt" for further discussion.

For a description of the terms and conditions of our Senior Credit Facility, including descriptions of the interest rate, commitment fee, covenants and terms of default, please see Note 9 "Debt" in the notes to our condensed consolidated financial statements.

As of December 31, 2021, we were in compliance with the covenants under our Senior Credit Facility. Based upon existing covenants as of December 31, 2021, we had availability to borrow up to $28.3 million under the Senior Credit Facility.

Amended and Restated Subordinated Debt Facility

Our Subordinated Debt Facility allows us to draw advances in increments of no less than $1.0 million per advance up to $25.0 million. Although we may use the Subordinated Debt Facility from time to time to enhance short term liquidity, we do not view the Subordinated Debt Facility as a material source of liquidity. As of December 31, 2021, there was no outstanding borrowings under the Subordinated Debt Facility, and availability to borrow up to $25.0 million under the Subordinated Debt Facility. In October 2021, we amended the Subordinated Debt Facility solely to extend the maturity date from January 31, 2023 to January 31, 2025. See Note 9 "Debt" for further information regarding the extension of the Subordinated Debt Facility.

See Note 9 "Debt" for further information regarding the terms of the Subordinated Debt Facility.

Uses of Liquidity and Capital Resources

Repayment of Current Portion of Senior Credit Facility

Our Senior Credit Facility, matures in October 2023, and thus, no amounts are due currently. However, due to the revolving nature of the facility, excess cash available is generally used to reduce the balance outstanding, which at December 31, 2021 was $135.0 million. The current variable interest rate on the facility at December 31, 2021 was 3.24%.

Customer Acquisitions

Our customer acquisition strategy consists of customer growth obtained through organic customer additions as well as opportunistic acquisitions. During the years ended December 31, 2021 and 2020, we spent a total of $1.4 million and $1.5 million, respectively, on organic customer acquisitions. As described above, the decrease was primarily due to limitation of our door-to-door marketing as a result of COVID-19 during the majority of 2020 and a reduction in targeted organic customer acquisitions as we focused our efforts to improve our organic sales channels, including vendor selection and sales quality. Our ability to grow our customer base organically or by acquisition is important to our success as we experience ongoing customer attrition each period.

Capital Expenditures

Our capital requirements each year are relatively low and generally consist of minor purchases of equipment or information system upgrades and improvements. Capital expenditures for the year ended December 31, 2021 included approximately $2.7 million related to information systems improvements.

Dividends and Distributions

For the year ended December 31, 2021, we paid dividends to holders of our Class A common stock of $0.725 per share or $11.0 million in the aggregate. In order to pay our stated dividends to holders of our Class A common stock, our subsidiary, Spark HoldCo is required to make corresponding distributions to holders of Class B common stock (our non-controlling interest holders). As a result, during the year ended December 31, 2021, Spark HoldCo made distributions of $14.8 million to our non-controlling interest holders related to the dividend payments to our Class A shareholders.

During the year ended December 31, 2021, we paid $7.8 million of dividends to holders of our Series A Preferred Stock, and as of December 31, 2021, we had accrued $1.9 million related to dividends to holders of our Series A Preferred Stock, which we paid on January 17, 2021. For the year ended December 31, 2021, we declared dividends of $2.1875 per share or $7.8 million in the aggregate on our Series A Preferred Stock.

On January 20, 2022, our Board of Directors declared a quarterly cash dividend in the amount of $0.18125 per share to holders of our Class A common stock and $0.546875 per share for the Series A Preferred Stock. Dividends on Class A common stock will be paid on March 15, 2022 to holders of record on March 1, 2022 and Series A Preferred Stock dividends will be paid on April 15, 2022 to holders of record on April 1, 2022.

Our ability to pay dividends in the future will depend on many factors, including the performance of our business and restrictions under our Senior Credit Facility. If our business does not generate sufficient cash for Spark HoldCo to make distributions to us to fund our Class A common stock and Series A Preferred Stock dividends, we may have to borrow to pay such amounts. Further, even if our business generates cash in excess of our current annual dividend (of $0.725 per share on our Class A common stock), we may reinvest such excess cash flows in our business and not increase the dividends payable to holders of our Class A common stock. Our future dividend policy is within the discretion of our Board of Directors and will depend upon the results of our operations, our financial condition, capital requirements and investment opportunities.

Share Repurchase Program

On August 18, 2020, our Board of Directors authorized a share repurchase program of up to $20.0 million of Class A common stock through August 18, 2021. During the year ended December 31, 2020, we repurchased 45,148 shares of our Class A common stock at a weighted average price of $8.75 per share, for a total cost of $0.4 million. For the year ended December 31, 2021, we did not repurchase our Class A common stock. The share repurchase program expired on August 18, 2021 pursuant to an agreement with lenders under our Senior Credit Facility, and our Senior Credit Facility was subsequently amended, terminating the provision for borrowings specific to Class A common stock repurchases.

Collateral Posting Requirements

Our contractual agreements with certain local regulated utilities and our supplier counterparties require us to maintain restricted cash balances or letters of credit as collateral for credit risk or the performance risk associated with the future delivery of natural gas or electricity. Due to the COVID-19 pandemic, certain local regulated utilities and our supplier counterparties have contacted us inquiring about our financial condition and the impact the pandemic is having on our operations. These inquiries may lead to additional requests for cash or letters of credit in an effort to mitigate the risk of default in paying our obligations related to the future delivery of natural gas or electricity. As of December 31, 2021, we had not been required to post additional collateral as a result of COVID-19.

As discussed above, during the winter storm Uri event, we were required to post a significant amount of collateral with ERCOT. Despite these posting requirements, we consistently maintained, and continue to maintain, sufficient liquidity to conduct our operations in the ordinary course. As of the date of this Annual Report, our collateral requirements with ERCOT have been reduced to pre-storm levels.

Summary of Contractual Obligations

The following table discloses aggregate information about our contractual obligations and commercial commitments as of December 31, 2021 (in millions):

	Total	2022	2023	2024	2025	2026	> 5 years
Purchase obligations:							
Pipeline transportation agreements	$ 8.8	$ 5.6	$ 0.6	$ 0.6	$ 0.6	$ 0.6	$ 0.8
Other purchase obligations [1]	5.2	2.4	0.9	0.7	0.6	0.6	—
Total purchase obligations	$ 14.0	$ 8.0	$ 1.5	$ 1.3	$ 1.2	$ 1.2	$ 0.8
Senior Credit Facility	$ 135.0	$ —	$ 135.0	$ —	$ —	$ —	$ —
Debt	$ 135.0	$ —	$ 135.0	$ —	$ —	$ —	$ —

(1) The amounts presented here include contracts for billing services and other software agreements to support our operations.

As of December 31, 2021, we had no material "off-balance sheet arrangements."

Related Party Transactions

For a discussion of related party transactions, see Note 14 "Transactions with Affiliates" in the Company's audited consolidated financial statements.

Critical Accounting Policies and Estimates

Our significant accounting policies are described in Note 2 "Basis of Presentation and Summary of Significant Accounting Policies" to our audited consolidated financial statements. We prepare our financial statements in conformity with accounting principles generally accepted in the United States of America and pursuant to the rules and regulations of the SEC, which require us to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying footnotes. Actual results could differ from those estimates. We consider the following policies to be the most critical in understanding the judgments that are involved in preparing our financial statements and the uncertainties that could impact our financial condition and results of operations.

Revenue Recognition and Retail Cost of Revenues

Our revenues are derived primarily from the sale of natural gas and electricity to retail customers. We also record revenues from sales of natural gas and electricity to wholesale counterparties, including affiliates. Revenues are recognized when the natural gas or electricity is delivered. Similarly, cost of revenues is recognized when the commodity is delivered.

In each period, natural gas and electricity that has been delivered but not billed by period is estimated. Accrued unbilled revenues are based on estimates of customer usage since the date of the last meter read and are provided by the utility. Volume estimates are based on forecasted volumes and estimated customer usage by class. Unbilled revenues are calculated by multiplying these volume estimates by the applicable rate by customer class. Estimated amounts are adjusted when actual usage is known and billed.

The cost of natural gas and electricity for sale to retail customers is similarly based on estimated supply volumes for the applicable reporting period. In estimating supply volumes, we consider the effects of historical customer volumes, weather factors and usage by customer class. Transmission and distribution delivery fees, where applicable, are estimated using the same method used for sales to retail customers. In addition, other load related costs, such as ISO fees, ancillary services and renewable energy credits are estimated based on historical trends, estimated supply volumes and initial utility data. Volume estimates are then multiplied by the supply rate and recorded as retail cost of revenues in the applicable reporting period. Estimated amounts are adjusted when actual usage is known and billed.

Derivative Instruments

We enter into both physical and financial contracts for the purchase and sale of electricity and natural gas and apply the fair value requirements of ASC Topic 815, *Derivatives and Hedging.*

Our derivative instruments are subject to mark-to-market accounting requirements and are recorded on the consolidated balance sheet at fair value. Derivative instruments representing unrealized gains are reported as derivative assets while derivative instruments representing unrealized losses are reported as derivative liabilities. We offset amounts in the consolidated balance sheets for derivative instruments executed with the same counterparty where we have a master netting arrangement.

To manage our retail business, we hold derivative instruments that are not for trading purposes and are not designated as hedges for accounting purposes. Changes in the fair value of and amounts realized upon settlement of derivative instruments not held for trading purposes are recognized in retail costs of revenues.

As part of our asset optimization activities, we manage a portfolio of commodity derivative instruments held for trading purposes. Changes in fair value of and amounts realized upon settlements of derivatives instruments held for trading purposes are recognized in earnings in net asset optimization revenues.

We have entered into other energy-related contracts that do not meet the definition of a derivative instrument or for which we made a normal purchase, normal sale election and are therefore not accounted for at fair value.

Goodwill

As noted above, Goodwill represents the excess of cost over fair value of the assets of businesses. The goodwill on our consolidated balance sheet as of December 31, 2021 is associated with both our Retail Natural Gas and Retail Electricity reporting units. We determine our reporting units by identifying each unit that is engaged in business activities from which it may earn revenues and incur expenses, has operating results regularly reviewed by the segment manager for purposes of resource allocation and performance assessment, and has discrete financial information.

Goodwill is assessed for impairment whenever events or circumstances indicate that impairment of the carrying value of goodwill is likely, but no less often than annually. Our annual assessment, absent a triggering event is as of October 31 of each year. On October 31, 2021, we performed a qualitative assessment of goodwill in accordance with guidance from ASC 350. This guidance permits an entity to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the quantitative goodwill impairment test. If we fail the qualitative test or if we elect to by-pass the qualitative assessment, then we must compare our estimate of the fair value of a reporting unit with its carrying value, including goodwill. If the carrying value of the reporting unit exceeds its fair value, we would recognize a goodwill impairment loss for the amount by which the reporting unit’s carrying value exceeds its fair value. All of these assessments and calculations, including the determination of whether a triggering event has occurred to undertake an assessment of goodwill involve a high degree of judgment.

We completed our annual assessment of goodwill impairment at October 31, 2021, and the test indicated no impairment.

Deferred tax assets and liabilities

The Company recognizes the amount of taxes payable or refundable for each tax year. In addition, the Company follows the asset and liability method of accounting for income taxes where deferred tax assets and liabilities are recognized for the expected future tax consequences of events that have been recognized in the financial statements or tax returns and operating loss carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in those years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in the tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided for deferred tax assets if it is more likely than not that these items will not be realized.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the projected future taxable income and tax planning strategies in making this assessment. All of these determinations involve estimates and assumptions.

Recent Accounting Pronouncements

Refer to Note 2 "Basis of Presentation and Summary of Significant Accounting Policies" for a discussion of recent accounting pronouncements.

Contingencies

In the ordinary course of business, we may become party to lawsuits, administrative proceedings and governmental investigations, including regulatory and other matters. Liabilities for loss contingencies arising from claims, assessments, litigation, fines, penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. For a discussion of the status of current legal and regulatory matters, see Note 13 "Commitments and Contingencies" in the Company’s audited consolidated financial statements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risks relating to our operations result primarily from changes in commodity prices and interest rates, as well as counterparty credit risk. We employ established risk management policies and procedures to manage, measure, and limit our exposure to these risks.

Commodity Price Risk

We hedge and procure our energy requirements from various wholesale energy markets, including both physical and financial markets and through short and long-term contracts. Our financial results are largely dependent on the margin we are able to realize between the wholesale purchase price of natural gas and electricity plus related costs and the retail sales price we charge our customers for these commodities. We actively manage our commodity price risk by entering into various derivative or non-derivative instruments to hedge the variability in future cash flows from fixed-price forecasted sales and purchases of natural gas and electricity in connection with our retail energy operations. These instruments include forwards, futures, swaps, and option contracts traded on various exchanges, such as NYMEX and Intercontinental Exchange, or ICE, as well as over-the-counter markets. These contracts have varying terms and durations, which range from a few days to several years, depending on the instrument. We also utilize similar derivative contracts in connection with our asset optimization activities to attempt to generate incremental gross margin by effecting transactions in markets where we have a retail presence. Generally, any such instruments that are entered into to support our retail electricity and natural gas business are categorized as having been entered into for non-trading purposes, and instruments entered into for any other purpose are categorized as having been entered into for trading purposes.

Our net gain on our non-trading derivative instruments, net of cash settlements, was $6.4 million for the year ended December 31, 2021.

We have adopted risk management policies to measure and limit market risk associated with our fixed-price portfolio and our hedging activities.

We measure the commodity risk of our non-trading energy derivatives using a sensitivity analysis on our net open position. As of December 31, 2021, our Gas Non-Trading Fixed Price Open Position (hedges net of retail load) was a short position of 606,580 MMBtu. An increase of 10% in the market prices (NYMEX) from their December 31, 2021 levels would have decreased the fair market value of our net non-trading energy portfolio by $0.2 million. Likewise, a decrease of 10% in the market prices (NYMEX) from their December 31, 2021 levels would have increased the fair market value of our non-trading energy derivatives by $0.2 million. As of December 31, 2021, our Electricity Non-Trading Fixed Price Open Position (hedges net of retail load) was a short position of 110,916 MWhs. An increase of 10% in the forward market prices from their December 31, 2021 levels would have decreased the fair market value of our net non-trading energy portfolio by $0.1 million. Likewise, a decrease of 10% in the forward market prices from their December 31, 2021 levels would have increased the fair market value of our non-trading energy derivatives by $0.1 million.

Credit Risk

In many of the utility services territories where we conduct business, Purchase of Receivables ("POR") programs have been established, whereby the local regulated utility purchases our receivables, and becomes responsible for billing the customer and collecting payment from the customer. This service results in substantially all of our credit risk being with the utility and not to our end-use customer in these territories. Approximately 59%, 64% and 67% of our retail revenues were derived from territories in which substantially all of our credit risk was with local regulated utility companies as of December 31, 2021, 2020 and 2019, respectively, all of which had investment grade ratings as of such date. During the same period, we paid these local regulated utilities a weighted average discount of approximately 0.9%, 1.2% and 0.8%, respectively, of total revenues for customer credit risk protection. In certain of the POR markets in which we operate, the utilities limit their collections exposure by retaining the ability to transfer a delinquent account back to us for collection when collections are past due for a specified period.

If our collection efforts are unsuccessful, we return the account to the local regulated utility for termination of service. Under these service programs, we are exposed to credit risk related to payment for services rendered during the time between when the customer is transferred to us by the local regulated utility and the time we return the customer to the utility for termination of service, which is generally one to two billing periods. We may also realize a loss on fixed-price customers in this scenario due to the fact that we will have already fully hedged the customer's expected commodity usage for the life of the contract.

In non-POR markets (and in POR markets where we may choose to direct bill our customers), we manage customer credit risk through formal credit review in the case of commercial customers, and credit score screening, deposits and disconnection for non-payment, in the case of residential customers. Economic conditions may affect our customers' ability to pay bills in a timely manner, which could increase customer delinquencies and may lead to an increase in bad debt expense. Our bad debt expense for the year ended December 31, 2021, 2020 and 2019 was approximately 0.2%, 1.6% and 3.3% of non-POR market retail revenues, respectively. See “Management's Discussion and Analysis of Financial Condition and Results of Operations—Drivers of Our Business—Customer Credit Risk” for an analysis of our bad debt expense related to non-POR markets during 2021.

We are exposed to wholesale counterparty credit risk in our retail and asset optimization activities. We manage this risk at a counterparty level and secure our exposure with collateral or guarantees when needed. At December 31, 2021 and 2020, approximately $6.6 million and $0.2 million of our total exposure of $7.2 million and $3.1 million, respectively, was either with a non-investment grade counterparty or otherwise not secured with collateral or a guarantee. The credit worthiness of the remaining exposure with other customers was evaluated with no material allowance recorded at December 31, 2021 and 2020.

Interest Rate Risk

We are exposed to fluctuations in interest rates under our variable-price debt obligations. At December 31, 2021, we were co-borrowers under the Senior Credit Facility, under which $135.0 million of variable rate indebtedness was outstanding. Based on the average amount of our variable rate indebtedness outstanding during the year ended December 31, 2021, a 1% percent increase in interest rates would have resulted in additional annual interest expense of approximately $1.4 million.

Item 8. Financial Statements and Supplementary Data

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

It is the responsibility of the management of Via Renewables, Inc. to establish and maintain adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) promulgated under the Securities Exchange Act of 1934, as amended, as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by our board of directors, management, and other personnel, 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 and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect our transactions and dispositions of the assets;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and the receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on our financial statements.

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

Management has assessed the effectiveness of the Company’s internal control over financial reporting as of December 31, 2021, utilizing the criteria in the Committee of Sponsoring Organizations of the Treadway Commission’s *Internal Control-Integrated Framework (2013)*. Based on its assessment, our management concluded the Company’s internal control over financial reporting was effective as of December 31, 2021.

Ernst & Young LLP, an independent registered public accounting firm, who audited the Company's consolidated financial statements included in this Form 10-K, has issued an attestation report on the Company's internal control over financial reporting, which is included herein.

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Via Renewables, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Via Renewables, Inc. (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations and comprehensive income (loss), changes in equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated March 3, 2022 expressed an unqualified opinion thereon.

Basis for Opinion

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

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

Critical Audit Matter

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

	Derivative Instruments
Description of the Matter	As described in Note 6 of the consolidated financial statements, the Company has recognized $7.7 million in gross derivative assets and $19.8 million in gross derivative liabilities. Notional volumes associated with natural gas and electricity derivatives were 5,398,000 MMBtu and 1,785,000 MWh as of December 31, 2021. Auditing the completeness and accuracy of derivatives was complex due to the significant volume of activity associated with the Company's risk management activities.

How We Addressed the Matter in Our Audit	We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's process of capturing and accounting for derivative instruments. To test the completeness and accuracy of the Company's derivative portfolio, our audit procedures included, among others, independently confirming details of contracts with counterparties and testing a sample of derivative contracts. For example, we confirmed directly with brokers and performed reconciliations between the broker's statement and the Company's derivative portfolio records. We also tested information subsequent to the balance sheet date to evaluate completeness of derivatives recorded. For example, we evaluated cash disbursement activity to evaluate completeness of the Company's derivative portfolio records.

/s/ Ernst & Young LLP

We have served as Via Renewables, Inc.'s auditor since 2018.

Houston, Texas

March 3, 2022

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Via Renewables, Inc.

Opinion on Internal Control over Financial Reporting

We have audited Via Renewables, Inc.'s internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Via Renewables, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of Via Renewables, Inc. as of December 31, 2021 and 2020, and the related consolidated statements of operations and comprehensive income (loss), changes in equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "consolidated financial statements"), and our report dated March 3, 2022 expressed an unqualified opinion thereon.

Basis for Opinion

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

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

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

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ Ernst & Young LLP

Houston, Texas

March 3, 2022

AUDITED CONSOLIDATED FINANCIAL STATEMENTS

VIA RENEWABLES, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share counts)

	December 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 68,899	$ 71,684
Restricted cash	6,421	—
Accounts receivable, net of allowance for doubtful accounts of $2,368 and $3,942 as of December 31, 2021 and 2020, respectively	66,676	70,350
Accounts receivable—affiliates	3,819	5,053
Inventory	1,982	1,496
Fair value of derivative assets	3,930	311
Customer acquisition costs, net	946	5,764
Customer relationships, net	8,523	12,077
Deposits	6,664	5,655
Renewable energy credit asset	14,691	20,666
Other current assets	14,129	11,818
Total current assets	196,680	204,874
Property and equipment, net	4,261	3,354
Fair value of derivative assets	340	—
Customer acquisition costs, net	453	306
Customer relationships, net	5,660	5,691
Deferred tax assets	23,915	27,960
Goodwill	120,343	120,343
Other assets	3,624	4,139
Total Assets	$ 355,276	$ 366,667
Liabilities, Series A Preferred Stock and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 43,285	$ 27,322
Accounts payable—affiliates	491	826
Accrued liabilities	19,303	34,164
Renewable energy credit liability	13,548	19,549
Fair value of derivative liabilities	4,158	7,505
Other current liabilities	1,707	1,295
Total current liabilities	82,492	90,661
Long-term liabilities:		
Fair value of derivative liabilities	36	227
Long-term portion of Senior Credit Facility	135,000	100,000
Other long-term liabilities	109	30
Total liabilities	217,637	190,918
Commitments and contingencies (Note 13)		
Series A Preferred Stock, par value $0.01 per share, 20,000,000 shares authorized, 3,567,543 shares issued and 3,567,543 shares outstanding at December 31, 2021 and 3,707,256 shares issued and 3,567,543 outstanding at December 31, 2020	87,288	87,288
Stockholders' equity:		
Common Stock :		
Class A common stock, par value $0.01 per share, 120,000,000 shares authorized, 15,791,019 shares issued and 15,646,425 shares outstanding at December 31, 2021 and 14,771,878 shares issued and 14,627,284 shares outstanding at December 31, 2020	158	148

Class B common stock, par value $0.01 per share, 60,000,000 shares authorized, 20,000,000 issued and outstanding at December 31, 2021 and 20,800,000 issued and outstanding at December 31, 2020	201	209
Additional paid-in capital	54,663	55,222
Accumulated other comprehensive loss	(40)	(40)
Retained earnings	776	11,721
Treasury stock, at cost, 144,594 at December 31, 2021 and December 31, 2020	(2,406)	(2,406)
Total stockholders' equity	53,352	64,854
Non-controlling interest in Spark HoldCo, LLC	(3,001)	23,607
Total equity	50,351	88,461
Total Liabilities, Series A Preferred Stock and stockholders' equity	$ 355,276	$ 366,667

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

VIA RENEWABLES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(in thousands, except per share data)

	Year Ended December 31,		
	2021	**2020**	**2019**
Revenues:			
Retail revenues	$ 397,728	$ 555,547	$ 810,954
Net asset optimization (expense) revenues	(4,243)	(657)	2,771
Total revenues	393,485	554,890	813,725
Operating expenses:			
Retail cost of revenues	323,219	344,592	615,225
General and administrative	44,279	90,734	133,534
Depreciation and amortization	21,578	30,767	40,987
Total operating expenses	389,076	466,093	789,746
Operating income	4,409	88,797	23,979
Other (expense)/income:			
Interest expense	(4,926)	(5,266)	(8,621)
Interest and other income	370	423	1,250
Gain on disposal of eRex	—	—	4,862
Total other (expense)/income	(4,556)	(4,843)	(2,509)
(Loss) income before income tax expense	(147)	83,954	21,470
Income tax expense	3,804	15,736	7,257
Net (loss) income	$ (3,951)	$ 68,218	$ 14,213
Less: Net (loss) income attributable to non-controlling interest	(9,146)	38,928	5,763
Net income attributable to Via Renewables, Inc. stockholders	$ 5,195	$ 29,290	$ 8,450
Less: Dividend on Series A preferred stock	7,804	7,441	8,091
Net (loss) income attributable to stockholders of Class A common stock	$ (2,609)	$ 21,849	$ 359
Other comprehensive (loss) income, net of tax:			
Currency translation loss	$ —	$ —	$ (102)
Other comprehensive loss	—	—	(102)
Comprehensive (loss) income	$ (3,951)	$ 68,218	$ 14,111
Less: Comprehensive (loss) income attributable to non-controlling interest	(9,146)	38,928	5,703
Comprehensive income attributable to Via Renewables, Inc. stockholders	$ 5,195	$ 29,290	$ 8,408
Net (loss) income attributable to Via Renewables, Inc. per share of Class A common stock			
Basic	$ (0.17)	$ 1.50	$ 0.03
Diluted	$ (0.17)	$ 1.48	$ 0.02
Weighted average shares of Class A common stock outstanding			
Basic	15,128	14,555	14,286
Diluted	15,128	14,715	14,568

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

VIA RENEWABLES, INC.
CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
(in thousands)

	Issued Shares of Class A Common Stock	Issued Shares of Class B Common Stock	Treasury Stock	Class A Common Stock	Class B Common Stock	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Additional Paid-In Capital	Retained Earnings (Deficit)	Total Stockholders' Equity	Non-controlling Interest	Total Equity
Balance at 12/31/2018:	14,178	20,800	(99)	$ 142	$ 209	$ (2,011)	$ 2	$ 46,157	$ 1,307	$ 45,806	$ 44,488	$ 90,294
Stock based compensation	—	—	—	—	—	—	—	5,271	—	5,271	—	5,271
Restricted stock unit vesting	301	—	—	3	—	—	—	(1,107)	—	(1,104)	—	(1,104)
Consolidated net income	—	—	—	—	—	—	—	—	8,450	8,450	5,763	14,213
Foreign currency translation adjustment for equity method investee	—	—	—	—	—	—	(42)	—	—	(42)	(60)	(102)
Gain on settlement of TRA, net of tax	—	—	—	—	—	—	—	11,951	—	11,951	—	11,951
Distributions paid to non-controlling unit holders	—	—	—	—	—	—	—	—	—	—	(34,794)	(34,794)
Dividends paid to Class A common stockholders ($0.725 per share)	—	—	—	—	—	—	—	(7,776)	(2,606)	(10,382)	—	(10,382)
Changes in ownership interest	—	—	—	—	—	—	—	(680)	—	(680)	680	—
Dividends to Preferred Shareholders	—	—	—	—	—	—	—	(2,029)	(6,077)	(8,106)	—	(8,106)
Proceeds from disgorgement of stockholder short-swing profits	—	—	—	—	—	—	—	55	—	55	—	55
Acquisition of Customers from Affiliate	—	—	—	—	—	—	—	—	—	—	(10)	(10)
Balance at 12/31/2019:	**14,479**	**20,800**	**(99)**	**$ 145**	**$ 209**	**$ (2,011)**	**$ (40)**	**$ 51,842**	**$ 1,074**	**$ 51,219**	**$ 16,067**	**$ 67,286**
Impact of adoption of ASC 326	—	—	—	—	—	—	—	—	(633)	(633)	—	(633)
Balance at January 1, 2020	14,479	20,800	(99)	145	209	(2,011)	(40)	51,842	441	50,586	16,067	66,653
Stock based compensation	—	—	—	—	—	—	—	2,357		2,357	—	2,357
Restricted stock unit vesting	293	—	—	3	—	—	—	(915)	—	(912)	—	(912)
Consolidated net income	—	—	—	—	—	—	—	—	29,290	29,290	38,928	68,218
Distributions paid to non-controlling unit holders	—	—	—	—	—	—	—	—	—	—	(29,450)	(29,450)
Dividends paid to Class A common stockholders ($0.725 per share)	—	—	—	—	—	—	—	—	(10,569)	(10,569)	—	(10,569)
Dividends paid to Preferred Stockholders	—	—	—	—	—	—	—	—	(7,441)	(7,441)	—	(7,441)
Treasury Shares	—	—	(45)	—	—	(395)	—		—	(395)		(395)

Changes in ownership interest	—	—	—	—	—	—	—	1,938	—	1,938	(1,938)	—
Balance at December 31, 2020	**14,772**	**20,800**	**(144) $**	**148 $**	**209 $**	**(2,406) $**	**(40) $**	**55,222 $**	**11,721 $**	**64,854 $**	**23,607 $**	**88,461**
Stock based compensation	—	—	—		—	—	—	3,151	—	3,151	—	3,151
Restricted stock unit vesting	219		—	2	—	—	—	(1,085)	—	(1,083)	—	(1,083)
Consolidated net income (loss)	—	—	—	—	—	—	—	—	5,195	5,195	(9,146)	(3,951)
Distributions paid to non-controlling unit holders	—	—	—	—	—	—	—	—	—	—	(17,436)	(17,436)
Dividends paid to Class A common stockholders ($0.725 per share)	—	—	—	—	—	—	—	(2,651)	(8,336)	(10,987)	—	(10,987)
Dividends paid to Preferred Stockholders	—	—	—	—	—	—	—	—	(7,804)	(7,804)	—	(7,804)
Exchange of shares of Class B common stock to shares of Class A common stock	800	(800)	—	8	(8)	—	—	320	—	320	(320)	—
Changes in ownership interest	—	—	—	—	—	—	—	(294)	—	(294)	294	—
Balance at December 31, 2021	**15,791**	**20,000**	**(144) $**	**158 $**	**201 $**	**(2,406) $**	**(40) $**	**54,663 $**	**776 $**	**53,352 $**	**(3,001) $**	**50,351**

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

VIA RENEWABLES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2021	**2020**	**2019**
Cash flows from operating activities:			
Net (loss) income	$ (3,951)	$ 68,218	$ 14,213
Adjustments to reconcile net (loss) income to net cash flows provided by operating activities:			
Depreciation and amortization expense	21,578	30,767	41,002
Deferred income taxes	4,045	1,905	(6,929)
Stock based compensation	3,448	2,503	5,487
Amortization of deferred financing costs	997	1,210	1,275
Change in fair value of earnout liabilities	—	—	(1,328)
Excess tax expense (benefit) related to restricted stock vesting	—	—	50
Bad debt expense	445	4,692	13,532
Loss on derivatives, net	(21,200)	23,386	67,749
Current period cash settlements on derivatives, net	15,692	(37,414)	(41,919)
Gain on disposal of eRex	—	—	(4,862)
Other	—	—	(776)
Changes in assets and liabilities:			
Decrease in accounts receivable	3,229	37,960	23,699
Decrease (increase) in accounts receivable—affiliates	1,234	(3,020)	526
(Increase) decrease in inventory	(486)	1,458	924
Increase in customer acquisition costs	(1,415)	(1,513)	(18,685)
Decrease (increase) in prepaid and other current assets	654	(2,120)	9,250
Decrease in intangible assets—customer acquisition	27	—	—
(Increase) decrease in other assets	(190)	288	55
Decrease in accounts payable and accrued liabilities	(10,213)	(37,297)	(8,620)
Decrease in accounts payable—affiliates	(335)	(184)	(1,455)
(Decrease) increase in other current liabilities	(705)	1,180	(1,459)
(Decrease) increase in other non-current liabilities	(152)	(188)	6
Net cash provided by operating activities	12,702	91,831	91,735
Cash flows from investing activities:			
Purchases of property and equipment	(2,713)	(2,154)	(1,120)
Acquisition of Customers	(3,797)	—	(5,913)
Disposal of eRex investment	—	—	8,431
Net cash (used in) provided by investing activities	(6,510)	(2,154)	1,398
Cash flows from financing activities:			
Buyback of Series A Preferred Stock	—	(2,282)	(743)
Payment to affiliates for acquisition of customer book	—	—	(10)
Borrowings on notes payable	774,000	612,000	356,000
Payments on notes payable	(739,000)	(635,000)	(362,500)
Net paydown on subordinated debt facility		—	(10,000)
Payments on the Verde promissory note	—	—	(2,036)
Payment for acquired customers	—	(972)	—
Restricted stock vesting	(1,329)	(1,107)	(1,348)
Proceeds from disgorgement of stockholders short-swing profits	—	—	55
Payment of Tax Receivable Agreement Liability	—	—	(11,239)
Payment of dividends to Class A common stockholders	(10,987)	(10,569)	(10,382)
Payment of distributions to non-controlling unitholders	(17,436)	(29,450)	(34,794)
Payment of Preferred Stock dividends	(7,804)	(7,886)	(8,106)
Purchase of Treasury Stock	—	(395)	—
Net cash used in financing activities	(2,556)	(75,661)	(85,103)
Increase in Cash and cash equivalents and Restricted Cash	3,636	14,016	8,030
Cash and cash equivalents and Restricted cash—beginning of period	71,684	57,668	49,638
Cash and cash equivalents and Restricted cash—end of period	$ 75,320	$ 71,684	$ 57,668
Supplemental Disclosure of Cash Flow Information:			
Non-cash items:			
Property and equipment purchase accrual	$ (38)	$ 46	$ 92
Holdback for Verde Note—Indemnified Matters	$ —	$ —	$ 4,900
Write-off of tax benefit related to tax receivable agreement liability—affiliates	$ —	$ —	$ 4,384

Gain on settlement of tax receivable agreement liability—affiliates	$ —	$ —	$ 16,336
Cash paid (received) during the period for:			
Interest	$ 3,754	$ 3,859	$ 6,634
Taxes	$ (1,788)	$ 23,890	$ 7,516

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

VIA RENEWABLES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Formation and Organization

Company's Name Change

In August 2021, Spark Energy, Inc. changed its name from Spark Energy, Inc. to Via Renewables, Inc. (the "Company").

Organization

We are an independent retail energy services company that provides residential and commercial customers in competitive markets across the United States with an alternative choice for natural gas and electricity. The Company is a holding company whose sole material asset consists of units in Spark HoldCo, LLC (“Spark HoldCo”). The Company is the sole managing member of Spark HoldCo, is responsible for all operational, management and administrative decisions relating to Spark HoldCo’s business and consolidates the financial results of Spark HoldCo and its subsidiaries. Spark HoldCo is the direct and indirect owner of the subsidiaries through which we operate. We conduct our business through several brands across our service areas, including Electricity Maine, Electricity N.H., Major Energy, Provider Power Massachusetts, Spark Energy, and Verde Energy.

2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) and pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). Our financial statements are presented on a consolidated basis and include all wholly-owned and controlled subsidiaries. We account for investments over which we have significant influence but not a controlling financial interest using the equity method of accounting. All significant intercompany transactions and balances have been eliminated in the consolidated financial statements.

In the opinion of the Company's management, the accompanying consolidated financial statements reflect all adjustments that are necessary to fairly present the financial position, the results of operations, the changes in equity and the cash flows of the Company for the respective periods. Such adjustments are of a normal recurring nature, unless otherwise disclosed.

Subsequent Events

Subsequent events have been evaluated through the date these financial statements are issued. Any material subsequent events that occurred prior to such date have been properly recognized or disclosed in the consolidated financial statements.

Use of Estimates and Assumptions

The preparation of our consolidated financial statements requires estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Actual results could materially differ from those estimates.

Relationship with our Founder, Majority Shareholder, and Chief Executive Officer

W. Keith Maxwell, III (our "Founder") is the Chief Executive Officer and the owner of a majority of the voting power of our common stock through his ownership of NuDevco Retail, LLC ("NuDevco Retail") and Retailco, LLC

("Retailco"). Retailco is a wholly owned subsidiary of TxEx Energy Investments, LLC ("TxEx"), which is wholly owned by Mr. Maxwell. NuDevco Retail is a wholly owned subsidiary of NuDevco Retail Holdings LLC ("NuDevco Retail Holdings"), which is a wholly owned subsidiary of Electric HoldCo, LLC, which is also a wholly owned subsidiary of TxEx.

We enter into transactions with and pay certain costs on behalf of affiliates that are commonly controlled by Mr. Maxwell, and these affiliates enter into transactions with and pay certain costs on our behalf. We undertake these transactions in order to reduce risk, reduce administrative expense, create economies of scale, create strategic alliances and supply goods and services among these related parties.

These transactions include, but are not limited to, employee benefits provided through the Company's benefit plans, insurance plans, leased office space, certain administrative salaries, management due diligence, recurring management consulting, and accounting, tax, legal, or technology services. Amounts billed under these arrangements are based on services provided, departmental usage, or headcount, which are considered reasonable by management. As such, the accompanying consolidated financial statements include costs that have been incurred by the Company and then directly billed or allocated to affiliates, and costs that have been incurred by our affiliates and then directly billed or allocated to us, and are recorded net in general and administrative expense on the consolidated statements of operations with a corresponding accounts receivable—affiliates or accounts payable—affiliates, respectively, recorded in the consolidated balance sheets. Additionally, the Company enters into transactions with certain affiliates for sales or purchases of natural gas and electricity, which are recorded in retail revenues, retail cost of revenues, and net asset optimization revenues in the consolidated statements of operations with a corresponding accounts receivable—affiliate or accounts payable—affiliate in the consolidated balance sheets. The allocations and related estimates and assumptions are described more fully in Note 14 "Transactions with Affiliates."

Cash and Cash Equivalents

Cash and cash equivalents consist of all unrestricted demand deposits and funds invested in highly liquid instruments with original maturities of three months or less. The Company periodically assesses the financial condition of the institutions where these funds are held and believes that its credit risk is minimal with respect to these institutions.

Restricted Cash

As part of the customer acquisitions in May 2021, we funded an escrow account, the balance of which is reflected as restricted cash in our consolidated balance sheet. As we acquire customers, we make payments to the sellers from the escrow account. As of December 31, 2021, the balance in the escrow account was $6.4 million, and these funds are expected to be released to the sellers as acquired customers transfer from the sellers to the Company in accordance with the asset purchase agreement, and any unallocated balance will be returned to the Company once the acquisition is complete. See Note 16 "Customer Acquisitions" for further discussion.

Inventory

Inventory consists of natural gas used to fulfill and manage seasonality for fixed and variable-price retail customer load requirements and is valued at the lower of weighted average cost or net realizable value. Purchased natural gas costs are recognized in the consolidated statements of operations, within retail cost of revenues, when the natural gas is sold and delivered out of the storage facility using the weighted average cost of the gas sold.

Customer Acquisition Costs

The Company capitalizes direct response advertising costs that consist primarily of hourly and commission-based telemarketing costs, door-to-door agent commissions and other direct advertising costs associated with proven customer generation in its balance sheet. These costs are amortized over the estimated life of a customer.

As of December 31, 2021 and 2020, the net customer acquisition costs were $1.4 million and $6.1 million, respectively, of which $0.9 million and $5.8 million were recorded in current assets, and $0.5 million and $0.3 million were recorded in non-current assets. Amortization of customer acquisition costs was $6.1 million, $13.9 million, and $18.5 million for the years ended December 31, 2021, 2020 and 2019, respectively. Customer acquisition costs do not include customer acquisitions through merger and acquisition activities, which are recorded as customer relationships.

Recoverability of customer acquisition costs is evaluated based on a comparison of the carrying amount of such costs to the future net cash flows expected to be generated by the customers acquired, considering specific assumptions for customer attrition, per unit gross profit, and operating costs. These assumptions are based on forecasts and historical experience.

Customer Relationships

Customer contracts recorded as part of mergers or acquisitions are reflected as customer relationships in our balance sheet. The Company had capitalized customer relationship of $8.5 million and $12.1 million, net of amortization, as current assets as of December 31, 2021 and 2020, respectively, and $5.7 million and $5.7 million, net of amortization, as non-current assets as of December 31, 2021 and 2020, respectively, related to these intangible assets. These intangibles are amortized on a straight-line basis over the estimated average life of the related customer contracts acquired, which ranges from three to six years.

The acquired customer relationships intangibles related to Provider Companies, Major Energy Companies, Perigee Energy LLC, Verde Companies, and HIKO are reflective of the acquired companies' customer base, and were valued at the respective dates of acquisition using an excess earnings method under the income approach. Using this method, the Company estimated the future cash flows resulting from the existing customer relationships, considering attrition as well as charges for contributory assets, such as net working capital, fixed assets, and assembled workforce. These future cash flows were then discounted using an appropriate risk-adjusted rate of return by retail unit to arrive at the present value of the expected future cash flows. Perigee, and HIKO customer relationships are amortized to depreciation and amortization based on the expected future net cash flows by year. The acquired customer relationship intangibles related to the Major Energy Companies, the Provider Companies and the Verde Companies were bifurcated between hedged and unhedged and amortized to depreciation and amortization based on the expected future cash flows by year and expensed to retail cost of revenue based on the expected term of the underlying fixed price contract in each reporting period, respectively.

Customer relationship amortization expense was $12.7 million, $13.6 million, and $18.3 million for the years ended December 31, 2021, 2020 and 2019, respectively.

We review customer relationships for impairment whenever events or changes in business circumstances indicate the carrying value of the intangible assets may not be recoverable. Impairment is indicated when the undiscounted cash flows estimated to be generated by the intangible assets are less than their respective carrying value. If an impairment exists, a loss is recognized for the difference between the fair value and carrying value of the intangible assets. No impairments of customer relationships were recorded for the years ended December 31, 2021, 2020 and 2019.

Trademarks

We record trademarks as part of our acquisitions which represent the value associated with the recognition and positive reputation of an acquired company to its target markets. This value would otherwise have to be internally developed through significant time and expense or by paying a third party for its use. These intangibles are amortized over the estimated five-year to ten-year life of the trademark on a straight-line basis. The fair values of trademark assets were determined at the date of acquisition using a royalty savings method under the income approach. Under this approach, the Company estimates the present value of expected cash flows resulting from avoiding royalty payments to use a third party trademark. The Company analyzes market royalty rates charged for licensing trademarks and applied an expected royalty rate to a forecast of estimated revenue, which was then

discounted using an appropriate risk adjusted rate of return. As of December 31, 2021 and 2020, we had recorded $3.5 million and $4.6 million related to these trademarks in other assets. Amortization expense was $1.1 million, $1.1 million, and $1.6 million for the years ended December 31, 2021, 2020 and 2019, respectively.

We review trademarks for impairment whenever events or changes in business circumstances indicate the carrying value of the intangible assets may not be recoverable. Impairment is indicated when the undiscounted cash flows estimated to be generated by the intangible assets are less than their respective carrying value. If an impairment exists, a loss is recognized for the difference between the fair value and carrying value of the intangible assets. No impairments of trademarks were recorded for the years ended December 31, 2021, 2020 and 2019.

Operating Leases

The Company's leases consist of operating leases related to our offices with lease terms expiring through 2022. The initial term for our property leases is typically three to five years, with renewal options. Rent is recognized on a straight-line basis over the lease term.

For our operating leases, we recorded rent expense of $0.2 million, $0.4 million and $0.8 million for the years ended December 31, 2021, 2020 and 2019, respectively. We recorded sub-lease income of $0.2 million, $0.2 million and $0.4 million for the years ended December 31, 2021, 2020 and 2019, respectively. As of December 31, 2021 and 2020, we had recorded a right-of-use asset of less than $0.1 million and $0.1 million, respectively, in other current assets and other assets. As of December 31, 2021 and 2020 we had recorded a lease liability of $0.1 million and $0.2 million, respectively, in other current liabilities and other long-term liabilities.

Deferred Financing Costs

Costs incurred in connection with the issuance of long-term debt are capitalized and amortized to interest expense using the straight-line method over the life of the related long-term debt. These costs are included in other assets in our consolidated balance sheets.

Property and Equipment

The Company records property and equipment at historical cost. Depreciation expense is recorded on a straight-line method based on estimated useful lives, which range from 2 to 5 years, along with estimates of the salvage values of the assets. When items of property and equipment are sold or otherwise disposed of, any gain or loss is recorded in the consolidated statements of operations.

The Company capitalizes costs associated with certain of its internal-use software projects. Costs capitalized are those incurred during the application development stage of projects such as software configuration, coding, installation of hardware and testing. Costs incurred during the preliminary or post-implementation stage of the project are expensed in the period incurred, including costs associated with formulation of ideas and alternatives, training and application maintenance. After internal-use software projects are completed, the associated capitalized costs are depreciated over the estimated useful life of the related asset. Interest costs incurred while developing internal-use software projects are also capitalized. Capitalized interest costs for the years ended December 31, 2021, 2020 and 2019 were not material.

Goodwill

Goodwill represents the excess of cost over fair value of the assets of businesses acquired in accordance with FASB ASC Topic 350 Intangibles-Goodwill and Other ("ASC 350"). The goodwill on our consolidated balance sheet as of December 31, 2021 is associated with both our Retail Natural Gas and Retail Electricity segments. We determine our segments, which are also considered our reporting unit, by identifying each unit that engaged in business activities from which it may earn revenues and incur expenses, had operating results regularly reviewed by the

segment manager for purposes of resource allocation and performance assessment, and had discrete financial information.

Goodwill is not amortized, but rather is assessed for impairment whenever events or circumstances indicate that impairment of the carrying value of goodwill is likely, but no less often than annually as of October 31. We compare our estimate of the fair value of the reporting unit with its carrying value, including goodwill. If the carrying value of the reporting unit exceeds its fair value, we would recognize a goodwill impairment loss for the amount by which the reporting unit's carrying value exceeds its fair value. In accordance with our accounting policy, we completed our annual assessment of goodwill impairment as of October 31, 2021 during the fourth quarter of 2021, using a qualitative assessment approach, and the test indicated no impairment.

Treasury Stock

Treasury stock consists of Company's own stock that has been issued, but subsequently reacquired by the Company. Treasury stock does not reduce the number of shares issued but does reduce the number of shares outstanding. These shares are not eligible to receive cash dividends. We use the cost method to account for treasury shares.

Equity Method Investments

We use the equity method of accounting to account for investments where we have the ability to exercise significant influence, but not control over, the investee. Under the equity method of accounting, investments are stated at initial cost and are adjusted for subsequent additional investments and our share of earnings or losses and distributions. See Note 17 "Equity Method Investment" for further discussion.

Revenues and Cost of Revenues

Our revenues are derived primarily from the sale of natural gas and electricity to customers, including affiliates. Revenues are recognized by the Company based on consideration specified in contracts with customers when performance obligations are satisfied by transferring control over products to a customer. Utilizing these criteria, revenue is recognized when the natural gas or electricity is delivered to the customer. Similarly, cost of revenues is recognized when the commodity is delivered.

Revenues for natural gas and electricity sales are recognized under the accrual method. Natural gas and electricity sales that have been delivered but not billed by period end are estimated. Accrued unbilled revenues are based on estimates of customer usage since the date of the last meter read provided by the utility. Volume estimates are based on forecasted volumes and estimated customer usage by class. Unbilled revenues are calculated by multiplying these volume estimates by the applicable rate by customer class. Estimated amounts are adjusted when actual usage is known and billed.

Costs for natural gas and electricity sales are similarly recognized under the accrual method. Natural gas and electricity costs that have not been billed to the Company by suppliers but have been incurred by period end are estimated. The Company estimates volumes for natural gas and electricity delivered based on the forecasted revenue volumes, estimated transportation cost volumes and estimation of other costs associated with retail load that varies by commodity utility territory. These costs include items like ISO fees, ancillary services and renewable energy credits. Estimated amounts are adjusted when actual usage is known and billed.

Our asset optimization activities, which primarily include natural gas physical arbitrage and other short term storage and transportation transactions, meet the definition of trading activities and are recorded on a net basis in the consolidated statements of operations in net asset optimization revenues. The Company recorded asset optimization revenues, primarily related to physical sales or purchases of commodities, of $57.0 million, $24.8 million and $62.8 million for the years ended December 31, 2021, 2020 and 2019, respectively, and recorded asset optimization costs of revenues of $61.2 million, $25.5 million and $60.0 million for the years ended December 31, 2021, 2020 and

2019, respectively, which are presented on a net basis in asset optimization revenues in the Consolidated Statements of Operations.

Natural Gas Imbalances

The consolidated balance sheets include natural gas imbalance receivables and payables, which primarily result when customers consume more or less gas than has been delivered by the Company to local distribution companies ("LDCs"). The settlement of natural gas imbalances varies by LDC, but typically the natural gas imbalances are settled in cash or in kind on a monthly, quarterly, semi-annual or annual basis. The imbalances are valued at their estimated net realizable value. The Company recorded an imbalance receivable of $0.3 million and $0.3 million in other current assets on the consolidated balance sheets as of December 31, 2021 and 2020, respectively. The Company recorded an imbalance payable of zero and less than $0.1 million in other current liabilities on the consolidated balance sheets as of December 31, 2021 and 2020, respectively.

Derivative Instruments

The Company uses derivative instruments such as futures, swaps, forwards and options to manage the commodity price risks of its business operations.

All derivatives are recorded in the consolidated balance sheets at fair value. Derivative instruments representing unrealized gains are reported as derivative assets while derivative instruments representing unrealized losses are reported as derivative liabilities. We offset amounts in the consolidated balance sheets for derivative instruments executed with the same counterparty where we have a master netting arrangement.

As part of our asset optimization activities, we manage a portfolio of commodity derivative instruments held for trading purposes. Changes in fair value of and amounts realized upon settlements of derivatives instruments held for trading purposes are recognized in earnings in net asset optimization revenues.

To manage the retail business, the Company holds derivative instruments that are not for trading purposes and are not designated as hedges for accounting purposes. Changes in the fair value of and amounts realized upon settlement of derivative instruments not held for trading purposes are recognized in retail costs of revenues.

Income Taxes

The Company follows the asset and liability method of accounting for income taxes where deferred tax assets and liabilities are recognized for the expected future tax consequences of events that have been recognized in the financial statements or tax returns and operating loss carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in those years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in the tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided for deferred tax assets if it is more likely than not that these items will not be realized. Amounts owed or refundable on current year returns is included as a current payable or receivable in the consolidated balance sheet.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the projected future taxable income and tax planning strategies in making this assessment.

The Company recognizes interest and penalties related to unrecognized tax benefits within the provision for income taxes on continuing operations in our consolidated statements of operations.

Earnings per Share

Basic earnings per share (“EPS”) is computed by dividing net income attributable to stockholders (the numerator) by the weighted-average number of Class A common shares outstanding for the period (the denominator). Class B common shares are not included in the calculation of basic earnings per share because they are not participating securities and have no economic interests. Diluted earnings per share is similarly calculated except that the denominator is increased by potentially dilutive securities. We use the treasury stock method to determine the potential dilutive effect of our outstanding unvested restricted stock units and use the if-converted method to determine the potential dilutive effect of our Class B common stock.

Non-controlling Interest

Net income attributable to non-controlling interest represents the Class B Common stockholders' interest in income and expenses of the Company. The weighted average ownership percentages for the applicable reporting period are used to allocate the income (loss) before income taxes to each economic interest owner.

Commitments and Contingencies

Liabilities for loss contingencies arising from claims, assessments, litigation, fines, penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. Legal costs incurred in connection with loss contingencies are expensed as incurred.

Recent Accounting Pronouncements

In December 2019, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2019-12, Income Taxes (Topic 740), Simplifying the Accounting for Income Taxes ("ASU 2019-12"). These amendments simplify the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. For public business entities, the amendments in ASU 2019-12 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020. We adopted ASU 2019-12 effective January 1, 2021 and the adoption did not have a material impact on our consolidated financial statements.

In March 2020, the FASB issued ASU No. 2020-04, Reference Rate Reform (Topic 848), Facilitation of the Effects of Reference Rate Reform on Financial Reporting ("ASU 2020-04"). The amendments in ASU 2020-04 provide optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform. In January 2021, the FASB issued ASU 2021-01, Reference Rate Reform ("ASU 2021-01"), which clarifies the scope and application of certain optional expedients and exceptions regarding the original guidance. The amendments in these ASUs were effective upon issuance and can be applied prospectively through December 31, 2022. The Company's Senior Credit Facility is the only agreement that makes reference to a LIBOR rate and the agreement outlines the specific procedures that will be undertaken once an appropriate alternative benchmark is identified. We adopted ASU 2020-04 effective January 1, 2022 and the adoption did not have a material impact on our consolidated financial statements.

3. Revenues

Our revenues are derived primarily from the sale of natural gas and electricity to customers, including affiliates. Revenue is measured based upon the quantity of gas or power delivered at prices contained or referenced in the customer's contract, and excludes any sales incentives (e.g. rebates) and amounts collected on behalf of third parties (e.g. sales tax).

Our revenues also include asset optimization activities. Asset optimization activities consist primarily of purchases and sales of gas that meet the definition of trading activities per FASB ASC Topic 815, *Derivatives and*

Hedging. They are therefore excluded from the scope of FASB ASC Topic 606, *Revenue from Contracts with Customers*.

Revenues for electricity and natural gas sales are recognized under the accrual method when our performance obligation to a customer is satisfied, which is the point in time when the product is delivered and control of the product passes to the customer. Electricity and natural gas products may be sold as fixed-price or variable-price products. The typical length of a contract to provide electricity and/or natural gas is 12 months. Customers are billed and typically pay at least monthly, based on usage. Electricity and natural gas sales that have been delivered but not billed by period end are estimated and recorded as accrued unbilled revenues based on estimates of customer usage since the date of the last meter read provided by the utility. Volume estimates are based on forecasted volumes and estimated residential and commercial customer usage. Unbilled revenues are calculated by multiplying these volume estimates by the applicable rate by customer class (residential or commercial). Estimated amounts are adjusted when actual usage is known and billed.

The following table discloses revenue by primary geographical market, customer type, and customer credit risk profile (in thousands). The table also includes a reconciliation of the disaggregated revenue to revenue by reportable segment (in thousands).

	Reportable Segments								
	Year Ended December 31, 2021			Year Ended December 31, 2020			Year Ended December 31, 2019		
	Retail Electricity	Retail Natural Gas	Total Reportable Segments	Retail Electricity	Retail Natural Gas	Total Reportable Segments	Retail Electricity	Retail Natural Gas	Total Reportable Segments
Primary markets (a)									
New England	$ 100,819	$ 9,402	$ 110,221	$ 166,982	$ 14,846	$ 181,828	$ 284,909	$ 19,289	$ 304,198
Mid-Atlantic	107,307	28,070	135,377	166,157	32,769	198,926	242,556	42,469	285,025
Midwest	41,974	20,602	62,576	57,314	26,368	83,682	79,188	39,200	118,388
Southwest	72,494	17,060	89,554	70,940	20,171	91,111	81,798	21,545	103,343
	$ 322,594	$ 75,134	$ 397,728	$ 461,393	$ 94,154	$ 555,547	$ 688,451	$ 122,503	$ 810,954
Customer type									
Commercial	$ 49,159	$ 25,610	$ 74,769	$ 128,874	$ 31,205	$ 160,079	$ 249,730	$ 40,466	$ 290,196
Residential	280,065	49,483	329,548	341,382	66,305	407,687	449,900	83,455	533,355
Unbilled revenue (b)	(6,630)	41	(6,589)	(8,863)	(3,356)	(12,219)	(11,179)	(1,418)	(12,597)
	$ 322,594	$ 75,134	$ 397,728	$ 461,393	$ 94,154	$ 555,547	$ 688,451	$ 122,503	$ 810,954
Customer credit risk									
POR	$ 195,120	$ 40,541	$ 235,661	$ 308,010	$ 47,470	$ 355,480	$ 479,011	$ 64,416	$ 543,427
Non-POR	127,474	34,593	162,067	153,383	46,684	200,067	209,440	58,087	267,527
	$ 322,594	$ 75,134	$ 397,728	$ 461,393	$ 94,154	$ 555,547	$ 688,451	$ 122,503	$ 810,954

(a) The primary markets include the following states:

- New England - Connecticut, Maine, Massachusetts, New Hampshire;
- Mid-Atlantic - Delaware, Maryland (including the District of Colombia), New Jersey, New York and Pennsylvania;
- Midwest - Illinois, Indiana, Michigan and Ohio; and
- Southwest - Arizona, California, Colorado, Florida, Nevada, and Texas.

(b) Unbilled revenue is recorded in total until it is actualized, at which time it is categorized between commercial and residential customers.

We record gross receipts taxes on a gross basis in retail revenues and retail cost of revenues. During the year ended December 31, 2021, 2020 and 2019 our retail revenues included gross receipts taxes of $1.1 million, $1.3 million and $1.5 million respectively. During the year ended December 31, 2021, 2020 and 2019, our retail cost of revenues included gross receipts taxes of $4.4 million, $5.9 million and $8.4 million, respectively.

Accounts receivables and Allowance for Credit Losses

As discussed in Note 2, "Basis of Presentation and Summary of Significant Accounting Policies", we adopted the new accounting standards for measuring credit losses effective January 1, 2020.

The Company conducts business in many utility service markets where the local regulated utility purchases our receivables, and then becomes responsible for billing the customer and collecting payment from the customer ("POR programs"). These POR programs result in substantially all of the Company's credit risk being linked to the applicable utility, which generally has an investment-grade rating, and not to the end-use customer. The Company monitors the financial condition of each utility and currently believes its receivables are collectible.

In markets that do not offer POR programs or when the Company chooses to directly bill its customers, certain receivables are billed and collected by the Company. The Company bears the credit risk on these accounts and records an appropriate allowance for doubtful accounts to reflect any losses due to non-payment by customers. The Company's customers are individually insignificant and geographically dispersed in these markets. The Company writes off customer balances when it believes that amounts are no longer collectible and when it has exhausted all means to collect these receivables.

For trade accounts receivables, the Company accrues an allowance for doubtful accounts by business segment by pooling customer accounts receivables based on similar risk characteristics, such as customer type, geography, aging analysis, payment terms, and related macroeconomic factors. Expected credit loss exposure is evaluated for each of our accounts receivables pools. Expected credits losses are established using a model that considers historical collections experience, current information, and reasonable and supportable forecasts. The Company writes off accounts receivable balances against the allowance for doubtful accounts when the accounts receivable is deemed to be uncollectible.

We assess the adequacy of the allowance for doubtful accounts through review of an aging of customer accounts receivable and general economic conditions in the markets that we serve. Bad debt expense of $0.4 million, $4.7 million and $13.5 million was recorded in general and administrative expense in the consolidated statements of operations for the years ended December 31, 2021, 2020 and 2019, respectively.

A rollforward of our allowance for credit losses for the year ended December 31, 2021 is presented in the table below (in thousands):

Balance at December 31, 2020	$ (3,942)
Bad debt provision	(205)
Write-offs	2,192
Recovery of previous write offs	(413)
Balance at December 31, 2021	$ (2,368)

4. Equity

Non-controlling Interest

We hold an economic interest and are the sole managing member in Spark HoldCo, with affiliates of our Founder and majority shareholder holding the remaining economic interests in Spark HoldCo. As a result, we consolidate the financial position and results of operations of Spark HoldCo, and reflect the economic interests owned by these affiliates as a non-controlling interest. The Company and affiliates owned the following economic interests in Spark HoldCo at December 31, 2021 and December 31, 2020, respectively.

	The Company	Affiliated Owners
December 31, 2021	44.12 %	55.88 %
December 31, 2020	41.53 %	58.47 %

The following table summarizes the portion of net income (loss) and income tax expense (benefit) attributable to non-controlling interest (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Net (loss) income allocated to non-controlling interest	$ (5,607)	$ 44,277	$ 7,604
Income tax expense allocated to non-controlling interest	3,539	5,349	1,841
Net (loss) income attributable to non-controlling interest	$ (9,146)	$ 38,928	$ 5,763

Class A Common Stock and Class B Common Stock

Holders of the Company's Class A common stock and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law or by our certificate of incorporation.

Conversion of Class B Common Stock to Class A Common Stock

In July 2021, holders of Class B common stock exchanged 800,000 of their Spark HoldCo units (together with a corresponding number of shares of Class B common stock) for shares of Class A common stock at an exchange ratio of one share of Class A common stock for each Spark HoldCo unit (and corresponding share of Class B common stock) exchanged.

Dividends on Class A Common Stock

Dividends declared for the Company's Class A common stock are reported as a reduction of retained earnings, or a reduction of additional paid in capital to the extent retained earnings are exhausted. During the years ended December 31, 2021, 2020, and 2019, we paid dividends on our Class A common stock of $11.0 million, $10.6 million, and $10.4 million. This dividend represented an annual rate of $0.725 per share on each share of Class A common stock.

On January 20, 2022, the Company declared a dividend of $0.18125 per share to holders of record of our Class A common stock on March 1, 2022 and payable on March 15, 2022.

In order to pay our stated dividends to holders of our Class A common stock, our subsidiary, Spark HoldCo is required to make corresponding distributions to holders of its units, including those holders that own our Class B common stock (our non-controlling interest holder). As a result, during the year ended December 31, 2021, Spark HoldCo made corresponding distributions of $14.8 million to our non-controlling interest holders.

Share Repurchase Program

On August 18, 2020, our Board of Directors authorized a share repurchase program of up to $20.0 million of Class A common stock through August 18, 2021. We funded the program through available cash balances, our Senior Credit Facility and operating cash flows.

The shares of Class A common stock could be repurchased from time to time in the open market at prevailing market prices or in privately negotiated transactions based on ongoing assessments of capital needs, the market price of the stock, and other factors, including general market conditions. The repurchase program did not obligate us to acquire any particular amount of Class A common stock, could be modified or suspended at any time, and could be terminated prior to completion.

For the year ended December 31, 2020, we repurchased 45,148 shares of our Class A common stock at a weighted average price of $8.75 per share, for a total cost of $0.4 million. For the year ended December 31, 2021, we did not repurchase our Class A common stock. The share repurchase program was suspended in March 2021 pursuant to an agreement with lenders under our Senior Credit Facility. The share repurchase program expired on August 18, 2021 and our Senior Credit Facility was subsequently amended, terminating the provision for borrowings specific to Class A common stock repurchases. See Note 9 "Debt" for further discussion.

Preferred Stock

The Company has 20,000,000 shares of authorized preferred stock for which there are 3,567,543 shares issued and outstanding at December 31, 2021 and 3,707,256 shares issued and 3,567,543 shares outstanding at December 31, 2020, respectively. See Note 5 "Preferred Stock" for a further discussion of preferred stock.

Issuance of Class A Common Stock Upon Vesting of Restricted Stock Units

For the years ended December 31, 2021, 2020, and 2019, 342,403, 469,811, and 473,492, respectively of restricted stock units vested, with 219,141, 292,879, and 300,715, respectively of shares of common stock distributed to the holders of these units. Differences between shares vested and issued were a result of 123,262, 176,932, and 172,777 shares of common stock withheld by the Company to cover taxes owed on the vesting of such units.

Earnings Per Share

Basic earnings per share (“EPS”) is computed by dividing net income attributable to stockholders (the numerator) by the weighted-average number of Class A common shares outstanding for the period (the denominator). Class B common shares are not included in the calculation of basic earnings per share because they are not participating securities and have no economic interests. Diluted earnings per share is similarly calculated except that the denominator is increased by potentially dilutive securities.

The following table presents the computation of basic and diluted income (loss) per share for the years ended December 31, 2021, 2020, and 2019 (in thousands, except per share data):

	Year Ended December 31,		
	2021	2020	2019
Net income attributable to Via Renewables, Inc. stockholders	$ 5,195	$ 29,290	$ 8,450
Less: Dividend on Series A preferred stock	7,804	7,441	8,091
Net (loss) income attributable to stockholders of Class A common stock	$ (2,609)	$ 21,849	$ 359
Basic weighted average Class A common shares outstanding	15,128	14,555	14,286
Basic (loss) earnings per share attributable to stockholders	**$ (0.17)**	**$ 1.50**	**$ 0.03**
Net (loss) income attributable to stockholders of Class A common stock	$ (2,609)	$ 21,849	$ 359
Diluted net (loss) income attributable to stockholders of Class A common stock	$ (2,609)	$ 21,849	$ 359
Basic weighted average Class A common shares outstanding	15,128	14,555	14,286
Effect of dilutive restricted stock units	—	160	282
Diluted weighted average shares outstanding	15,128	14,715	14,568
Diluted (loss) earnings per share attributable to stockholders	**$ (0.17)**	**$ 1.48**	**$ 0.02**

The computation of diluted earnings per share for the year ended December 31, 2021 excludes 20.0 million shares of Class B common stock and 0.5 million restricted stock units because the effect of their conversion was antidilutive. The Company's outstanding shares of Series A Preferred Stock were not included in the calculation of diluted earnings per share because they contain only contingent redemption provisions that have not occurred.

Variable Interest Entity

Spark HoldCo is a variable interest entity due to its lack of rights to participate in significant financial and operating decisions and its inability to dissolve or otherwise remove its management. Spark HoldCo owns all of the outstanding membership interests in each of our operating subsidiaries. We are the sole managing member of Spark HoldCo, manage Spark HoldCo's operating subsidiaries through this managing membership interest, and are considered the primary beneficiary of Spark HoldCo. The assets of Spark HoldCo cannot be used to settle our obligations except through distributions to us, and the liabilities of Spark HoldCo cannot be settled by us except through contributions to Spark HoldCo. The following table includes the carrying amounts and classification of the assets and liabilities of Spark HoldCo that are included in our consolidated balance sheet as of December 31, 2021 and 2020 (in thousands):

	December 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 68,703	$ 71,442
Accounts receivable	66,676	70,350
Other current assets	56,392	55,575
Total current assets	191,771	197,367
Non-current assets:		
Goodwill	120,343	120,343
Other assets	16,758	15,259
Total non-current assets	137,101	135,602
Total Assets	$ 328,872	$ 332,969
Liabilities		
Current liabilities:		
Accounts Payable and Accrued Liabilities	$ 62,538	$ 61,436
Other current liabilities	49,328	43,676
Total current liabilities	111,866	105,112
Long-term liabilities:		
Long-term portion of Senior Credit Facility	135,000	100,000
Other long-term liabilities	145	256
Total long-term liabilities	135,145	100,256
Total Liabilities	$ 247,011	$ 205,368

5. Preferred Stock

Holders of the Series A Preferred Stock have no voting rights, except in specific circumstances of delisting or in the case the dividends are in arrears as specified in the Series A Preferred Stock Certificate of Designations. The Series A Preferred Stock accrue dividends at an annual percentage rate of 8.75%, and the liquidation preference provisions of the Series A Preferred Stock are considered contingent redemption provisions because there are rights granted to the holders of the Series A Preferred Stock that are not solely within our control upon a change in control of the Company. Accordingly, the Series A Preferred Stock is presented between liabilities and the equity sections in the accompanying consolidated balance sheet.

We have the option to redeem our Series A Preferred Stock on or after April 15, 2022. After April 15, 2022, the dividend on the Series A Preferred Stock will accrue at an annual rate equal to the sum of (a) Three-Month LIBOR (if it then exists), or an alternative reference rate and (b) 6.578%, based on the $25.00 liquidation preference per share of Series A Preferred Stock.

During the year ended December 31, 2021, we paid $7.8 million in dividends to holders of the Series A Preferred Stock. As of December 31, 2021, we had accrued $1.9 million related to dividends to holders of the Series A Preferred Stock. This dividend was paid on January 17, 2022. During the year ended December 31, 2020, the Company paid $7.9 million in dividends to holders of the Series A Preferred Stock and had accrued $1.9 million as of December 31, 2020.

On January 20, 2022, the Company declared a quarterly cash dividend in the amount of $0.546875 per share of Series A Preferred Stock. This amount represents an annualized dividend of $2.1875 per share. The dividend will be paid on April 15, 2022 to holders of record on April 1, 2022 of the Series A Preferred Stock.

A summary of our preferred equity balance for the years ended December 31, 2021 and 2020 is as follows:

	(in thousands)
Balance at December 31, 2019	**$ 90,015**
Repurchase of Series A Preferred Stock	(2,667)
Accumulated dividends on Series A Preferred Stock	(60)
Balance at December 31, 2020	**$ 87,288**
Repurchase of Series A Preferred Stock	—
Accumulated dividends on Series A Preferred Stock	—
Balance at December 31, 2021	**$ 87,288**

6. Derivative Instruments

We are exposed to the impact of market fluctuations in the price of electricity and natural gas, basis differences in the price of natural gas, storage charges, renewable energy credits ("RECs"), and capacity charges from independent system operators. We use derivative instruments in an effort to manage our cash flow exposure to these risks. These instruments are not designated as hedges for accounting purposes, and accordingly, changes in the market value of these derivative instruments are recorded in the cost of revenues. As part of our strategy to optimize pricing in our natural gas related activities, we also manage a portfolio of commodity derivative instruments held for trading purposes. Our commodity trading activities are subject to limits within our Risk Management Policy. For these derivative instruments, changes in the fair value are recognized currently in earnings in net asset optimization revenues.

Derivative assets and liabilities are presented net in our consolidated balance sheets when the derivative instruments are executed with the same counterparty under a master netting arrangement. Our derivative contracts include transactions that are executed both on an exchange and centrally cleared, as well as over-the-counter, bilateral contracts that are transacted directly with third parties. To the extent we have paid or received collateral related to the derivative assets or liabilities, such amounts would be presented net against the related derivative asset or liability’s fair value. As of December 31, 2021 and 2020, we offset $0.5 million and $0.1 million, respectively, in collateral to net against the related derivative liability's fair value. The specific types of derivative instruments we may execute to manage the commodity price risk include the following:

- Forward contracts, which commit us to purchase or sell energy commodities in the future;
- Futures contracts, which are exchange-traded standardized commitments to purchase or sell a commodity or financial instrument;
- Swap agreements, which require payments to or from counterparties based upon the differential between two prices for a predetermined notional quantity; and
- Option contracts, which convey to the option holder the right but not the obligation to purchase or sell a commodity.

The Company has entered into other energy-related contracts that do not meet the definition of a derivative instrument or for which we made a normal purchase, normal sale election and are therefore not accounted for at fair value including the following:

- Forward electricity and natural gas purchase contracts for retail customer load;
- Renewable energy credits; and
- Natural gas transportation contracts and storage agreements.

Volumes Underlying Derivative Transactions

The following table summarizes the net notional volumes of our open derivative financial instruments accounted for at fair value by commodity. Positive amounts represent net buys while bracketed amounts are net sell transactions (in thousands):

Non-trading

Commodity	Notional	December 31, 2021	December 31, 2020
Natural Gas	MMBtu	3,862	2,880
Electricity	MWh	1,785	1,845

Trading

Commodity	Notional	December 31, 2021	December 31, 2020
Natural Gas	MMBtu	1,536	102

Gains (Losses) on Derivative Instruments

Gains (losses) on derivative instruments, net and current period settlements on derivative instruments were as follows for the periods indicated (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Gain (loss) on non-trading derivatives, net	$ 22,130	$ (23,439)	$ (67,955)
(Loss) gain on trading derivatives, net	(930)	53	206
Gain (loss) on derivatives, net	**$ 21,200**	**$ (23,386)**	**$ (67,749)**
Current period settlements on non-trading derivatives [1]	(15,752)	37,921	42,944
Current period settlements on trading derivatives	60	(192)	(124)
Total current period settlements on derivatives [1]	**$ (15,692)**	**$ 37,729**	**$ 42,820**

(1) Excludes settlements of zero, $0.3 million, and $(0.9) million, respectively, for the years ended December 31, 2021, 2020, and 2019 related to power call options.

Gains (losses) on trading derivative instruments are recorded in net asset optimization revenues and gains (losses) on non-trading derivative instruments are recorded in retail cost of revenues on the consolidated statements of operations.

Fair Value of Derivative Instruments

The following tables summarize the fair value and offsetting amounts of our derivative instruments by counterparty and collateral received or paid (in thousands):

	December 31, 2021				
Description	Gross Assets	Gross Amounts Offset	Net Assets	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ 7,121	$ (3,319)	$ 3,802	$ —	$ 3,802
Trading commodity derivatives	143	(15)	128	—	128
Total Current Derivative Assets	7,264	(3,334)	3,930	—	3,930
Non-trading commodity derivatives	411	(71)	340	—	340
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Assets	411	(71)	340	—	340
Total Derivative Assets	$ 7,675	$ (3,405)	$ 4,270	$ —	$ 4,270

Description	Gross Liabilities	Gross Amounts Offset	Net Liabilities	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ (18,195)	$ 14,504	$ (3,691)	$ 491	$ (3,200)
Trading commodity derivatives	(1,403)	445	(958)	—	(958)
Total Current Derivative Liabilities	(19,598)	14,949	(4,649)	491	(4,158)
Non-trading commodity derivatives	(236)	200	(36)	—	(36)
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Liabilities	(236)	200	(36)	—	(36)
Total Derivative Liabilities	$ (19,834)	$ 15,149	$ (4,685)	$ 491	$ (4,194)

	December 31, 2020				
Description	Gross Assets	Gross Amounts Offset	Net Assets	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ 308	$ (105)	$ 203	$ —	$ 203
Trading commodity derivatives	112	(4)	108	—	108
Total Current Derivative Assets	420	(109)	311	—	311
Non-trading commodity derivatives	—	—	—	—	—
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Assets	—	—	—	—	—
Total Derivative Assets	$ 420	$ (109)	$ 311	$ —	$ 311

Description	Gross Liabilities	Gross Amounts Offset	Net Liabilities	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ (11,139)	$ 3,620	$ (7,519)	$ 86	$ (7,433)
Trading commodity derivatives	(74)	2	(72)	—	(72)
Total Current Derivative Liabilities	(11,213)	3,622	(7,591)	86	(7,505)
Non-trading commodity derivatives	(838)	611	(227)	—	(227)
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Liabilities	(838)	611	(227)	—	(227)
Total Derivative Liabilities	$ (12,051)	$ 4,233	$ (7,818)	$ 86	$ (7,732)

7. Property and Equipment

Property and equipment consist of the following (in thousands):

	Estimated useful lives (years)	December 31, 2021	December 31, 2020
Information technology	2 – 5	$ 6,534	$ 5,821
Furniture and fixtures	2 – 5	957	957
Total		7,491	6,778
Accumulated depreciation		(3,230)	(3,424)
Property and equipment—net		**$ 4,261**	**$ 3,354**

Information technology assets include software and consultant time used in the application, development and implementation of various systems including customer billing and resource management systems. As of each of December 31, 2021 and 2020, information technology includes $0.2 million and $0.7 million, respectively, of costs associated with assets not yet placed into service.

Depreciation expense recorded in the consolidated statements of operations was $1.8 million, $2.1 million and $2.3 million for the years ended December 31, 2021, 2020 and 2019, respectively.

8. Intangible Assets

Goodwill, customer relationships and trademarks consist of the following amounts (in thousands):

	December 31, 2021	December 31, 2020
Goodwill	**$ 120,343**	**$ 120,343**
Customer Relationships— Acquired		
Cost	$ 46,552	$ 58,688
Accumulated amortization	(41,120)	(44,175)
Customer Relationships—Acquired	**$ 5,432**	**$ 14,513**
Customer Relationships—Other		
Cost	$ 15,955	$ 8,988
Accumulated amortization	(7,204)	(5,733)
Customer Relationships—Other, net	**$ 8,751**	**$ 3,255**
Trademarks		
Cost	$ 7,040	$ 7,570
Accumulated amortization	(3,508)	(2,972)
Trademarks, net	**$ 3,532**	**$ 4,598**

Changes in goodwill, customer relationships (including non-compete agreements) and trademarks consisted of the following (in thousands):

	Goodwill	Customer Relationships— Acquired & Non-Compete Agreements	Customer Relationships— Other	Trademarks
Balance at December 31, 2018	$ 120,343	$ 36,194	$ 6,865	$ 7,287
Additions	—	—	6,913	—
Amortization	—	(12,342)	(6,256)	(1,579)
Balance at December 31, 2019	$ 120,343	$ 23,852	$ 7,522	$ 5,708
Amortization	—	(9,339)	(4,267)	(1,110)
Balance at December 31, 2020	$ 120,343	$ 14,513	$ 3,255	$ 4,598
Additions	—	—	9,100	—
Adjustments	—	—	(27)	—
Amortization	—	(9,081)	(3,577)	(1,066)
Balance at December 31, 2021	**$ 120,343**	**$ 5,432**	**$ 8,751**	**$ 3,532**

Estimated future amortization expense for customer relationships and trademarks at December 31, 2021 is as follows (in thousands):

Year Ending December 31,	
2022	$ 9,227
2023	3,639
2024	2,830
2025	404
2026	404
> 5 years	1,211
Total	**$ 17,715**

9. Debt

Debt consists of the following amounts as of December 31, 2021 and 2020 (in thousands):

	December 31, 2021	December 31, 2020
Long-term debt:		
Senior Credit Facility [1] [2]	$ 135,000	$ 100,000
Total long-term debt	135,000	100,000
Total debt	$ 135,000	$ 100,000

(1) As of December 31, 2021 and 2020, the weighted average interest rate on the Senior Credit Facility was 3.24% and 3.75%, respectively.
(2) As of December 31, 2021 and 2020, we had $27.7 million and $31.0 million in letters of credit issued, respectively.

Capitalized financing costs associated with our Senior Credit Facility were $1.8 million and $1.6 million as of December 31, 2021 and 2020, respectively. Of these amounts, $1.0 million and $1.0 million are recorded in other current assets, and $0.8 million and $0.6 million are recorded in other non-current assets in the consolidated balance sheets as of December 31, 2021 and 2020, respectively.

Interest expense consists of the following components for the periods indicated (in thousands):

	Years Ended December 31,		
	2021	2020	2019
Senior Credit Facility	$ 2,206	$ 2,291	$ 5,263
Letters of credit fees and commitment fees	1,417	1,472	1,656
Amortization of deferred financing costs	997	1,210	1,275
Other	306	293	197
Verde promissory note	—	—	230
Interest expense	$ 4,926	$ 5,266	$ 8,621

Senior Credit Facility

The Company, as guarantor, and Spark HoldCo (the “Borrower” and, together with each subsidiary of Spark HoldCo (“Co-Borrowers”)) maintain a senior secured borrowing base credit facility (as amended from time to time, “Senior Credit Facility”) that allows us to borrow on a revolving basis and has a maximum borrowing capacity of $227.5 million as of December 31, 2021. As further described below, on October 15, 2021, the Company entered into the Fifth Amendment to its Senior Credit Facility.

Prior to the Fifth Amendment and subject to applicable sub-limits and terms of the Senior Credit Facility, borrowings were available for the issuance of letters of credit (“Letters of Credit”), working capital and general purpose revolving credit loans (“Working Capital Loans”), and share buyback loans (“Share Buyback Loans”). Prior to the Fifth Amendment, the Senior Credit Facility matured in July 2022.

On October 15, 2021, the Company entered into the Fifth Amendment to its Senior Credit Facility, which, among other things extended the maturity date, added a provision for borrowings to fund acquisitions ("Acquisition Loans") subject to limits as defined in the agreement, and terminated the provision allowing for Share Buyback Loans. Pursuant to the Fifth Amendment, the Senior Credit Facility will mature on October 13, 2023, and all amounts outstanding thereunder will be payable on the maturity date. Borrowings under the Senior Credit Facility may be used to pay fees and expenses in connection with the Senior Credit Facility, finance ongoing working capital requirements and general corporate purpose requirements of the Co-Borrowers, and to provide partial funding for acquisitions, as allowed under terms of the Senior Credit Facility. The Fifth Amendment provides for Acquisition Loans not to exceed 75% of the adjusted purchase price of the acquisition, as defined in the agreement.

Pursuant to the Senior Credit Facility, the interest rate for Working Capital Loans and Letters of Credit under the Senior Credit Facility is generally determined by reference to the Eurodollar rate plus an applicable margin of up to

3.25% per annum (based on the prevailing utilization) or an alternate base rate plus an applicable margin of up to 2.25% per annum (based on the prevailing utilization). The alternate base rate is equal to the highest of (i) the prime rate (as published in the Wall Street Journal), (ii) the federal funds rate plus 0.50% per annum, or (iii) the reference Eurodollar rate plus 1.00%.

Prior to the Fifth Amendment, borrowings under the Senior Credit Facility for Share Buyback Loans, were generally determined by reference to the Eurodollar rate plus an applicable margin of 4.50% per annum or the alternate base rate plus an applicable margin of 3.50% per annum.

Pursuant to the Fifth Amendment, borrowings under the Senior Credit Facility for Acquisition Loans are generally determined by reference to the Eurodollar rate plus an applicable margin of 4.00% per annum or the alternate base rate plus an applicable margin of 3.00% per annum.

The Co-Borrowers pay a commitment fee of 0.50% quarterly in arrears on the unused portion of the Senior Credit Facility. In addition, the Co-Borrowers are subject to additional fees including an upfront fee, an annual agency fee, and letter of credit fees based on a percentage of the face amount of letters of credit payable to any syndicate member that issues a letter of credit.

The Senior Credit Facility contains covenants that, among other things, require the maintenance of specified ratios or conditions including:

- *Minimum Fixed Charge Coverage Ratio*. We must maintain a minimum fixed charge coverage ratio of not less than 1.25 to 1.00. The Fixed Charge Coverage Ratio is defined as the ratio of (a) Adjusted EBITDA to (b) the sum of consolidated (with respect to the Company and the Co-Borrowers) interest expense, letter of credit fees, commitment fees, acquisition earn-out payments (excluding earnout payments funded with proceeds from newly issued preferred or common equity), distributions, scheduled amortization payments, and payments made on or after the closing of the Fourth Amendment to the Senior Credit Facility (other than such payments made from escrow accounts which were funded in connection with a permitted acquisition) related to the settlement of civil and regulatory matters if not included in the calculation of Adjusted EBITDA. Our Minimum Fixed Charge Coverage Ratio as of December 31, 2021 was 2.12 to 1.00.

- *Maximum Total Leverage Ratio*. We must maintain a ratio of (x) the sum of total indebtedness (excluding eligible subordinated debt and letter of credit obligations), plus (y) gross amounts reserved for civil and regulatory liabilities identified in SEC filings, to Adjusted EBITDA of no more than 2.50 to 1.00. Our Maximum Total Leverage Ratio as of December 31, 2021 was 1.86 to 1.00.

- *Maximum Senior Secured Leverage Ratio*. We must maintain a Senior Secured Leverage Ratio of no more than 1.85 to 1.00. The Senior Secured Leverage Ratio is defined as the ratio of (a) all indebtedness of the loan parties on a consolidated basis that is secured by a lien on any property of any loan party (including the effective amount of all loans then outstanding under the Senior Credit Facility) to (b) Adjusted EBITDA. Our Maximum Senior Secured Leverage Ratio as of December 31, 2021 was 1.67 to 1.00.

The Senior Credit Facility contains various negative covenants that limit our ability to, among other things, incur certain additional indebtedness, grant certain liens, engage in certain asset dispositions, merge or consolidate, make certain payments, distributions, investments, acquisitions or loans, materially modify certain agreements, or enter into transactions with affiliates. The Senior Credit Facility also contains affirmative covenants that are customary for credit facilities of this type. As of December 31, 2021, we were in compliance with our various covenants under the Senior Credit Facility.

The Senior Credit Facility is secured by pledges of the equity of the portion of Spark HoldCo owned by us, the equity of Spark HoldCo's subsidiaries, the Co-Borrowers' present and future subsidiaries, and substantially all of the Co-Borrowers' and their subsidiaries' present and future property and assets, including accounts receivable, inventory and liquid investments, and control agreements relating to bank accounts.

We are entitled to pay cash dividends to the holders of the Series A Preferred Stock and Class A common stock so long as: (a) no default exists or would result therefrom; (b) the Co-Borrowers are in pro forma compliance with all financial covenants before and after giving effect thereto; and (c) the outstanding amount of all loans and letters of credit does not exceed the borrowing base limits. Prior to the Fifth Amendment, which terminated Share Buyback Loans, we were entitled to repurchase up to an aggregate amount of 10,000,000 shares of our Class A common stock, and up to $92.7 million of Series A Preferred Stock through one or more normal course open market purchases through NASDAQ so long: (a) no default existed or would result therefrom; (b) the Co-Borrowers were in pro forma compliance with all financial covenants before and after giving effect thereto; and (c) the outstanding amount of all loans and letters of credit did not exceed the borrowing base limits.

The Senior Credit Facility contains certain customary representations and warranties and events of default. Events of default include, among other things, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults and cross-acceleration to certain indebtedness, certain events of bankruptcy, certain events under ERISA, material judgments in excess of $5.0 million, certain events with respect to material contracts, and actual or asserted failure of any guaranty or security document supporting the Senior Credit Facility to be in full force and effect. A default will also occur if at any time W. Keith Maxwell III ceases to, directly or indirectly, own at least 13,600,000 Class A and Class B shares on a combined basis (to be adjusted for any stock split, subdivisions or other stock reclassification or recapitalization), and a controlling percentage of the voting equity interest of the Company, and certain other changes in control. If such an event of default occurs, the lenders under the Senior Credit Facility would be entitled to take various actions, including the acceleration of amounts due under the facility and all actions permitted to be taken by a secured creditor.

Subordinated Debt Facility

In October 2021, the Company entered into an Amended and Restated Subordinated Promissory Note in the principal amount of up to $25.0 million (the "Subordinated Debt Facility"), by and among the Company, Spark HoldCo and Retailco. The Subordinated Debt Facility amended and restated the Subordinated Promissory Note dated June 2019, by and among the Company, Spark HoldCo and Retailco, solely to extend the maturity date from January 31, 2023 to January 31, 2025.

The Subordinated Debt Facility allows us to draw advances in increments of no less than $1.0 million per advance up to the maximum principal amount of the Subordinated Debt Facility. Advances thereunder accrue interest at 5% per annum from the date of the advance. We have the right to capitalize interest payments under the Subordinated Debt Facility. The Subordinated Debt Facility is subordinated in certain respects to our Senior Credit Facility pursuant to a subordination agreement. We may pay interest and prepay principal on the Subordinated Debt Facility so long as we are in compliance with the covenants under our Senior Credit Facility, are not in default under the Senior Credit Facility and have minimum availability of $5.0 million under the borrowing base under the Senior Credit Facility. Payment of principal and interest under the Subordinated Debt Facility is accelerated upon the occurrence of certain change of control or sale transactions.

As of December 31, 2021 and 2020, there were no outstanding borrowings under the Subordinated Debt Facility.

10. Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (exit price) in an orderly transaction between market participants at the measurement date. Fair values are based on assumptions that market participants would use when pricing an asset or liability, including assumptions about risk and the risks inherent in valuation techniques and the inputs to valuations. This includes the credit standing of counterparties involved and the impact of credit enhancements.

We apply fair value measurements to our commodity derivative instruments based on the following fair value hierarchy, which prioritizes the inputs to the valuation techniques used to measure fair value into three broad levels:

- Level 1—Quoted prices in active markets for identical assets and liabilities. Instruments categorized in Level 1 primarily consist of financial instruments such as exchange-traded derivative instruments.
- Level 2—Inputs other than quoted prices recorded in Level 1 that are either directly or indirectly observable for the asset or liability, including quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived from observable market data by correlation or other means. Instruments categorized in Level 2 primarily include non-exchange traded derivatives such as over-the-counter commodity forwards and swaps and options.
- Level 3—Unobservable inputs for the asset or liability, including situations where there is little, if any, observable market activity for the asset or liability. The Level 3 category includes estimated earnout obligations related to our acquisitions.

As the fair value hierarchy gives the highest priority to quoted prices in active markets (Level 1) and the lowest priority to unobservable data (Level 3), the Company maximizes the use of observable inputs and minimizes the use of unobservable inputs when measuring fair value. These levels can change over time. In some cases, the inputs used to measure fair value might fall in different levels of the fair value hierarchy. In these cases, the lowest level input that is significant to a fair value measurement in its entirety determines the applicable level in the fair value hierarchy.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following tables present assets and liabilities measured and recorded at fair value in our consolidated balance sheets on a recurring basis by and their level within the fair value hierarchy (in thousands):

	Level 1	Level 2	Level 3	Total
December 31, 2021				
Non-trading commodity derivative assets	$ 104	$ 4,038	$ —	$ 4,142
Trading commodity derivative assets	—	128	—	128
Total commodity derivative assets	**$ 104**	**$ 4,166**	**$ —**	**$ 4,270**
Non-trading commodity derivative liabilities	$ —	$ (3,236)	$ —	$ (3,236)
Trading commodity derivative liabilities	—	(958)	—	(958)
Total commodity derivative liabilities	**$ —**	**$ (4,194)**	**$ —**	**$ (4,194)**

	Level 1	Level 2	Level 3	Total
December 31, 2020				
Non-trading commodity derivative assets	$ 104	$ 99	$ —	$ 203
Trading commodity derivative assets	—	108	—	108
Total commodity derivative assets	**$ 104**	**$ 207**	**$ —**	**$ 311**
Non-trading commodity derivative liabilities	$ (5)	$ (7,655)	$ —	$ (7,660)
Trading commodity derivative liabilities	—	(72)	—	(72)
Total commodity derivative liabilities	**$ (5)**	**$ (7,727)**	**$ —**	**$ (7,732)**

We had no transfers of assets or liabilities between any of the above levels during the years ended December 31, 2021, 2020 and 2019.

Our derivative contracts include exchange-traded contracts valued utilizing readily available quoted market prices and non-exchange-traded contracts valued using market price quotations available through brokers or over-the-counter and on-line exchanges. In addition, in determining the fair value of our derivative contracts, we apply a credit risk valuation adjustment to reflect credit risk, which is calculated based on our or the counterparty's

historical credit risks. As of December 31, 2021 and 2020, the credit risk valuation adjustment was a reduction of derivative liabilities, net of $0.1 million and $0.2 million, respectively.

11. Stock-Based Compensation

Restricted Stock Units

We maintain a Long-Term Incentive Plan ("LTIP") for employees, consultants and directors of the Company and its affiliates who perform services for the Company. The purpose of the LTIP is to provide a means to attract and retain individuals to serve as directors, employees and consultants who provide services to the Company by affording such individuals a means to acquire and maintain ownership of awards, the value of which is tied to the performance of the Company's Class A common stock. The LTIP provides for grants of cash payments, stock options, stock appreciation rights, restricted stock or units, bonus stock, dividend equivalents, and other stock-based awards with the total number of shares of stock available for issuance under the LTIP not to exceed 2,750,000 shares.

Restricted stock units granted to our officers, employees, non-employee directors and certain employees of our affiliates who perform services for the Company vest over approximately one year for non-employee directors and ratably over approximately one to four years for officers, employees, and employees of affiliates, with the initial vesting date occurring in May of the subsequent year. Each restricted stock unit is entitled to receive a dividend equivalent when dividends are declared and distributed to shareholders of Class A common stock. These dividend equivalents are retained by the Company, reinvested in additional restricted stock units effective as of the record date of such dividends and vested upon the same schedule as the underlying restricted stock unit.

The Company measures the cost of awards classified as equity awards based on the grant date fair value of the award, and the Company measures the cost of awards classified as liability awards at the fair value of the award at each reporting period. The Company has utilized an estimated 10% annual forfeiture rate of restricted stock units in determining the fair value for all awards excluding those issued to executive level recipients and non-employee directors, for which no forfeitures are estimated to occur. The Company has elected to recognize related compensation expense on a straight-line basis over the associated vesting periods.

Although the restricted stock units allow for cash settlement of the awards at the sole discretion of management of the Company, management intends to settle the awards by issuing shares of the Company's Class A common stock.

Total stock-based compensation expense for the years ended December 31, 2021, 2020 and 2019 was $3.4 million, $2.5 million and $5.5 million. Total income tax benefit related to stock-based compensation recognized in net income (loss) was $0.4 million, $0.3 million and $0.6 million for the years ended December 31, 2021, 2020 and 2019.

Equity Classified Restricted Stock Units

Restricted stock units issued to employees and officers of the Company are classified as equity awards. The fair value of the equity classified restricted stock units is based on the Company's Class A common stock price as of the grant date. The Company recognized stock based compensation expense of $3.1 million, $2.4 million and $5.0 million for the years ended December 31, 2021, 2020 and 2019, respectively, in general and administrative expense with a corresponding increase to additional paid in capital. The following table summarizes equity classified restricted stock unit activity and unvested restricted stock units for the year ended December 31, 2021:

	Number of Shares (in thousands)	Weighted Average Grant Date Fair Value
Unvested at December 31, 2020	**305**	**$9.48**
Granted	394	10.67
Dividend reinvestment issuances	27	10.79
Vested	(319)	10.90
Forfeited	(14)	10.56
Unvested at December 31, 2021	**393**	**$10.35**

For the year ended December 31, 2021, 319,351 restricted stock units vested, with 211,154 shares of Class A common stock distributed to the holders of these units and 108,197 shares of Class A common stock withheld by the Company to cover taxes owed on the vesting of such units. As of December 31, 2021, there was $2.9 million of total unrecognized compensation cost related to the Company's equity classified restricted stock units, which is expected to be recognized over a weighted average period of approximately 3.0 years.

Change in Control Restricted Stock Units

In 2018, the Company granted Change in Control Restricted Stock Units ("CIC RSUs") to certain officers that vest upon a "Change in Control", if certain conditions are met. The terms of the CIC RSUs define a "Change in Control" to generally mean:

- the consummation of an agreement to acquire or tender offer for beneficial ownership by any person, of 50% or more of the combined voting power of our outstanding voting securities entitled to vote generally in the election of directors, or by any person of 90% or more of the then total outstanding shares of Class A common stock;
- individuals who constitute the incumbent board cease for any reason to constitute at least a majority of the board;
- consummation of certain reorganizations, mergers or consolidations or a sale or other disposition of all or substantially all of our assets;
- approval by our stockholders of a complete liquidation or dissolution;
- a public offering or series of public offerings by Retailco and its affiliates, as a selling shareholder group, in which their total interest drops below 10 million of our total outstanding voting securities;
- a disposition by Retailco and its affiliates in which their total interest drops below 10 million of our total outstanding voting securities; or
- any other business combination, liquidation event of Retailco and its affiliates or restructuring of us which the Compensation Committee deems in its discretion to achieve the principles of a Change in Control.

The equity classified restricted stock unit table above excludes unvested CIC RSUs as the conditions for Change in Control have not been met. The Company has not recognized stock compensation expense related to the CIC RSUs as the Change in Control conditions have not been met.

Liability Classified Restricted Stock Units

Restricted stock units issued to non-employee directors of the Company and employees of certain of our affiliates are classified as liability awards as the awards are either to a) non-employee directors that allow for the recipient to choose net settlement for the amount of withholding taxes dues upon vesting or b) to employees of certain affiliates of the Company and are therefore not deemed to be employees of the Company. The fair value of the liability classified restricted stock units is based on the Company's Class A common stock price as of the reported period ending date. The Company recognized stock based compensation expense of $0.3 million, $0.1 million and $0.5 million for years ended December 31, 2021, 2020 and 2019, respectively, in general and administrative expense with a corresponding increase to liabilities. As of December 31, 2021 and 2020, the Company's liabilities related to these restricted stock units recorded in current liabilities was $0.2 million and $0.1 million, respectively. The

following table summarizes liability classified restricted stock unit activity and unvested restricted stock units for the year ended December 31, 2021:

	Number of Shares (in thousands)	Weighted Average Reporting Date Fair Value
Unvested at December 31, 2020	**37**	**$9.57**
Granted	8	11.43
Dividend reinvestment issuances	1	11.43
Vested	(23)	10.70
Forfeited	—	—
Unvested at December 31, 2021	**23**	**$11.43**

For the year ended December 31, 2021, 23,052 restricted stock units vested, with 7,987 shares of Class A common stock distributed to the holders of these units and 15,065 shares of Class A common stock withheld by the Company to cover taxes owed on the vesting of such units. As of December 31, 2021, there was $0.1 million of total unrecognized compensation cost related to the Company's liability classified restricted stock units, which is expected to be recognized over a weighted average period of approximately 0.4 years.

12. Income Taxes

We and our subsidiaries, CenStar and Verde Energy USA, Inc. ("Verde Corp") are each subject to U.S. federal income tax as corporations. CenStar and Verde Corp file consolidated tax returns in jurisdictions that allow combined reporting. Spark HoldCo and its subsidiaries, with the exception of CenStar and Verde Corp, are treated as flow-through entities for U.S. federal income tax purposes, and, as such, are generally not subject to U.S. federal income tax at the entity level. Rather, the tax liability with respect to their taxable income is passed through to their members or partners. Accordingly, we are subject to U.S. federal income taxation on our allocable share of Spark HoldCo's net U.S. taxable income.

In our financial statements, we report federal and state income taxes for our share of the partnership income attributable to our ownership in Spark HoldCo and for the income taxes attributable to CenStar and Verde Corp. Net income attributable to non-controlling interest includes the provision for income taxes related to CenStar and Verde Corp.

We account for income taxes using the asset and liability method. Deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and the tax bases of the assets and liabilities. We apply existing tax law and the tax rate that we expect to apply to taxable income in the years in which those differences are expected to be recovered or settled in calculating the deferred tax assets and liabilities. Effects of changes in tax rates on deferred tax assets and liabilities are recognized in income in the period of the tax rate enactment. A valuation allowance is recorded when it is not more likely than not that some or all of the benefit from the deferred tax asset will be realized.

The provision for income taxes for the years ended December 31, 2021, 2020, and 2019 included the following components:

(in thousands)	2021	2020	2019
Current:			
Federal	$ 381	$ 10,722	$ 10,511
State	(622)	3,109	3,675
Total Current	(241)	13,831	14,186
Deferred:			
Federal	3,070	1,778	(4,668)
State	975	127	(2,261)
Total Deferred	4,045	1,905	(6,929)
Provision for income taxes	**$ 3,804**	**$ 15,736**	**$ 7,257**

The effective income tax rate was (2,588)%, 19%, and 34% for the years ended December 31, 2021, 2020, and 2019, respectively. The following table reconciles the income tax benefit that would result from application of the statutory federal tax rate, 21%, 21%, and 21% for the years ended December 31, 2021, 2020, and 2019 respectively, to the amount included in the consolidated statement of operations:

(in thousands)	2021	2020	2019
Expected provision at federal statutory rate	$ (31)	$ 17,630	$ 4,509
Increase (decrease) resulting from:			
Non-controlling interest	3,475	(6,464)	(1,329)
Class A Preferred Stock dividends	1,264	1,304	1,341
State income taxes, net of federal income tax effect	1,487	4,145	1,382
Prior year tax adjustments	(996)	(993)	1,060
Non-deductible expenses	(158)	195	256
Rate differential on loss carryback	(1,157)	—	—
Other	(80)	(81)	38
Provision for income taxes	**$ 3,804**	**$ 15,736**	**$ 7,257**

Total income tax expense for the years ended December 31, 2021, 2020 and 2019 differed from amounts computed by applying the U.S. federal statutory tax rates to pre-tax income primarily due to state income taxes and the impact of permanent differences between book and taxable income, most notably the income attributable to non-controlling interest, which gets taxed at the non-controlling interest partner level. In addition, in 2021 the Company recognized an effective tax rate benefit from the carry-back of a net operating loss due to higher statutory rate in the carry-back years.

The components of our deferred tax assets as of December 31, 2021 and 2020 are as follows:

(in thousands)	2021	2020
Deferred Tax Assets:		
Investment in Spark HoldCo	$ 20,942	$ 25,751
Derivative Liabilities	—	416
Intangibles	2,822	1,393
Other	599	531
Total deferred tax assets	**24,363**	**28,091**
Deferred Tax Liabilities:		
Derivative Liabilities	(245)	—
Other	(203)	(131)
Total deferred tax liabilities	**(448)**	**(131)**
Total deferred tax assets/liabilities	**$ 23,915**	**$ 27,960**

We periodically assess whether it is more likely than not that we will generate sufficient taxable income to realize our deferred income tax assets. In making this determination, we consider all available positive and negative evidence and makes certain assumptions. We consider, among other things, our deferred tax liabilities, the overall business environment, our historical earnings and losses, current industry trends, and our outlook for future years. We believe it is more likely than not that our deferred tax assets will be utilized, and accordingly have not recorded a valuation allowance on these assets.

The tax years 2016 through 2020 remain open to examination by the major taxing jurisdictions to which the Company is subject to income tax.

Accounting for uncertainty in income taxes prescribes a recognition threshold and measurement methodology for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. As of December 31, 2021 and 2020 there was no liability, and for the years ended December 31, 2021, 2020 and 2019, there was no expense recorded for interest and penalties associated with uncertain tax positions or unrecognized tax positions. Additionally, the Company does not have unrecognized tax benefits as of December 31, 2021 and 2020.

13. Commitments and Contingencies

From time to time, we may be involved in legal, tax, regulatory and other proceedings in the ordinary course of business. Liabilities for loss contingencies arising from claims, assessments, litigation or other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated.

Legal Proceedings

Below is a summary of our currently pending material legal proceedings. We are subject to lawsuits and claims arising in the ordinary course of our business. The following legal proceedings are in various stages and are subject to substantial uncertainties concerning the outcome of material factual and legal issues. Accordingly, unless otherwise specifically noted, we cannot currently predict the manner and timing of the resolutions of these legal proceedings or estimate a range of possible losses or a minimum loss that could result from an adverse verdict in a potential lawsuit. While the lawsuits and claims are asserted for amounts that may be material should an unfavorable outcome occur, management does not currently expect that any currently pending matters will have a material adverse effect on our financial position or results of operations.

Consumer Lawsuits

Similar to other energy service companies (“ESCOs”) operating in the industry, from time-to-time, the Company is subject to class action lawsuits in various jurisdictions where the Company sells natural gas and electricity.

Variable Rate Cases

In the cases referred to as Variable Rate Cases, such actions involve consumers alleging they paid higher rates than they would have if they stayed with their default utility. The underlying claims of each case are similar; however, because numerous cases have been brought in several different jurisdictions, the varying applicable case law, the varying facts and stages of each case, the Company agreed to mediate to avoid duplicative defense costs in numerous jurisdictions. The Company continues to deny the allegations asserted by Plaintiffs and intends to vigorously defend these matters.

In January 2022, the Company participated in mediation which covered three Spark brand matters: (*1) Janet Rolland et al v. Spark Energy, LLC (D.N.J Apr. 2017); (2) Burger v. Spark Energy Gas, LLC (N.D. Ill. Dec. 2019); and (3) Local 901 v. Spark Energy, LLC (Sup. Ct. Allen County, Indiana Aug. 2019)*. The Company is working with an independent mediator to find a resolution to these cases, and the parties have suspended litigation pending a mutually agreed settlement. Given the ongoing mediation we cannot predict the outcome of these cases at this time.

In December of 2020, the Company participated in mediation which covered several Verde brand matters: (*1) Marshall v. Verde Energy USA, Inc. (D.N.J. Jan. 2018); (2) Mercado v. Verde Energy USA, Inc. (N.D. Ill. Mar. 2018); (3) Davis v. Verde Energy USA, Inc., et al. (D. Mass. Apr. 2019); (4) Panzer v. Verde Energy, USA Inc. and Oasis Power, LLC (E.D. Pa Aug. 2019); (5) LaQua v. Verde Energy USA New York, LLC (E.D.N Y. Jan. 2020); and (6) Abbate v. Verde Energy USA Ohio, LLC (S.D. Ohio Jun. 2020)*. The parties agreed to a global settlement that would resolve all of these Verde cases on a nationwide basis. On December 17, 2021, the class action settlement agreement was granted final approval in the United States District Court for the Northern District of Illinois Eastern Division and the deadline for consumers to file a claim is March 31, 2022.

On January 14, 2021, *Glikin, et. all v. Major Energy Electric Services, LLC,* a purported variable rate class action was filed in the United States District Court, Southern District of New York, attempting to represent a class of all Major Energy customers (including customers of companies Major Energy acts as a successor to) in the United States charged a variable rate for electricity or gas by Major Energy during the applicable statute of limitations period up to and including the date of judgment. The Company believes there is no merit to this case and plans to vigorously defend this matter; however, given the current early stage of this matter, we cannot predict the outcome of this case at this time.

Corporate Matter Lawsuits

Saul Horowitz, as Sellers' Representative for the former owners of the Major Energy Companies v. National Gas & Electric, LLC ("NG&E") and Spark Energy, Inc., was a lawsuit filed on October 17, 2017 in the United States District Court for the Southern District of New York related to the Company's purchase of Major Energy and structure of the earn-out in connection therewith ("Major Earn-Out Case") asserting claims of fraudulent inducement against NG&E, breach of contract against NG&E and Spark, and tortious interference with contract against Spark related to a membership interest purchase agreement, subsequent dropdown, and associated earnout agreements with the Major Energy Companies' former owners. On September 30, 2021, the Court held in favor of the Company on all claims and entered judgment in favor of the Company to close this case. On October 29, 2021, plaintiffs filed a notice of appeal to the Second Circuit Court of Appeals. The Company will continue to aggressively defend this matter.

Several smaller, related cases to the Major Earn-Out Case involving the same facts are pending in the United States District Court for the Southern District of New York. These are regarding Major Energy executive compensation agreements. The Company believes there is no merit to these cases and is vigorously defending these matters; however, we cannot predict the outcome of these cases at this time.

In addition to the matters disclosed above, the Company may from time to time be subject to legal proceedings that arise in the ordinary course of business. Although there can be no assurance in this regard, the Company does not expect any of those legal proceedings to have a material adverse effect on the Company's results of operations, cash flows or financial condition.

Regulatory Matters

Many state regulators, such at the state Public Utility Commissions and Attorney Generals, have increased scrutiny on retail energy providers, across all industry providers. We are subject to regular regulatory inquiries, which include subpoenas, license renewal reviews, and preliminary investigations in the ordinary course of our business. Below is a summary of our currently pending material state regulatory matters. The following state regulatory matters are in various stages and are subject to substantial uncertainties concerning the outcome of material factual and legal issues. Accordingly, we cannot currently predict the manner and timing of the resolution of these state regulatory matters or estimate a range of possible losses or a minimum loss that could result from an adverse action. Management does not currently expect that any currently pending state regulatory matters will have a material adverse effect on our financial position or results of operations.

Connecticut. In 2019, PURA initiated review of two of the Company's brands in Connecticut, Spark and Verde, focusing on marketing, billing and enrollment practices. The Company is cooperating with PURA's requests to review Spark and Verde practices in Connecticut.

New York. Prior to the purchase of Major Energy by the Company, in 2015, Major Energy Services, LLC and Major Energy Electric Services were contacted by the Attorney General, Bureau of Consumer Frauds & Protection for State of New York relating to their marketing practices. Major Energy has exchanged information in response to various requests from the Attorney General and recently agreed to respond to additional questions via remote proceedings in October of 2020. In January 2022, New York State Attorney General filed a complaint against Major Energy regarding the historical acts of Major Energy (a pre-acquisition matter). Via Renewables, Inc. was also named in the action due to current ownership. We are responding to the complaint (due end of March 2022) and seeking indemnification from the Major Energy former owners.

Pennsylvania. Verde Energy USA, Inc. ("Verde") was the subject of a formal investigation by the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement ("PPUC") initiated on January 30, 2020. The investigation asserted that Verde may have violated Pennsylvania retail energy supplier regulations. The Company met with the PPUC in February 2020 to discuss the matter and to work with the PPUC cooperatively. Verde reached a settlement, which included payment of a civil penalty of $1.0 million and a $0.1 million contribution to the PPL hardship fund. On June 30, 2020, Verde and PPUC Bureau of Investigation and Enforcement filed a Joint Petition for Approval of Settlement and Statements in Support of that Joint Petition with the Commission. The Office of Consumer Advocacy in Pennsylvania has filed several objections to this settlement; however, the settlement has survived all objections to date, and should be finalized by mid-2022.

Maine. In early 2018, Staff of the Maine Public Utilities Commission ("Maine PUC") issued letters to Electricity Maine seeking information about customer complaints principally associated with historical door-to-door ("D2D") sales practices. The Maine PUC hearing examiner released its report in April 2020 alleging failures of compliance related to enrollment and marketing practices by Electricity Maine. The Company worked cooperatively with the Maine Office of Public Advocate and the staff of the Maine PUC on a revised settlement which was approved by the Maine PUC in February 2021.

In addition to the matters disclosed above, in the ordinary course of business, the Company may from time to time be subject to regulators initiating informal reviews or issuing subpoenas for information as means to evaluate the Company and its subsidiaries' compliance with applicable laws, rule, regulations and practices. Although there can be no assurance in this regard, the Company does not expect any of those regulatory reviews to have a material adverse effect on the Company's results of operations, cash flows or financial condition.

Indirect Tax Audits

We are undergoing various types of indirect tax audits spanning from years 2014 to 2021 for which additional liabilities may arise. At the time of filing these consolidated financial statements, these indirect tax audits are at an early stage and subject to substantial uncertainties concerning the outcome of audit findings and corresponding responses.

As of December 31, 2021 and December 31, 2020 we had accrued $14.7 million and $26.6 million, respectively, related to litigation and regulatory matters and $0.7 million and $1.2 million, respectively, related to indirect tax audits. The outcome of each of these may result in additional expense.

14. Transactions with Affiliates

Transactions with Affiliates

We enter into transactions with and pay certain costs on behalf of affiliates that are commonly controlled in order to reduce risk, reduce administrative expense, create economies of scale, create strategic alliances and supply goods and services to these related parties. We also sell and purchase natural gas and electricity with affiliates. We present receivables and payables with the same affiliate on a net basis in the consolidated balance sheets as all affiliate activity is with parties under common control. Affiliated transactions include certain services to the affiliated companies associated with employee benefits provided through our benefit plans, insurance plans, leased office space, administrative salaries, due diligence work, recurring management consulting, and accounting, tax, legal, or

technology services. Amounts billed are based on the services provided, departmental usage, or headcount, which are considered reasonable by management. As such, the accompanying consolidated financial statements include costs that have been incurred by us and then directly billed or allocated to affiliates, as well as costs that have been incurred by our affiliates and then directly billed or allocated to us, and are recorded net in general and administrative expense on the consolidated statements of operations with a corresponding accounts receivable—affiliates or accounts payable—affiliates, respectively, recorded in the consolidated balance sheets. Transactions with affiliates for sales or purchases of natural gas and electricity, are recorded in retail revenues, retail cost of revenues, and net asset optimization revenues in the consolidated statements of operations with a corresponding accounts receivable—affiliate or accounts payable—affiliate recorded in the consolidated balance sheets.

The following tables presents asset and liability balances with affiliates (in thousands):

	December 31, 2021	December 31, 2020
Assets		
Accounts Receivable - affiliates	$ 3,819	$ 5,053
Total Assets - affiliates	**$ 3,819**	**$ 5,053**

	December 31, 2021	December 31, 2020
Liabilities		
Accounts Payable - affiliates	$ 491	$ 826
Total Liabilities - affiliates	**$ 491**	**$ 826**

The following table presents revenues and cost of revenues recorded in net asset optimization revenue associated with affiliates for the periods indicated (in thousands):

	December 31, 2021	December 31, 2020	December 31, 2019
Revenue NAO - affiliates	$ 1,566	$ 1,025	$ 2,423
Cost of Revenue NAO - affiliates	5	241	104
Net NAO - affiliates	**$ 1,561**	**$ 784**	**$ 2,319**

Cost Allocations

Where costs incurred on behalf of the affiliate or us cannot be determined by specific identification for direct billing, the costs are allocated to the affiliated entities or us based on estimates of percentage of departmental usage, wages or headcount. The total net amount direct billed and allocated to/(from) affiliates was $(0.5) million, $(1.5) million and $(0.7) million for the years ended December 31, 2021, 2020 and 2019, respectively.

Of the amounts directly billed and allocated from affiliates, we recorded general and administrative expense of $0.1 million, $0.2 million, and zero for the year ended December 31, 2021, 2020 and 2019 related to telemarketing activities performed by an affiliate.

Distributions to and Contributions from Affiliates

During the years ended December 31, 2021, 2020 and 2019, we made distributions to affiliates of our Founder of $14.8 million, $15.1 million and $15.1 million, respectively, for payments of quarterly distributions on their respective Spark HoldCo units. During the years ended December 31, 2021, 2020 and 2019, we also made distributions to these affiliates for gross-up distributions of $2.6 million, $14.4 million, and $19.7 million, respectively, in connection with distributions made between Spark HoldCo and Via Renewables, Inc. for payment of income taxes incurred by us.

Proceeds from Disgorgement of Stockholder Short-swing Profits

During the years ended December 31, 2021, 2020 and 2019, we recorded zero, zero, and $0.1 million, respectively, for the disgorgement of stockholder short-swing profits under Section 16(b) under the Exchange Act. The amount was recorded as an increase to additional paid-in capital in our consolidated balance sheet as of December 31, 2021, 2020 and 2019.

Subordinated Debt Facility

In June 2019, we and Spark HoldCo entered into a Subordinated Debt Facility with an affiliate owned by our Founder, which allows the Company to borrow up to $25.0 million. The Subordinated Debt Facility allows us to draw advances in increments of no less than $1.0 million per advance up to the maximum principal amount of the Subordinated Debt Facility. Advances thereunder accrue interest at 5% per annum from the date of the advance. As of December 31, 2021 and 2020, there were no outstanding borrowings under the Subordinated Debt Facility. See Note 9 "Debt" for a further description of terms and conditions of the Subordinated Debt Facility.

Tax Receivable Agreement

Prior to July 11, 2019, we were party to a tax receivable agreement ("TRA") with affiliates. Effective July 11, 2019, the Company entered into a TRA Termination and Release Agreement (the “Release Agreement”), which provided for a full and complete termination of any further payment, reimbursement or performance obligation of the Company, Retailco and NuDevco Retail under the TRA, whether past, accrued or yet to arise. Pursuant to the Release Agreement, the Company made a cash payment of approximately $11.2 million on July 15, 2019 to Retailco and NuDevco Retail. In connection with the termination of the TRA, Spark HoldCo made a distribution of approximately $16.3 million on July 15, 2019 to Retailco and NuDevco Retail under the Spark HoldCo Third Amended and Restated Limited Liability Company Agreement, as amended.

The TRA generally provided for the payment by us to affiliates of 85% of the net cash savings, if any, in U.S. federal, state and local income tax or franchise tax that we realized or would realize (or were deemed to realize in certain circumstances) in future periods as a result of (i) any tax basis increases resulting from the initial purchase by us of Spark HoldCo units from entities owned by our Founder, (ii) any tax basis increases resulting from the exchange of Spark HoldCo units for shares of Class A common stock pursuant to the Exchange Right (or resulting from an exchange of Spark HoldCo units for cash pursuant to the Cash Option) and (iii) any imputed interest deemed to be paid by us as a result of, and additional tax basis arising from, any payments we made under the TRA. We retained the benefit of the remaining 15% of these tax savings.

For the four-quarter periods ending September 30, 2016, 2017, and 2018, we met the threshold coverage ratio required to fund the payments required under the TRA. Our affiliates, however, granted us the right to defer the TRA payment related to the four-quarter period ending September 30, 2016 until May 2018. In April, May, and December of 2018, we paid a total of $6.2 million related to our obligations under the TRA for the 2015, 2016, and 2017 tax years.

15. Segment Reporting

Our determination of reportable business segments considers the strategic operating units under which we make financial decisions, allocate resources and assess performance of our business. Our reportable business segments are retail electricity and retail natural gas. The retail electricity segment consists of electricity sales and transmission to residential and commercial customers. The retail natural gas segment consists of natural gas sales to, and natural gas transportation and distribution for, residential and commercial customers. Corporate and other consists of expenses and assets of the retail electricity and natural gas segments that are managed at a consolidated level such as general and administrative expenses. Asset optimization activities are also included in Corporate and other.

For the years ended December 31, 2021, 2020 and 2019, we recorded asset optimization revenues of $57.0 million, $24.8 million and $62.8 million and asset optimization cost of revenues of $61.2 million, $25.5 million and $60.0 million, respectively, which are presented on a net basis in asset optimization revenues.

We use retail gross margin to assess the performance of our operating segments. Retail gross margin is defined as operating income (loss) plus (i) depreciation and amortization expenses and (ii) general and administrative expenses, less (i) net asset optimization revenues (expenses), (ii) net gains (losses) on non-trading derivative instruments, and (iii) net current period cash settlements on non-trading derivative instruments. We deduct net gains (losses) on non-trading derivative instruments, excluding current period cash settlements, from the retail gross margin calculation in order to remove the non-cash impact of net gains and losses on these derivative instruments. Retail gross margin should not be considered an alternative to, or more meaningful than, operating income (loss), as determined in accordance with GAAP.

Below is a reconciliation of retail gross margin to income (loss) before income tax expense (in thousands):

	Years Ended December 31,		
(in thousands)	**2021**	**2020**	**2019**
Reconciliation of Retail Gross Margin to Income (loss) before taxes			
(Loss) income before income tax expense	$ (147)	$ 83,954	$ 21,470
Gain on disposal of eRex	—	—	(4,862)
Interest and other income	(370)	(423)	(1,250)
Interest expense	4,926	5,266	8,621
Operating income	4,409	88,797	23,979
Depreciation and amortization	21,578	30,767	40,987
General and administrative	44,279	90,734	133,534
Less:			
Net asset optimization (expense) revenue	(4,243)	(657)	2,771
Net, gain (loss) on non-trading derivative instruments	22,130	(23,439)	(67,955)
Net, cash settlements on non-trading derivative instruments	(15,752)	37,921	42,944
Non-recurring event - Winter Storm Uri	(64,403)	—	—
Retail Gross Margin	**$ 132,534**	**$ 196,473**	**$ 220,740**

Financial data for business segments are as follows (in thousands):

Year Ended December 31, 2021	Retail Electricity	Retail Natural Gas	Corporate and Other	Eliminations	Consolidated
Total Revenues	$ 322,594	$ 75,134	$ (4,243)	$ —	$ 393,485
Retail cost of revenues	284,794	38,425	—	—	323,219
Less:					
Net asset optimization revenue	—	—	(4,243)	—	(4,243)
Net, gain on non-trading derivative instruments	19,070	3,060	—	—	22,130
Current period settlements on non-trading derivatives	(12,876)	(2,876)	—	—	(15,752)
Non-recurring event - Winter Storm Uri	(64,403)	—	—	—	(64,403)
Retail gross margin	**$ 96,009**	**$ 36,525**	**$ —**	**$ —**	**$ 132,534**
Total Assets	**$ 1,527,456**	**$ 7,320**	**$ 311,556**	**$ (1,491,056)**	**$ 355,276**
Goodwill	**$ 117,813**	**$ 2,530**	**$ —**	**$ —**	**$ 120,343**

Year Ended December 31, 2020	Retail Electricity	Retail Natural Gas	Corporate and Other	Eliminations	Consolidated
Total Revenues	$ 461,393	$ 94,154	$ (657)	$ —	$ 554,890
Retail cost of revenues	306,012	38,580	—	—	344,592
Less:					
Net asset optimization expense	—	—	(657)	—	(657)
Net, losses on non-trading derivative instruments	(23,242)	(197)	—	—	(23,439)
Current period settlements on non-trading derivatives	35,390	2,531	—	—	37,921
Retail gross margin	**$ 143,233**	**$ 53,240**	**$ —**	**$ —**	**$ 196,473**
Total Assets	**$ 2,906,139**	**$ 941,569**	**$ 318,865**	**$ (3,799,906)**	**$ 366,667**
Goodwill	**$ 117,813**	**$ 2,530**	**$ —**	**$ —**	**$ 120,343**

Year Ended December 31, 2019	Retail Electricity	Retail Natural Gas	Corporate and Other	Eliminations	Consolidated
Total Revenues	$ 688,451	$ 122,503	$ 2,771	$ —	$ 813,725
Retail cost of revenues	552,250	62,975	—	—	615,225
Less:					
Net asset optimization expense	—	—	2,771	—	2,771
Net, Losses on non-trading derivative instruments	(66,180)	(1,775)	—	—	(67,955)
Current period settlements on non-trading derivatives	41,841	1,103	—	—	42,944
Retail gross margin	**$ 160,540**	**$ 60,200**	**$ —**	**$ —**	**$ 220,740**
Total Assets	**$ 2,524,884**	**$ 820,601**	**$ 341,411**	**$ (3,263,928)**	**$ 422,968**
Goodwill	**$ 117,813**	**$ 2,530**	**$ —**	**$ —**	**$ 120,343**

Significant Customers

For each of the years ended December 31, 2021, 2020 and 2019, we did not have any significant customers that individually accounted for more than 10% of our consolidated retail revenue.

Significant Suppliers

For each of the years ended December 31, 2021, 2020 and 2019, we had two, one, and one significant suppliers that individually accounted for more than 10% of our consolidated retail cost of revenues. For each of the years ended December 31, 2021, 2020 and 2019, these suppliers accounted for 26%, 11% and 10% of our consolidated cost of revenue.

16. Customer Acquisitions

In May 2021, we entered into a series of asset purchase agreements and agreed to acquire up to approximately 56,900 RCEs for a cash purchase price of up to a maximum of $11.5 million. These customers began transferring in August 2021, and are located in our existing markets. During the year ended December 31, 2021, a total of $3.8 million was paid for approximately 45,000 RCEs ($9.1 million for acquired customer contracts, net of $5.3 million related holdbacks under the terms of the purchase agreement). In addition, approximately $1.2 million was released back to us for a reduction in RCEs to be acquired.

As part of the acquisitions, we funded an escrow account, the balance of which is reflected as restricted cash in our consolidated balance sheet. As we acquire customers, we make payments to the sellers from the escrow account. As of December 31, 2021, the balance in the escrow account was $6.4 million, and these funds are expected to be released to the sellers as acquired customers transfer from the sellers to the Company in accordance with the asset purchase agreement, and any unallocated balance will be returned to the Company once the acquisition is complete.

In July 2021, we entered into an agreement to acquire up to approximately 50,000 RCEs and derivatives related to the customer load under a five-year contingent fee structure based on gas volume billed and collected for the acquired customer contracts. These customers began transferring in the fourth quarter of 2021, and are located in our existing markets. Due to the contingent fee structure, the cost of the RCEs will be recognized when probable and reasonably estimable.

17. Equity Method Investment

Investment in eREX Spark Marketing Co., Ltd

Prior to November 2019, we, together with eREX Co., Ltd., a Japanese company, were party to an agreement ("eREX JV Agreement") for a joint venture, eREX Spark Marketing Co., Ltd ("ESM"). As part of this agreement, we made contributions of 156.4 million Japanese Yen, or $1.4 million, for a 20% ownership interest in ESM. We were entitled to share in 30% of the dividends distributed by ESM for the first year a qualifying dividend was paid and for the subsequent four years thereafter. After this period, dividends were to be distributed proportionately with the equity ownership of ESM. ESM's board of directors consists of four directors, one of whom was appointed by us. In November 2019, Spark HoldCo, LLC entered into a share purchase agreement with eREX Co., Ltd. In accordance with the agreement, Spark HoldCo, LLC sold its shares which represented 20% ownership interest in ESM for $8.4 million. The disposal of ESM resulted in a non-recurring gain of $4.9 million for the year ended December 31, 2019. Based on our significant influence, as reflected by the 20% equity ownership and 25% control of the ESM board of directors, we recorded the investment in ESM as an equity method investment.

18. Subsequent Events

Declaration of Dividends

On January 20, 2022, we declared a quarterly dividend of $0.18125 per share to holders of record of our Class A common stock on March 1, 2022, which will be paid on March 15, 2022.

We also declared a quarterly cash dividend in the amount of $0.546875 per share to holders of record of the Series A Preferred Stock on January 20, 2022. The dividend will be paid on April 15, 2022 to holders of record on April 1, 2022.

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

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost benefit relationship of possible controls and procedures. Based on this evaluation, management concluded that our disclosure controls and procedures were effective as of December 31, 2021 at the reasonable assurance level.

Management's Annual Report on Internal Control Over Financial Reporting

See "Management's Report on Internal Control Over Financial Reporting" under Item 8 of this Annual Report.

Attestation Report of the Independent Registered Public Accounting Firm

Our independent registered public accounting firm, Ernst & Young LLP, has provided an attestation report on the Company's internal control over financial reporting as of December 31, 2021.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended December 31, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not Applicable.

PART III.

Item 10. Directors, Executive Officers and Corporate Governance

Information as to Item 10 will be set forth in the Proxy Statement for the 2021 Annual Meeting of Shareholders (the "Annual Meeting") and is incorporated herein by reference.

Item 11. Executive Compensation

Information as to Item 11 will be set forth in the Proxy Statement for the Annual Meeting and is incorporated herein by reference.

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

Except as provided below, information as to Item 12 will be set forth in the Proxy Statement for the Annual Meeting and is incorporated herein by reference.

Equity Compensation Plan Information

The following table shows information about our Class A common stock that may be issued under the Via Renewables, Inc. Amended and Restated Incentive Plan (the "Incentive Plan") as of December 31, 2021.

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights (1)	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)(2))
Equity compensation plans approved by the security holders	488,789	1,783,577
Equity compensation plans not approved by the security holders	—	—
Total	488,789	1,783,577

(1) This column reflects the maximum number of shares of Class A common stock that may be issued under outstanding and unvested restricted stock units ("RSUs") at December 31, 2021. No stock options or warrants have been granted under the Incentive Plan.
(2) This column reflects the total number of shares of Class A common stock remaining available for issuance under the LTIP.

The Incentive Plan is the only plan under which our equity securities are authorized for issuance. The Incentive Plan was approved by our shareholder prior to our initial public offering and was approved by our public shareholders in 2019. Please read Note 11 to our consolidated financial statements, entitled "Stock-Based Compensation" for a description of the Incentive Plan.

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

Information as to Item 13 will be set forth in the Proxy Statement for the Annual Meeting and is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services

Information as to Item 14 will be set forth in the Proxy Statement for the Annual Meeting and is incorporated herein by reference.

PART IV.

Item 15. Exhibits, Financial Statement Schedules

(1) The consolidated financial statements of Via Renewables, Inc. and its subsidiaries and the report of the independent registered public accounting firm are included in Part II, Item 8 of this Annual Report.

(2) All schedules have been omitted because they are not required under the related instructions, are not applicable or the information is presented in the consolidated financial statements or related notes.

(3) The exhibits listed on the accompanying Exhibit Index are filed as part of, or incorporated by reference into, this Annual Report.

INDEX TO EXHIBITS

		Incorporated by Reference			
Exhibit	**Exhibit Description**	**Form**	**Exhibit Number**	**Filing Date**	**SEC File No.**
2.1#	Membership Interest Purchase Agreement, by and among Spark Energy, Inc., Spark HoldCo, LLC, Provider Power, LLC, Kevin B. Dean and Emile L. Clavet, dated as of May 3, 2016.	10-Q	2.1	5/5/2016	001-36559
2.2#	Membership Interest Purchase Agreement, by and among Spark Energy, Inc., Spark HoldCo, LLC, Retailco, LLC and National Gas & Electric, LLC, dated as of May 3, 2016.	10-Q	2.2	5/5/2016	001-36559
2.3#	Amendment No. 1 to the Membership Interest Purchase Agreement, dated as of July 26, 2016, by and among Spark Energy, Inc., Spark HoldCo, LLC, Provider Power, LLC, Kevin B. Dean and Emile L. Clavet.	8-K	2.1	8/1/2016	001-36559
2.4#	Membership Interest and Stock Purchase Agreement, by and among Spark Energy, Inc., CenStar Energy Corp. and Verde Energy USA Holdings, LLC, dated as of May 5, 2017.	10-Q	2.4	5/8/2017	001-36559
2.5	First Amendment to the Membership Interest and Stock Purchase Agreement, dated July 1, 2017, by and among Spark Energy, Inc., CenStar Energy Corp., and Verde Energy USA Holdings, LLC.	8-K	2.1	7/6/2017	001-36559
2.6#	Agreement to Terminate Earnout Payments, effective January 12, 2018, by and among Spark Energy, Inc., CenStar Energy Corp., Woden Holdings, LLC (fka Verde Energy USA Holdings, LLC), Verde Energy USA, Inc., Thomas FitzGerald, and Anthony Menchaca.	8-K	2.1	1/16/2018	001-36559
2.7#	Asset Purchase Agreement, dated March 7, 2018, by and between Spark HoldCo, LLC and National Gas & Electric, LLC	10-K	2.7	3/9/2018	001-36559
2.8#	Asset Purchase Agreement by and between Spark HoldCo, LLC and Starion Energy Inc., Starion Energy NY Inc. and Starion Energy PA Inc., dated October 19, 2018.	8-K	2.1	10/25/2018	001-36559
2.9	First Amendment to Asset Purchase Agreement, by and between Spark HoldCo, LLC, Starion Energy Inc., Starion Energy NY Inc., and Starion Energy PA, Inc., effective May 1, 2020.	10-Q	2.9	8/5/2020	001-36559
3.1	Amended and Restated Certificate of Incorporation of Via Renewables, Inc., as amended through August 6, 2021	10-Q	3.1	11/4/2021	001-36559
3.2	Second Amended and Restated Bylaws of Via Renewables, Inc.	8-K	3.2	8/9/2021	001-36559
3.3	Certificate of Designations of Rights and Preferences of 8.75% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Stock.	8-A	5	3/14/2017	001-36559
4.1	Description of Capital Stock of Via Renewables, Inc.	10-K	4.1	3/5/2020	001-36559
4.2	Class A Common Stock Certificate	S-1	4.1	6/30/2014	333-196375

10.1	Credit Agreement, dated as of May 19, 2017, among Spark Energy, Inc., Spark HoldCo, LLC, Spark Energy, LLC, Spark Energy Gas, LLC, CenStar Energy Corp, CenStar Operating Company, LLC, Oasis Power, LLC, Oasis Power Holdings, LLC, Electricity Maine, LLC, Electricity N.H., LLC, Provider Power Mass, LLC, Major Energy Services LLC, Major Energy Electric Services LLC, Respond Power LLC and Perigee Energy, LLC as Co-Borrowers, Coöperatieve Rabobank U.A., New York Branch, as Administrative Agent, an Issuing Bank and a Bank, and Coöperatieve Rabobank U.A., New York Branch and BBVA Compass, as Joint Lead Arrangers and Sole Bookrunner, and the Other Financial Institutions Signatory Thereto.	8-K	10.1	5/24/2017	001-36559
10.2	Amendment No. 1 to the Credit Agreement, dated as of November 2, 2017, among Spark HoldCo, LLC, Spark Energy, LLC, Spark Energy Gas, LLC, CenStar Energy Corp, CenStar Operating Company, LLC, Oasis Power, LLC, Electricity Maine, LLC, Electricity N.H., LLC, Provider Power Mass, LLC, Major Energy Services, LLC, Major Energy Electric Services LLC, Respond Power, LLC, Perigee Energy, LLC, Verde Energy USA, Inc., Verde Energy USA, Inc., Verde Energy USA Commodities, LLC, Verde Energy USA Connecticut, LLC, Verde Energy USA DC, LLC, Verde Energy USA Illinois, LLC, Verde Energy USA Maryland, LLC, Verde Energy USA Massachusetts, LLC, Verde Energy USA New Jersey, LLC, Verde Energy USA New York, LLC, Verde Energy USA Ohio, LLC, Verde Energy USA Pennsylvania, LLC, Verde Energy USA Texas Holdings, LLC, Verde Energy USA Trading, LLC, Verde Energy Solutions, LLC, and Verde Energy USA Texas, LLC as Co-Borrowers, Spark Energy, Inc., Coöperatieve Rabobank U.A., New York Branch, as Agent, and the Banks party thereto.	10-Q	10.1	11/3/2017	001-36559
10.3	Amendment No. 2 to the Credit Agreement, dated as of July 17, 2018, by and among Spark Energy, Inc., the Co-Borrowers, Coöperatieve Rabobank U.A., New York Branch, as agent, the Banks party thereto, and Brown Brothers Harrisman & Co., as existing bank.	8-K	10.1	7/20/2018	001-36559
10.4	Amendment No. 3 to the Credit Agreement, dated as of June 13, 2019, by and among Spark Energy, Inc., the Co-Borrowers, the Issuing Banks party thereto, Coöperatieve Rabobank U.A., New York Branch, as agent, and the Banks party thereto.	8-K	10.1	6/18/2019	001-36559
10.5#	Amendment No. 4 to the Credit Agreement, dated as of July 31, 2020, by and among Spark Energy, Inc., the Co-Borrowers, the Issuing Banks party thereto, Coöperatieve Rabobank U.A., New York Branch, as agent, and the Banks party thereto.	10-Q	10.1	8/5/2020	001-36559
10.6*#	Amendment No. 5 to the Credit Agreement, dated as of October 15, 2021, by and among Via Renewables, Inc., the Co-Borrowers, the Issuing Banks party thereto, Coöperatieve Rabobank U.A., New York Branch, as agent, and the Banks party thereto.				
10.7	New Bank Agreement, dated October 30, 2020, by and among Spark Energy, Inc., the Co-Borrowers, the Issuing Banks party thereto, Coöperatieve Rabobank U.A., New York Branch, as agent, the Banks party thereto and Gulf Capital Bank, as new bank.	10-Q	10.2	11/4/2020	001-36559
10.8	New Bank Agreement, dated January 19, 2021, by and among Spark Energy, Inc., the Co-Borrowers and Guarantors, the Banks party thereto, Coöperatieve Rabobank U.A., New York Branch, as agent, and Wells Fargo Bank, NA, as new bank	10-Q	10.2	5/6/2021	001-36559

10.9	Tax Receivable Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., Spark HoldCo LLC, NuDevco Retail Holdings, LLC, NuDevco Retail, LLC and W. Keith Maxwell III.	8-K	10.2	8/4/2014	001-36559
10.10	TRA Termination and Release Agreement, dated July 11, 2019, by and among Spark Energy, Inc., Spark HoldCo, LLC, Retailco, LLC, NuDevco Retail, LLC and W. Keith Maxwell III.	8-K	10.1	7/17/2019	001-36559
10.11	Registration Rights Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., NuDevco Retail Holdings, LLC and NuDevco Retail LLC.	8-K	10.4	8/4/2014	001-36559
10.12	Transaction Agreement II, dated as of July 30, 2014, by and among Spark Energy, Inc., Spark HoldCo, LLC, NuDevco Retail LLC, NuDevco Retail Holdings, LLC, Spark Energy Ventures, LLC, NuDevco Partners Holdings, LLC and Associated Energy Services, LP.	8-K	4.1	8/4/2014	001-36559
10.13	Spark HoldCo. Third Amended and Restated Limited Liability Agreement, dated as of March 15, 2017, by and among Spark Energy, Inc., Retailco, LLC and NuDevco Retail, LLC.	10-Q	10.1	5/8/2017	001-36559
10.14	Amendment No. 1, dated as of January 26, 2018, to Third Amended and Restated Limited Liability Company Agreement of Spark Holdco, LLC.	8-K	10.1	1/26/2018	001-36559
10.15	Amendment No. 2 to the Third Amended and Restated Limited Liability Company Agreement of Spark Holdco, LLC, dated as of March 30, 2020, by and between Spark Energy, Inc., Spark HoldCo, LLC, NuDevco Retail, LLC and Retailco, LLC.	8-K	10.1	4/3/2020	001-36559
10.16	Amended and Restated Subordinated Promissory Note of Spark HoldCo, LLC and Spark Energy, Inc., dated July 31, 2020.	10-K	10.46	3/4/2021	001-36559
10.17	Amended and Restated Subordinated Promissory Note of Spark HoldCo, LLC and Via Renewables, Inc., dated October 13, 2021.	8-K	10.2	10/20/2021	001-36559
10.18†	Spark Energy, Inc. Long-Term Incentive Plan	S-8	4.3	7/31/2014	333-197738
10.19†	Spark Energy, Inc. Amended and Restated Long-Term Incentive Plan.	10-Q	10.3	11/10/2016	001-36559
10.20†	Spark Energy, Inc. Second Amended and Restated Long Term Incentive Plan.	8-K	10.1	5/23/2019	001-36559
10.21†	Form of Restricted Stock Unit Agreement	S-1	10.4	6/30/2014	333-196375
10.22†	Form of Restricted Stock Unit Agreement (Second A&R LTIP).	10-Q	10.2	8/5/2020	001-36559
10.23†	Form of Notice of Grant of Restricted Stock Unit	S-1	10.5	6/30/2014	333-197738
10.24†	Form of Notice of Grant of Restricted Stock Unit (Change in Control Restricted Stock Units).	10-Q	10.5	8/3/2018	333-196375
10.25†	Form of Notice of Grant of Restricted Stock Unit (Second A&R LTIP).	10-Q	10.3	8/5/2020	001-36559

10.26†	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and W. Keith Maxwell III.	8-K	10.5	8/4/2014	001-36559
10.27†	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and James G. Jones II.	8-K	10.10	8/4/2014	001-36559
10.28†	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Kenneth M. Hartwick.	8-K	10.12	8/4/2014	001-36559
10.29†	Indemnification Agreement, dated May 25, 2016, by and between Spark Energy, Inc. and Nick W. Evans, Jr.	8-K	10.1	5/27/2016	001-36559
10.30†	Indemnification Agreement, dated August 29, 2019, by and among Spark Energy, Inc. and Amanda Bush	8-K	10.1	8/30/2019	001-36559
10.31†	Indemnification Agreement, dated as of March 17, 2020, by and between Spark Energy, Inc. and Kevin McMinn.	8-K	10.2	3/19/2020	001-36559
10.32†	Employment Agreement, dated June 14, 2019, by and between Spark Energy, Inc. and James G. Jones II.	8-K	10.3	6/18/2019	001-36559
10.33†	Employment Agreement, effective as of March 13, 2020, by and between Spark Energy, Inc. and W. Keith Maxwell III.	8-K	10.1	3/19/2020	001-36559
10.34†	Employment Agreement, effective as of March 23, 2020, by and between Spark Energy, Inc. and Kevin McMinn.	8-K	10.1	3/25/2020	001-36559
10.35†	Employment Agreement, dated November 4, 2021, by and between Via Renewables, Inc. and Miguel “Mike” Barajas	10-Q	10.5	11/4/2021	001-36559
10.36†	Employment Agreement, dated November 4, 2021, by and between Via Renewables, Inc. and Paul Konikowski.	8-K	10.1	11/8/2021	001-36559
10.37†	Engagement Letter Agreement, dated August 27, 2020, by and among Spark Energy, Inc. and Good Counsel Legal Services, LLC	10-K	10.47	3/4/2021	001-36559
10.38†	Amendment to Engagement Letter Agreement, dated August 1, 2021, by and between Good Counsel Legal Services, LLC and Spark Energy, LLC.	10-Q	10.3	11/4/2021	001-36559
10.39	Transition and Resignation Agreement and Mutual Release of Claims, dated April 2, 2021, between Spark Energy, Inc. and Kevin McMinn.	8-K	10.1	4/8/2021	001-36559
10.40 †	Transition and Resignation Agreement and Mutual Release of Claims, dated November 4, 2021, by and between Via Renewables, Inc. and James Jones	10-Q	10.4	11/4/2021	001-36559
21.1*	List of Subsidiaries of Via Renewables, Inc.				
23.1*	Consent of EY				
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.				
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.				
32**	Certifications pursuant to 18 U.S.C. Section 1350.				

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

* Filed herewith
** Furnished herewith
† Compensatory plan or arrangement
+ Portions of this exhibit have been omitted and filed separately with the SEC pursuant to an order granting confidential treatment.
# The registrant agrees to furnish supplementally a copy of any omitted schedule to the Commission upon request.

Item 16. Form 10-K Summary

None.

SIGNATURES

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

March 3, 2022

Via Renewables, Inc.

By: /s/ Mike Barajas

Mike Barajas

Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant in the capacities indicated on March 3, 2022:

By: /s/ W. Keith Maxwell III

W. Keith Maxwell III

Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)

/s/ Mike Barajas

Mike Barajas

Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

/s/ Nick Evans Jr.

Nick Evans Jr.

Director

/s/ Kenneth M. Hartwick

Kenneth M. Hartwick

Director

/s/ Amanda Bush

Amanda Bush

Director

[Execution Version]

AMENDMENT NO. 5

THIS **AMENDMENT NO. 5** (this "Amendment"), entered into on, and effective as of October 15, 2021 (the "Effective Date"), is made by and among **SPARK HOLDCO, LLC** ("HoldCo"), a Delaware limited liability company, **SPARK ENERGY, LLC** ("Spark"), a Texas limited liability company, **SPARK ENERGY GAS, LLC** (" SEG"), a Texas limited liability company, **CENSTAR ENERGY CORP.**, a New York corporation ("CenStar"), **CENSTAR OPERATING COMPANY, LLC**, a Texas limited liability company ("Censtar Opco"), **OASIS POWER, LLC**, a Texas limited liability company ("Oasis"), **OASIS POWER HOLDINGS, LLC**, a Texas limited liability company ("Oasis Holdings"), **ELECTRICITY MAINE, LLC**, a Maine limited liability company ("Maine"), **ELECTRICITY N.H., LLC**, a Maine limited liability company ("NH"), **PROVIDER POWER MASS, LLC**, a Maine limited liability company ("Mass"), **MAJOR ENERGY SERVICES LLC**, a New York limited liability company ("Major"), **MAJOR ENERGY ELECTRIC SERVICES LLC**, a New York limited liability company ("Electric"), **RESPOND POWER LLC**, a New York limited liability company ("Respond"), **PERIGEE ENERGY, LLC**, a Texas limited liability company ("Perigee"), **VERDE ENERGY USA, INC.**, a Delaware corporation ("Verde Inc."), **VERDE ENERGY USA COMMODITIES, LLC**, a Delaware limited liability company ("Verde Commodities"), **VERDE ENERGY USA CONNECTICUT, LLC**, a Delaware limited liability company ("Verde Connecticut"), **VERDE ENERGY USA DC, LLC**, a Delaware limited liability company ("Verde DC"), **VERDE ENERGY USA ILLINOIS, LLC**, a Delaware limited liability company ("Verde Illinois"), **VERDE ENERGY USA MARYLAND, LLC**, a Delaware limited liability company ("Verde Maryland"), **VERDE ENERGY USA MASSACHUSETTS, LLC**, a Delaware limited liability company ("Verde Massachusetts"), **VERDE ENERGY USA NEW JERSEY, LLC**, a Delaware limited liability company ("Verde New Jersey"), **VERDE ENERGY USA NEW YORK, LLC**, a Delaware limited liability company ("Verde New York"), **VERDE ENERGY USA OHIO, LLC**, a Delaware limited liability company ("Verde Ohio"), **VERDE ENERGY USA PENNSYLVANIA, LLC**, a Delaware limited liability company ("Verde Pennsylvania"), **VERDE ENERGY USA TEXAS HOLDINGS, LLC**, a Delaware limited liability company ("Verde Texas Holdings"), **VERDE ENERGY USA TRADING, LLC**, a Delaware limited liability company ("Verde Trading"), **VERDE ENERGY SOLUTIONS, LLC**, a Delaware limited liability company ("Verde Solutions"), **VERDE ENERGY USA TEXAS, LLC**, a Texas limited liability company (fka Potentia Energy, LLC) ("Verde Texas"), and **HIKO ENERGY, LLC**, a New York limited liability company ("Hiko") (jointly, severally and together, the "Co-Borrowers," and each individually, a "Co-Borrower"), **VIA RENEWABLES, INC.** (fka Spark Energy, Inc.)(" Parent"), a Delaware corporation, the Issuing Banks, **COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH**, as Agent, and each financial institution which is a party hereto (collectively, the "Banks"). Capitalized terms used herein but not defined herein shall have the meanings specified by the Credit Agreement referred to below.

W I T N E S S E T H:

WHEREAS, the Co-Borrowers, the Parent, the Agent, and the Banks have entered into the Credit Agreement dated as of May 19, 2017 (as amended, restated, supplemented or otherwise modified from time to time prior to the effectiveness of this Amendment, the "Existing Credit Agreement"; and after giving effect to this Amendment, the "Credit Agreement"); and

WHEREAS, the parties hereto have agreed to make certain amendments to the Existing Credit Agreement as provided for herein.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements set forth herein and for other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. **Amendments**. Effective on the occurrence of the Effective Date (as defined below), the Existing Credit Agreement is hereby amended as follows:

(a) the Existing Credit Agreement (excluding the Exhibits and Schedules thereto, which (except as set forth in clauses (b) through (i) below) shall continue to be the Schedules and Exhibits under the Credit Agreement) is amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Annex I hereto.

(b) Schedule 2.01 is deleted and replaced as set forth on Annex II hereto.

(c) Exhibit A-1 is deleted and replaced as set forth on Annex III hereto.

(d) Exhibit A-2 is amended by deleting the final sentence in footnote 3 therein and replacing it with the following: "If no Interest Period is specified with respect to any requested Daily Eurodollar Rate Loan, an Interest Period of one month's duration shall be deemed to have been selected."

(e) Exhibit B-1 is deleted and replaced with Exhibit B as set forth on Annex IV hereto.

(f) Exhibit B-2 is deleted.

(g) Exhibit D is deleted and replaced as set forth on Annex V hereto.

(h) Exhibit G is deleted and replaced as set forth on Annex VI hereto.

(i) Exhibit H is deleted and replaced as set forth on Annex VII hereto.

(j) Exhibit I is deleted and replaced as set forth on Annex VIII hereto.

SECTION 2. ***Conditions to Effectiveness***. This Amendment shall be effective as of the Effective Date upon the satisfaction of the following conditions precedent:

(a) Documentation.

(i) The Agent shall have received counterparts hereof duly executed by the Loan Parties, the Agent, the Issuing Banks, and the Banks.

(ii) The Agent shall have received copies of the resolutions of each Loan Party authorizing the transactions contemplated hereby, certified as of the Effective Date by a Responsible Officer of such Loan Party.

(iii) The Agent shall have received a certificate of a Responsible Officer of each Loan Party certifying the names and true signatures of any Responsible Officers of such Loan Party who are authorized to act on behalf of each Loan Party.

(iv) The Agent shall have received (a) the certificate of incorporation, certificate of formation, or certificate of limited partnership, as applicable, of each Loan Party as in effect on the Effective Date, each certified by the Secretary of State of each such Person's state of organization (or a certification by a Responsible Officer of such Loan Party (in form and substance satisfactory to the Agent) that such certificate of incorporation, certificate of formation, or certificate of limited partnership, as applicable, has not been amended since the previous delivery thereof to the Agent and remains in full force and effect), (b) the bylaws, regulations, operating agreement or partnership agreement, as applicable, of each Loan Party, each certified by a Responsible Officer of such Loan Party as a true and correct copy thereof as of the Effective Date (or a certification by a Responsible Officer of such Loan Party (in form and substance satisfactory to the Agent) that such bylaws, regulations, operating agreement or partnership agreement, as applicable, has (or have) not been amended since the previous delivery thereof to the Agent and remain (or remains) in full force and effect), and (c) evidence satisfactory to the Agent, that each Loan Party is in good standing under the laws of its state of organization.

(v) The Agent shall have received a Note (as defined in the Credit Agreement (after giving effect to this Amendment)) duly executed by the Co-Borrowers, for each Bank which shall have requested the same prior to the date hereof.

(vi) The Agent shall have received (x) the Subordinated Creditor Consent (in the form of Annex IX hereto) duly executed by Retailco and (y) written evidence (in form and substance satisfactory to the Agent) that the maturity of the Subordinated Debt owing to Retailco has been extended in a manner compliant with clause (a) of the definition thereof.

(vii) The Agent shall have received all documentation and other information requested by the Agent, any Issuing Bank, or any Bank that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the USA Patriot Act.

(b) Fees and Expenses. The Agent shall have received evidence of payment by the Co-Borrowers of all fees, costs and expenses to the extent then due and payable on or prior to the Effective Date, together with Attorney Costs.

SECTION 3. ***Representations and Warranties. Each of the Co-Borrowers hereby represents and warrants that after giving effect hereto:***

(a) The execution, delivery and performance by each Loan Party of this Amendment have been duly authorized by all necessary corporate or limited liability company action, as applicable, and do not and will not contravene, conflict with or result in any breach or contravention of, or the creation of any Lien under any of such Loan Party's organizational and governing documents, or any document evidencing any contractual obligation to which such Loan Party is a party or any order, injunction, writ or decree of any Governmental Authority to which such Loan Party or its property is subject or any Requirement of Law, to the extent any such contravention, conflict or breach has or could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

(b) The representations and warranties of the Loan Parties contained in the Loan Documents are true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which representation and warranty shall be true and correct in all respects) on and as of the Effective Date (except to the extent such representations and

warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date) and after giving effect to this Amendment.

(c) No event has occurred and is continuing which constitutes a Default, an Event or Default or both.

SECTION 4. ***Share Buyback DDTL Commitments; WC Notes; Share Buyback DDTL Notes.***

(a) The Share Buyback DDTL Commitment (as defined in the Existing Credit Agreement) of each Bank is hereby terminated.

(b) Each WC Note (as defined in the Existing Credit Agreement) and each Share Buyback DDTL Note (as defined in the Existing Credit Agreement) is hereby canceled.

SECTION 5. ***Ratification of Obligations; Reaffirmation of Guaranty Agreement and Liens; Post-Closing Covenant. (a) Each of the Loan Parties hereby ratifies and confirms its Obligations under the Credit Agreement and the other Loan Documents and acknowledges that all other terms, provisions and conditions of the Credit Agreement and the other Loan Documents remain unchanged (except as modified hereby) and are in full force and effect. The Parent hereby ratifies, confirms, acknowledges and agrees that its obligations under the Guaranty Agreement are in full force and effect and that it continues to unconditionally and irrevocably guarantee*** the prompt payment in full when due, whether at stated maturity, by acceleration or otherwise, and performance of all of the Obligations***. Each Loan Party hereby ratifies, confirms, acknowledges and agrees that all Liens now or hereafter held by the Agent for the benefit of the Secured Parties as security for payment of the Obligations remain in full force and effect. Each of the Parent and the Co-Borrowers hereby acknowledges, agrees, confirms and ratifies that (i) it is a "Co-Borrower" and a "Grantor" under and pursuant to the terms of the Subordination Agreement, (ii) it is bound as party thereto in such capacity, and (iii) all of its obligations and agreements thereunder are and remain in full force and effect.***

(b) On or prior to the date which is thirty (30) days after the date hereof (or such later date in the sole discretion of the Administrative Agent), the Parent and Co-Borrowers shall deliver one or more legal opinions of counsel to the Parent and Co-Borrowers (in form and substance satisfactory to the Administrative Agent), which shall include opinions as to such matters required by the Administrative Agent.

SECTION 6. ***Governing Law***. This Amendment shall be construed in accordance with, and this Amendment, and all matters arising out of or relating in any way whatsoever to this Amendment (whether in contract, tort, or otherwise) shall be governed by, the law of the State of New York, other than those conflict of law provisions that would defer to the substantive laws of another jurisdiction. This governing law election has been made by the parties in reliance (at least in part) on Section 5-1401 of the General Obligation Law of the State of New York, as amended (as and to the extent applicable), and other applicable law.

SECTION 7. **Execution in Counterparts**. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," and words of

like import in this Amendment shall be deemed to include Electronic Signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Agent to accept electronic signatures in any form or format without its prior consent.

SECTION 8. **Loan Document**. This Amendment is a Loan Document.

SECTION 9. **Headings**. The captions and headings of this Amendment are for convenience of reference only and shall not affect the interpretation of this Amendment.

SECTION 10. **Entire Agreement**. THIS AMENDMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING AMONG THE PARTIES HERETO, AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS AND UNDERSTANDINGS OF SUCH PERSONS, VERBAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF.

SECTION 11. **Severability**. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

CO-BORROWERS:

SPARK HOLDCO, LLC
SPARK ENERGY, LLC
SPARK ENERGY GAS, LLC
CENSTAR ENERGY CORP.
CENSTAR OPERATING COMPANY, LLC
OASIS POWER, LLC
OASIS POWER HOLDINGS, LLC
ELECTRICITY MAINE, LLC
ELECTRICITY N.H., LLC
PROVIDER POWER MASS, LLC
MAJOR ENERGY SERVICES LLC
MAJOR ENERGY ELECTRIC SERVICES LLC
RESPOND POWER LLC
PERIGEE ENERGY, LLC
VERDE ENERGY USA, INC.
VERDE ENERGY USA COMMODITIES, LLC
VERDE ENERGY USA CONNECTICUT, LLC
VERDE ENERGY USA DC, LLC
VERDE ENERGY USA ILLINOIS, LLC
VERDE ENERGY USA MARYLAND, LLC
VERDE ENERGY USA MASSACHUSETTS, LLC
VERDE ENERGY USA NEW JERSEY, LLC
VERDE ENERGY USA NEW YORK, LLC
VERDE ENERGY USA OHIO, LLC
VERDE ENERGY USA PENNSYLVANIA, LLC
VERDE ENERGY USA TEXAS HOLDINGS, LLC
VERDE ENERGY USA TEXAS, LLC
VERDE ENERGY USA TRADING, LLC
VERDE ENERGY SOLUTIONS, LLC
HIKO ENERGY, LLC

Each By:/s/ James G. Jones II
Name: James G. Jones II
Title: CFO

PARENT:

VIA RENEWABLES, INC. (fka Spark Energy, Inc.)

By: /s/James G. Jones II
Name: James G. Jones II
Title: CFO

[Signature Page to Amendment No. 5]

BANKS:

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH, as Agent, an Issuing Bank and a Bank

By: /s/ Bradley Dingwall
Name: Bradley Dingwall
Title: Executive Director

By: /s/ Jan Hendrik de Graaff
Name: Jan Hendrik de Graaff
Title: Jan Hendrick de Graaff

[Signature Page to Amendment No. 5]

WOODFOREST NATIONAL BANK, as a Bank

By: /s/ Andy Gaines
Name: Andy Gaines
Title: SVP

[Signature Page to Amendment No. 5]

BOKF, NA, A NATIONAL BANKING ASSOCIATION DBA BANK OF TEXAS, as an Issuing Bank and a Bank

By: /s/ Santiago Acuna
Name: Santiago Acuna
Title: VP, Corporate Banking

[Signature Page to Amendment No. 5]

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Bank

By: /s/ Melina Mackey
Name: Melina Mackey
Title: Vice President

[Signature Page to Amendment No. 5]

BANCORPSOUTH BANK, as a Bank

By: /s/ Phillip M. Gonzalez
Name: Phillip M. Gonzalez
Title: Senior Vice President

[Signature Page to Amendment No. 5]

ORIGIN BANK, as a Bank

By: /s/ Robert S. Martin
Name: Robert S. Martin
Title: Regional Executive Vice President

[Signature Page to Amendment No. 5]

VERITEX COMMUNITY BANK (formerly known as Green Bank), as a Bank

By: /s/ Greg Christmann
Name: Greg Christmann
Title: Executive Vice President

[Signature Page to Amendment No. 5]

ZIONS BANCORPORATION, N.A. DBA AMEGY BANK, as a Bank

By: /s/ Mario Gagetta
Name: Mario Gagetta
Title: Vice President

[Signature Page to Amendment No. 5]

GULF CAPITAL BANK, as a Bank

By: /s/ Kristen Mclean
Name: Kristen Mclean
Title: SVP – Relationship Manager

[Signature Page to Amendment No. 5]

Annex I to Amendment No. 5

[AMENDMENTS TO CREDIT AGREEMENT]

4824-7382-2460, v. 2

[Execution Version]

Annex I to Amendment No. 5

CREDIT AGREEMENT

among

VIA RENEWABLES, INC. (fka SPARK ENERGY, INC.),
as Parent,

SPARK HOLDCO, LLC,
SPARK ENERGY, LLC,
SPARK ENERGY GAS, LLC,
CENSTAR ENERGY CORP,
CENSTAR OPERATING COMPANY, LLC,
OASIS POWER, LLC,
OASIS POWER HOLDINGS, LLC,
ELECTRICITY MAINE, LLC,
ELECTRICITY N.H., LLC,
PROVIDER POWER MASS, LLC,
MAJOR ENERGY SERVICES LLC,
MAJOR ENERGY ELECTRIC SERVICES LLC,
RESPOND POWER LLC,
PERIGEE ENERGY, LLC,
VERDE ENERGY USA, INC.,
VERDE ENERGY USA COMMODITIES, LLC,
VERDE ENERGY USA CONNECTICUT, LLC,
VERDE ENERGY USA DC, LLC,
VERDE ENERGY USA ILLINOIS, LLC,
VERDE ENERGY USA MARYLAND, LLC,
VERDE ENERGY USA MASSACHUSETTS, LLC,
VERDE ENERGY USA NEW JERSEY, LLC,
VERDE ENERGY USA NEW YORK, LLC,
VERDE ENERGY USA OHIO, LLC,
VERDE ENERGY USA PENNSYLVANIA, LLC,
VERDE ENERGY USA TEXAS HOLDINGS, LLC,
VERDE ENERGY USA TEXAS, LLC,

VERDE ENERGY USA TRADING, LLC,
VERDE ENERGY SOLUTIONS, LLC,
HIKO ENERGY, LLC
as Co-Borrowers,
COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,
as Administrative Agent, an Issuing Bank and a Bank,

and

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,
as Lead Arranger and Active Bookrunner,

and

WOODFOREST NATIONAL BANK,
as Joint Bookrunner,

and

WOODFOREST NATIONAL BANK AND BOKF, NA, A NATIONAL BANKING ASSOCIATION DBA BANK OF TEXAS,
as Co-Syndication Agents,

and

THE OTHER FINANCIAL INSTITUTIONS PARTY
HERETO FROM TIME TO TIME

Dated as of May 19, 2017

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "Agreement") is dated as of May 19, 2017, among **SPARK HOLDCO, LLC** ("HoldCo"), a Delaware limited liability company, **SPARK ENERGY, LLC** ("Spark"), a Texas limited liability company, **SPARK ENERGY GAS, LLC** (" SEG"), a Texas limited liability company, **CENSTAR ENERGY CORP**, a New York corporation ("CenStar"), **CENSTAR OPERATING COMPANY, LLC**, a Texas limited liability company ("Censtar Opco"), **OASIS POWER, LLC**, a Texas limited liability company ("Oasis"), **OASIS POWER HOLDINGS, LLC**, a Texas limited liability company ("Oasis Holdings"), **ELECTRICITY MAINE, LLC**, a Maine limited liability company ("Maine"), **ELECTRICITY N.H., LLC**, a Maine limited liability company ("NH"), **PROVIDER POWER MASS, LLC**, a Maine limited liability company ("Mass"), **MAJOR ENERGY SERVICES LLC**, a New York limited liability company ("Major"), **MAJOR ENERGY ELECTRIC SERVICES LLC**, a New York limited liability company ("Electric"), **RESPOND POWER LLC**, a New York limited liability company ("Respond"), **PERIGEE ENERGY, LLC**, a Texas limited liability company ("Perigee"), **VERDE ENERGY USA, INC.**, a Delaware corporation ("Verde Inc."), **VERDE ENERGY USA COMMODITIES, LLC**, a Delaware limited liability company ("Verde Commodities"), **VERDE ENERGY USA CONNECTICUT, LLC**, a Delaware limited liability company ("Verde Connecticut"), **VERDE ENERGY USA DC, LLC**, a Delaware limited liability company ("Verde DC"), **VERDE ENERGY USA ILLINOIS, LLC**, a Delaware limited liability company ("Verde Illinois"), **VERDE ENERGY USA MARYLAND, LLC**, a Delaware limited liability company ("Verde Maryland"), **VERDE ENERGY USA MASSACHUSETTS, LLC**, a Delaware limited liability company ("Verde Massachusetts"), **VERDE ENERGY USA NEW JERSEY, LLC**, a Delaware limited liability company ("Verde New Jersey"), **VERDE ENERGY USA NEW YORK, LLC**, a Delaware limited liability company ("Verde New York"); **VERDE ENERGY USA OHIO, LLC**, a Delaware limited liability company ("Verde Ohio"), **VERDE ENERGY USA PENNSYLVANIA, LLC**, a Delaware limited liability company ("Verde Pennsylvania"), **VERDE ENERGY USA TEXAS HOLDINGS, LLC**, a Delaware limited liability company ("Verde Texas Holdings"), **VERDE ENERGY USA TRADING, LLC**, a Delaware limited liability company ("Verde Trading"), **VERDE ENERGY SOLUTIONS, LLC**, a Delaware limited liability company ("Energy Solutions"), **VERDE ENERGY USA TEXAS, LLC**, a Texas limited liability company ("Verde Texas") and **HIKO ENERGY, LLC**, a New York limited liability company ("Hiko") (jointly, severally and together, the "Co-Borrowers," and each individually, a "Co-Borrower"), **VIA RENEWABLES, INC. (fka SPARK ENERGY, INC.)** ("Parent"), a Delaware corporation, **COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH**, as Agent, an Issuing Bank and a Bank, **COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH**, as Lead Arranger and Active Bookrunner, and each other financial institution which may become a party hereto (collectively, the "Banks").

In consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

Article 1
DEFINITIONS

1.01 Certain Defined Terms. The following terms have the following meanings:

"Account" has the meaning stated in the New York Uniform Commercial Code.

"Acquisition Advance Cap" means the lesser of (x) $50,000,000 and (y) the Working Capital Advance Cap, as such amount may be reduced as set forth in this Agreement.

"Acquisition Loan" shall have the meaning set forth in Section 2.01(b).

"Activities" has the meaning set forth in Section 9.02(b).

"Actual Embedded Gross Margin" means, with respect to all variable price contracts of the Co-Borrowers and calculated as of the last day of the fiscal quarter then ended for such fiscal quarter, the aggregate Dollar gross margin (i.e., as to any contract, the difference between the contract price under such contract and the cost of supply for such contract) of the Co-Borrowers under all variable price contracts existing as of such fiscal quarter end (net of actual attrition) and excluding any new variable price customer additions or conversions from fixed to variable subsequent to the measurement date for such fiscal quarter (but only to the extent not included in the most recent calculation of Embedded Gross Margin pursuant to Section 7.02(p)).

"Additional Debt" means Indebtedness for borrowed money other than Indebtedness described in Section 7.13.

"Adjusted EBITDA" means EBITDA of the Loan Parties on a Consolidated basis for the most recent twelve (12) month period, plus (a) to the extent deducted in determining EBITDA, (i) non-cash compensation expenses, (ii) non-recurring expenses, and (iii) unrealized net loss under Swap Contracts to the extent that there are offsetting forward physical purchase and sales contracts that do not qualify as derivatives under GAAP and have not been recorded on the income statement, minus (b) to the extent included in determining EBITDA for such period, (i) non-recurring revenue, (ii) customer acquisition costs incurred in the current period, and (iii) unrealized net gain under Swap Contracts to the extent that there are offsetting forward physical purchase and sales contracts that do not qualify as derivatives under GAAP; *provided* that, Adjusted EBITDA shall be subject to pro forma adjustments for Permitted Acquisitions and Dispositions assuming that such transactions had occurred on the first day of the determination period. Co-Borrowers shall provide to the Agent supporting documentation as reasonably requested by Agent. All calculations of Adjusted EBITDA shall be satisfactory to the Agent in its sole discretion in all respects.

"Adjusted Purchase Price" means, with respect to any Permitted Acquisition, the cash portion of the purchase price thereof.

"Administrative Questionnaire" means an administrative questionnaire delivered by each Bank in a form supplied by the 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, is in Control of, is Controlled by, or is under common Control with, such Person.

"Affiliate Obligation" means indebtedness owing by an Affiliate of a Loan Party (which is not a Loan Party itself) to a Loan Party, *provided* that a first priority security interest has been granted by such Loan Party to Agent in the amounts owed by the Affiliate in a manner satisfactory to Agent.

"Agent" means Rabobank in its capacity as administrative agent for the Banks hereunder, and any successor agent arising under Section 9.06.

"Agent Parties" means, collectively, the Agent and its Related Parties.

"Agent's Group" has the meaning set forth in Section 9.02(b).

"Agent's Payment Office" means the address for payments set forth in Section 10.02 in relation to Agent, or such other address as Agent may from time to time specify.

"Aggregate Amount" means the Effective Amount of all outstanding Working Capital Loans plus the Effective Amount of all outstanding Acquisition Loans plus the Effective Amount of all outstanding L/C Obligations.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Loan Party or its Subsidiaries, in each case, from time to time concerning or relating to bribery or corruption, including the FCPA.

"Anti-Terrorism Laws" means any laws, regulations, or orders of any Governmental Authority of the United States, the United Nations, United Kingdom, European Union, or the Netherlands relating to terrorism financing or money laundering, including, but not limited to, the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.), the Trading With the Enemy Act (50 U.S.C. § 5 et seq.), the International Security Development and Cooperation Act (22 U.S.C. § 2349aa-9 et seq.), the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the "USA Patriot Act"), and any rules or regulations promulgated pursuant to or under the authority of any of the foregoing.

"Applicable Margin" means,

(a) with respect to Working Capital Loans, the following percentages per annum:

(i) if the average daily Aggregate Amount during the most recently ended fiscal quarter was less than fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) three percent (3.00%) for Eurodollar Rate Loans, and (ii) two percent (2.00%) for Base Rate Loans; and

(ii) if the average daily Aggregate Amount during the most recently ended fiscal quarter was greater than or equal to fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) three and one-quarter percent (3.25%) for Eurodollar Rate Loans, and (ii) two and one-quarter percent (2.25%) for Base Rate Loans.

(b) with respect to Acquisition Loans, (i) four percent (4.00%) per annum for Eurodollar Rate Loans and (ii) three percent (3.00%) per annum for Base Rate Loans.

The Applicable Margin for any fiscal quarter with respect to Working Capital Loans shall be determined by the Agent based upon the average Aggregate Amount outstanding and the average aggregate Commitments of the Banks in effect, in each case, on each day during the fiscal quarter most recently ended, and any such determination shall be conclusive and binding absent manifest error. Any increase or decrease in the Applicable Margin with respect to Working Capital Loans resulting from a change in the average daily Aggregate Amount or aggregate Commitments of the Banks during any fiscal quarter shall become effective as of the first day of the subsequent fiscal quarter, as notified by the Agent to the Co-Borrowers. Notwithstanding the foregoing, with respect to Working Capital Loans, the Applicable Margin shall be deemed to be the Applicable Margin described in clause (a)(ii) above from and after the

Closing Date through and including the last day of the first full fiscal quarter ending after the Closing Date.

"Approved Brokerage Accounts" means brokerage accounts maintained by the Co-Borrowers or any of them with an Eligible Broker for the purpose of allowing the Co-Borrowers or any of them to engage in the purchase and sale of commodity futures, commodity options, forward or leverage contracts and/or actual or cash commodities, and subject to a fully perfected first priority security interest in favor of the Agent, for its benefit and the benefit of the Banks (including a tri-party control agreement, acceptable to the Agent).

"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.

"Assignment and Assumption" means an assignment and assumption entered into by a Bank and an assignee (with the consent of each party whose consent is required by Section 10.07(b)), and accepted by the Agent, substantially in the form of Exhibit I or any other form approved by the Agent.

"Attorney Costs" means and includes all fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel.

"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.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Expiration Date, (b) the date of termination of the Commitments pursuant to Section 2.08, (c) intentionally omitted and (d) the date of termination of the Commitments of each Bank to make Loans and of the obligation of the Issuing Banks to Issue Letters of Credit pursuant to Section 8.02.

"Avoidance Provisions" has the meaning set forth in Section 10.06(c)(iii).

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank Blocked Accounts" means the accounts listed on Schedule 1.01(b) hereto, and, with respect to each other Co-Borrower, an account with a depositary institution acceptable

to the Agent into which collections from such Co-Borrower's accounts will be deposited pursuant to Section 7.08.

"Bankruptcy Code" means the Federal Bankruptcy Reform Act of 1978, as amended (11 U.S.C. § 101, et seq.).

"Banks" means Rabobank and each other financial institution that is or may become a party to this Agreement that maintains a Commitment or has outstanding Loans and participations in respect of L/C Obligations. References to the "Banks" shall include each Issuing Bank; for purposes of clarification only, to the extent that any Issuing Bank may have any rights or obligations in addition to those of the Banks due to its status as an Issuing Bank, its status as such will be specifically referenced.

"Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus ½ of 1% and (c) the Eurodollar Rate for a one month maturity on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.0%, provided, that the Base Rate shall not at any time be less than 0%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate, respectively.

"Base Rate Loan" means any Loan bearing interest based upon the Base Rate.

"Benchmark" means, initially, the Eurodollar Rate; provided, that if a replacement of the Benchmark has occurred pursuant to Section 4.06, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means, for any Available Tenor:

(1) For purposes of clause (i) of Section 4.06, the first alternative set forth below that can be determined by the Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration; provided, that if any Available Tenor of the Eurodollar Rate does not correspond to an Available Tenor of Term SOFR, the Benchmark Replacement for such Available Tenor of the Eurodollar Rate shall be the closest corresponding Available Tenor (based on length) for Term SOFR and if such Available Tenor of the Eurodollar Rate equally corresponds to two Available Tenors of Term SOFR, the corresponding tenor of Term SOFR with the shorter duration shall apply, or

(b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of the Eurodollar Rate with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (a) of this definition (which spread adjustment, for the avoidance of doubt, shall be 0.11448% (11.448 basis points).

(2) For purposes of clause (ii) of Section 4.06, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Agent and the Co-Borrowers as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for Dollar-denominated syndicated credit facilities at such time;

provided that, 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 Loan Documents.

Notwithstanding the foregoing, the Agent may (in its sole discretion) determine that a Benchmark Replacement pursuant to paragraph 1(a) of this definition is not administratively feasible and shall not be applied, and that either paragraph 1(b) or paragraph (2) of this definition shall automatically be deemed to apply by providing notice to the Co-Borrowers and Banks at least five (5) Business Days prior to the effective date for the Benchmark Replacement.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate", the definition of "Business Day", the definition of "Interest Period", the timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Transition Event" means with respect to any then-current Benchmark other than the Eurodollar Rate, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, 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, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, 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 (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

"Benefit Plan" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Loan Party incurs or otherwise has any obligation or liability, contingent or otherwise.

"Blocked Account Agreements" means the deposit account control agreements, three party agreements, and other similar agreements listed on the Security Schedule and each other deposit account control agreement, three party agreement or other similar agreement executed from time to time, in each case, in form and substance satisfactory to the Agent.

"Borrowing" means a borrowing hereunder consisting of a Working Capital Loan or a Acquisition Loan made to one or more of the Co-Borrowers by the Banks under Article 2 or continuation or conversion of loans consisting of simultaneous Working Capital Loans or Acquisition Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by the Banks pursuant to Section 2.01.

"Borrowing Base Advance Cap" means at any time an amount equal to the least of:

(a) the aggregate Commitments at such time minus, until March 31, 2022, $10,000,000;[1] and

(b) the sum of:

(i) 100% of the amount of Cash Collateral and other liquid investments of the Co-Borrowers which are acceptable to the Agent in its sole discretion and which are subject to a first perfected security interest in favor of the Agent, for its benefit and the benefit of the Banks, and which have not been used in determining availability for any other advance or Letter of Credit Issuance; plus

(ii) 90% of equity (net liquidity value) in Approved Brokerage Accounts; **plus**

(iii) 90% of the amount of Tier I Accounts, net of deductions, offsets and counterclaims; **plus**

(iv) 85% of the amount of Tier II Accounts, net of deductions, offset and counterclaims; **plus**

(v) 85% of the amount of Tier I Unbilled Qualified Accounts, net of deductions, offset and counterclaims; **plus**

(vi) 80% of the amount of Tier II Unbilled Qualified Accounts, net of deductions, offset and counterclaims; **plus**

(vii) 80% of the amount of Eligible Inventory; **plus**

(viii) 85% of the amount of Hedged Eligible Inventory; **plus**

(ix) 80% of the amount of net Eligible Exchange Receivables; **plus**

(x) 80% of the amount of Letters of Credit for Product Not Yet Delivered; **plus**

[1] Note that while the $10 million reduction concept appears as a change, it is part of the existing deal via previous consent letters approved by the Majority Banks. The only change to the existing deal is the termination of the reduction at March 31, 2022.

(xi) 70% of In-the-Money Positions from counterparties due to any Co-Borrower with tenors up to twelve (12) months; **plus**

(xii) 50% of In-the-Money Positions from counterparties due to any Co-Borrower with tenors greater than twelve (12) months and up to twenty-four (24) months; **plus**

(xiii) 50% of the Embedded Gross Margin; **plus**

(xiv) 40% of Eligible RECs; **less**

(xv) the amounts (including disputed items) which would be subject to a so-called "First Purchaser Lien" as defined in Texas Bus. & Com. Code Section 9.343, comparable laws of the states of Oklahoma, Kansas, Wyoming or New Mexico, or any other comparable law, except to the extent a Letter of Credit secures payment of amounts subject to such First Purchaser Liens; **less**

(xvi) 115% of the amount of any mark to market exposure to the Swap Banks under Swap Contracts other than Swap Contracts involving physical delivery as reported by the Swap Banks, reduced by cash collateral held by a Swap Bank; **less**

(xvii) with respect to Swap Contracts involving physical delivery, 115% of the amount of mark to market exposure to the Swap Banks under such Swap Contracts until nomination for delivery has been made and 115% of the amount of notional exposure to the Swap Banks under such Swap Contracts after such nomination for delivery has been made, in each case, reduced by cash collateral held by a Swap Bank; **less**

(xviii) Reserves deemed necessary by the Agent; **less**

(xix) storage and transportation expenses not covered by a Letter of Credit or cash collateral due within 60 days of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b); **less**

(xx) sales Taxes; **less**

(xxi) until March 31, 2022, $10,000,000.[2]

provided that, (w) in no event shall the amounts described in (b)(xi), (b)(xii), and (b)(xiii) above in excess of the lesser of (1) forty percent (40%) of the sum of the items in subsections (b)(i) through (b)(xx) above, in the aggregate, and (2) forty percent (40%) of the Commitments at such time, be counted when making the calculation under subsection (b) of this definition; (x) in no event shall the amounts described in (b)(xiii) above be in excess of the lesser of (1) $50,000,000 and (2) 25% of the Commitments at such time; (y) in no event shall any amounts described in (b)(i) through (b)(xx) above which may fall into more than one of such categories be counted more than once when making the calculation under subsection (b) of this definition; and (z) in the event the amounts described in (b)(iii), (iv), (v), (vi), (ix), (xi) and (xii) in the aggregate for any counterparty exceed the amounts set forth on the Credit Limits Annex or the amount

[2] See footnote 1 above.

approved for other counterparties not listed on the Credit Limits Annex (including, without limitation the amounts set forth on Annex B), such excess amounts may not be included in the Borrowing Base Advance Cap unless approved by the Majority Banks.

"Borrowing Date" means any date on which a Borrowing occurs under Section 2.04.

"Building" means any "building" or "manufactured (mobile) home" (in each case, as such terms are defined for purposes of the National Flood Insurance Program).

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Co-Borrowers with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which dealings in dollar deposits are carried out in the London interbank market.

"Capital Lease" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Capital Lease Obligation" means, with respect to any Person and a Capital Lease, the amount of the obligation of such Person as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person as of the date of any determination thereof.

"Cash Collateral" means currency issued by the United States and Marketable Securities which have been Cash Collateralized for the benefit of the Secured Parties.

"Cash Collateralize" means to pledge and deposit with or deliver to the Agent, for the benefit of the Secured Parties, Cash Collateral as collateral for the Obligations pursuant to documentation in form and substance satisfactory to the Agent. The Co-Borrowers hereby grant the Agent, for the benefit of the Secured Parties, a security interest in all Cash Collateral and deposit account balances.

"CEA Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Charges" has the meaning set forth in Section 2.10(e).

"Close-Out Amount" shall have the meaning ascribed to it in the Intercreditor Agreement.

"Closing Date" means May 19, 2017.

"Co-Borrowers" means, together, HoldCo, Spark, SEG, CenStar, Censtar Opco, Oasis, Oasis Holdings, Maine, NH, Mass, Major, Electric, Respond, Perigee, Verde Inc., Verde Commodities, Verde Connecticut, Verde DC, Verde Illinois, Verde Maryland, Verde Massachusetts, Verde New Jersey, Verde New York, Verde Ohio, Verde Pennsylvania, Verde Texas Holdings, Verde Trading, Energy Solutions, Verde Texas, Hiko and each Restricted

Subsidiary of a Loan Party that hereafter becomes a Co-Borrower in accordance with Section 7.23(a). Any of the individual Co-Borrowers may be generically referred to as "Co-Borrower".

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means all assets of the Loan Parties including, without limitation, all accounts, equipment, chattel paper, inventory, Product in transit, the Bank Blocked Accounts, instruments, investment property, contract rights, general intangibles, fixed assets, and real estate, whether presently existing or hereafter acquired or created and the proceeds thereof, excluding the POR Collateral but only to the extent the applicable POR Agreement requires the release of Agent's lien in such POR Collateral.

"Collateral Position" means Collateral of the Loan Parties available to support a Credit Extension, as determined in the Collateral Position Report.

"Collateral Position Report" means the Collateral Position Report substantially in the form attached hereto as Exhibit D, which Collateral Position Report sets forth (a) all of the Loan Parties' eligible assets, including, without limitation, all unrealized gains, a description of all offsets, counterclaims or deductions by counterparty and mark-to-market exposure by counterparty, including counterparty details and (b)(i) the aggregate amount of Major MIPA Payments made as of such reporting date (which, for purposes of this report, shall include Major MIPA Payments made by the Major Companies and the Loan Parties) and (ii) the aggregate amount of Provider MIPA Payments and Verde MIPA Payments made as of such reporting date, in each case, in sufficient detail and in form satisfactory to Agent.

"Commitment" means, as to each Bank, its obligation to (a) make Working Capital Loans pursuant to Section 2.01(a), (b) make Acquisition Loans pursuant to Section 2.01(b), and (c) purchase participations in L/C Obligations. As of October 15, 2021, (x) the aggregate Commitments equal $227,500,000 and (y) each Bank's Commitment is set forth on Schedule 2.01.

"Commitment Increase Agreement" means a Commitment Increase Agreement, substantially in the form of Exhibit G, among the Co-Borrowers, the Agent and a Bank, pursuant to which such Bank agrees to increase its Commitment as described in Section 2.02 of this Agreement.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Communications" has the meaning set forth in Section 10.02.

"Compliance Certificate" means a certificate, in the form attached hereto as Exhibit E, or any other form acceptable to the Agent.

"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" refers to the consolidation of any Person, in accordance with GAAP, with its properly consolidated Subsidiaries; *provided* that, unless otherwise expressly provided herein, references to the Loan Parties on a Consolidated basis shall exclude all Unrestricted Subsidiaries. References herein to a Person's Consolidated financial statements, financial position, financial condition, liabilities, etc., refer to the Consolidated financial statements, financial position, financial condition, liabilities, etc., of such Person and its properly consolidated Subsidiaries.

"Consolidated Interest Expense" means, with respect to the most recent twelve (12) month period, the sum (without duplication) of the following (in each case, eliminating all offsetting debits and credits between the Loan Parties and all other items required to be eliminated in the course of the preparation of financial statements of the Loan Parties on a Consolidated basis in accordance with GAAP): all interest and commitment fees in respect of Indebtedness of the Loan Parties on a Consolidated basis (including imputed interest on Capital Lease Obligations) which are incurred during such period, whether accrued or expensed in such period, it being understood and agreed that underwriting fees, structuring fees, arrangement fees, upfront fees, fronting fees, other fees similar to the shall not be deemed to be commitment fees nor included in the calculation of Consolidated Interest Expense.

"Consolidated Net Income" means the net income (or deficit) of the Loan Parties on a Consolidated basis for the most recent twelve (12) month period determined in accordance with GAAP consistently applied after eliminating earnings or losses attributable to outstanding minority interests and excluding the net earnings of any Person other than a Restricted Subsidiary in which Parent or any of its Restricted Subsidiaries has an ownership interest.

"Contributing Borrower" has the meaning set forth in Section 10.06(f).

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "Controlled by" or "under common Control with" shall have the correlative meanings.

"Conversion/Continuation Date" means any date on which, under Section 2.05, the Co-Borrowers (a) convert Loans of one Type to another Type, or (b) continue such Loans as Loans of the same Type, but with a new Interest Period.

"Credit Exposure" means, with respect to any Bank at any time, the sum of the outstanding principal amount of such Bank's Loans and such Bank's Pro Rata Share of the L/C Obligations.

"Credit Extension" means and includes (a) the making of any Loans hereunder, and (b) the Issuance of any Letters of Credit hereunder.

"Credit Limits Annex" means Annex B to this Agreement, as the same may be modified from time to time as mutually agreed to in writing by the Co-Borrowers and the Agent, which may be effectuated without the necessity of amending this Agreement. The Credit Limits Annex shall be re-determined based on factors such as Product prices and other factors determined by the Co-Borrowers and the Agent on a reasonable basis and in good faith on a semi-annual basis as of July 15 and January 15 of each year and effective five (5) days after the date of re-determination. In addition to the scheduled redeterminations set forth above, each of the Agent and/or the Co-Borrowers shall have the right to request two additional re-determinations of the Credit Limits Annex per year.

"Credit Percentage" means, with respect to any Bank at any time, the percentage (carried out to the ninth decimal place) of the aggregate Commitments represented by such Bank's Commitments at such time. If the commitment of each Bank to make Loans has been terminated pursuant to Section 8.02 or if the aggregate Commitments have expired, then the percentage of each Bank shall be determined based on the Credit Percentage of such Bank most recently in effect, giving effect to any subsequent assignments. The Credit Percentage of each Bank as of October
15, 2021 is set forth as its "Credit Percentage" opposite the name of such Bank on Schedule 2.01

or in the Assignment and Assumption pursuant to which such Bank becomes a party hereto, as applicable.

"Cure Contribution" means an equity contribution by Retailco, NuDevco Retail or the holder of an Equity Interest in Parent permitted by the applicable organizational documents of Parent or the incurrence of Subordinated Debt permitted by Section 7.13(c), in each case, for purpose of curing a Default or Event of Default which, without such contribution, would occur as a result of a failure to comply with Section 7.09(a) or (b).

"Cure Period" has the meaning specified in Subsection 7.09(d).

"Daily Eurodollar Rate Loan" means a Eurodollar Rate Loan requested by the Co-Borrowers on same day notice.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

"Default" means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

"Defaulting Bank" means any Bank, as reasonably determined by the Agent or the Issuing Banks, that has (a) failed to fund any portion of Loans or participations in any Letter of Credit within two (2) Business Days of the date required to be funded by it hereunder, unless such Bank notifies the Agent and the Co-Borrowers in writing that such failure is the result of such Bank's reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing), (b) notified the Co-Borrowers, the Agent, any Issuing Bank or any Bank 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 or under any other agreement in which it commits to extend credit (unless such writing or public statement relates to such Bank's obligation to fund a Loan hereunder and states that such position is based on such Bank's reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) failed, within two (2) Business Days after a request by the Agent or an Issuing Bank 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 Letters of Credit, (d) otherwise failed to pay over to the Agent, any Issuing Bank or any other Bank any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (e) become or is insolvent or has a parent company that has become or is insolvent or become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or has taken any action in furtherance of, or has indicated its consent to, approval of or acquiescence in any such proceeding or appointment 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 action in furtherance of, or has indicated its consent to, approval of or acquiescence in any such proceeding or appointment, or (f) become, or has a parent company that has become, the subject of a Bail-in Action. With respect to any Bank that is a "Defaulting Bank" pursuant to clauses (a), (c) or (d)

above, upon (i) such "Defaulting Bank" paying all amounts owed to the applicable Bank(s), Issuing Banks or the Agent pursuant to the terms hereof, as reasonably determined by such Bank(s), Issuing Banks, and the Agent, as applicable, and (ii) the approval of the Co-Borrowers, Issuing Banks, and Agent, such "Defaulting Bank" shall cease to be a "Defaulting Bank".

"Default Period" means with respect to any Bank, the period during which such Bank is a Defaulting Bank.

"Default Rate" has the meaning specified in Section 2.10(a).

"Disposition" or "Dispose" means the sale, transfer, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes, accounts receivable, or customer contracts (other than as a result of cancellation by any customer or attrition in the ordinary course of business), or any rights and claims associated with each of the forgoing.

"Documentary Letter of Credit" means a Letter of Credit which is intended at the time of Issuance to be drawn upon and excludes Standby Letters of Credit.

"Dollars," "dollars" and "$" each mean lawful money of the United States.

"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after notice of such Early Opt-in Election is provided to the Banks, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after notice of such Early Opt-in Election is provided to the Banks, the Majority Banks' written notice of objection to such Early Opt-in Election.

"Early Opt-in Election" means the occurrence of:

(1) a notification by the Agent to (or the request by the Co-Borrowers to the Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Agent and the Co-Borrowers to trigger a fallback from the Eurodollar Rate and the provision by the Agent of written notice of such election to the Banks.

"EBITDA" means the sum of Consolidated Net Income of the Loan Parties on a Consolidated basis for the most recent twelve (12) month period, plus (a) the following to the extent included in calculating such Consolidated Net Income: (i) Consolidated Interest Expense for such period, (ii) all income taxes (including any franchise taxes to the extent based upon net income) for such period, (iii) all depreciation and amortization (including amortization of intangible assets, debt issue costs and amortization under ASC Rule 718), (iv) any loss from the disposition of assets, (v) any extraordinary losses, (vi) any non-cash losses resulting from mark to market activity as a result of the implementation of ASC 815, and (vii) other non-cash charges (including any provision for the reduction in the carrying value of assets recorded in accordance with GAAP, but excluding any non-cash charges that constitute an accrual of or reserve for future cash charges) for such period, minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) all income tax credits for such period, (ii) any gain from the disposition of assets, (iii) any extraordinary gains, (iv) any non-cash gains resulting from mark to market activity as a result of the implementation of ASC 815, and (v) all non-cash items of

income (other than account receivables and similar items arising from the normal course of business and reflected as income under accrual methods of accounting consistent with past practices) for such period, plus (c) cash dividends or cash distributions received by the Loan Parties from any Person other than a Restricted Subsidiary in which Parent or any of its Subsidiaries has an ownership interest; *provided* that (i) such cash dividends or cash distributions consist solely of proceeds generated solely from operations in the ordinary course of business and (ii) in no event shall EBITDA attributable to cash dividends or cash distributions from such Persons exceed EBITDA of the Loan Parties on a Consolidated basis (without giving effect to any such cash dividends or cash distributions).

"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 Amount" means (a) with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Loans occurring on such date; and (b) with respect to any outstanding L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any Issuances of Letters of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including changes as a result of expiration or cancellation, any reimbursements of outstanding unpaid drawings under any Letters of Credit and any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"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.

"Eligible Accounts" means, at the time of any determination thereof, each Co-Borrower's Accounts as to which the following requirements have been fulfilled to the satisfaction of the Agent (unless otherwise indicated):

(a) Such Account either (i) is the result of a sale to an account debtor who has been pre-approved for such purpose by the Majority Banks in writing, in their sole discretion, or (ii) is secured by letters of credit in form acceptable to the Agent in its sole discretion and issued by banks approved by the Agent in its sole discretion, or (iii) is within the credit limits set forth on the Credit Limits Annex;

(b) The applicable Co-Borrower has lawful and absolute title to such Account;

(c) Such Account is a valid, legally enforceable obligation of the Person who is obligated under such Account (1) for Products actually delivered to such account debtor or (2) for services rendered for such account debtor, in each case in (1) and (2) above in the ordinary course of the applicable Co-Borrower's business;

(d) Such Account shall have excluded therefrom any portion that is subject to any dispute, offset, counterclaim or other claim or defense on the part of the account debtor or to any claim on the part of the account debtor denying liability under such Account;

(e) Such Account is not evidenced by any chattel paper, promissory note or other instrument;

(f) Such Account is subject to a fully perfected first priority security interest (or properly filed and acknowledged assignment, in the case of U.S. government contracts, if any) in favor of the Agent for the benefit of the Secured Parties pursuant to the Loan Documents, prior to the rights of, and enforceable as such against, any other Person, and such Account is not subject to any security interest or Lien in favor of any Person other than the Liens of the Agent for the benefit of the Secured Parties pursuant to the Loan Documents;

(g) Such Account shall have excluded any portion which is not payable in Dollars in the U.S. and/or any portion with respect to which a currency valuation or conversion risk rests with Co-Borrowers;

(h) Such Account has been due and payable for thirty (30) days or less from the date of the invoice and no extension or indulgence has been granted extending the due date beyond a 30-day period, except (i) if such Account is owing from an account debtor who pays via automated clearinghouse (ACH) transactions, then the number 35 shall be substituted for the number 30 in the foregoing, (ii) if such Account is from federal, state, county or municipal account debtors under government contracts, then the number 45 shall be substituted for the number 30 in the foregoing and (iii) if the Co-Borrowers have purchased credit insurance on such Account, which such insurance names Agent as co-beneficiary and is acceptable in form and substance to Agent, then the number 90 shall be substituted for the number 30 in the foregoing;

(i) No account debtor in respect of such Account is (i) an Affiliate of either Co-Borrower, or (ii) incorporated in or primarily conducting business in any jurisdiction outside of the U.S., unless such account debtor and the account is approved in writing by the Banks;

(j) The applicable Co-Borrower shall have notified the account debtor (pursuant to the contract under which such Account arises or by separate notice) of the assignment of the Account to the Banks and shall have given irrevocable instructions to pay proceeds of the Account to the Agent on behalf of the Banks without offset or counterclaim. In the alternative, the Agent and the applicable Co-Borrower shall have notified the account debtor of the assignment and give irrevocable instructions to the account debtor to pay proceeds as directed by the Agent on behalf of the Banks;

(k) Such Account meets and complies with the Risk Management and Credit Policy; *provided* that, if any credit limits for any account debtor in the Risk Management and Credit Policy are less than the credit limit set forth for such account debtor on Annex C, the Accounts for such account debtor shall be deemed to be in compliance with the credit limits set forth in the Risk Management and Credit Policy for purposes of this clause (k) to the extent such Accounts are within the credit limit for such account debtor set forth on Annex C; and

(l) No Account is owing from an account debtor that is a Sanctioned Person, a Loan Party, or an Affiliate of a Loan Party.

Eligible Accounts shall exclude any portion of such Accounts relating to (i) Transmission and Distribution Service Provider ("TDSP") charges billed to ERCOT customers to the extent that such TDSP charges owed to the TDSP have not been paid by Co-Borrowers prior to the creation of the Account from such ERCOT customers and (ii) purchase of receivables fees and related sales Taxes to the extent that such fees and related sales Taxes applicable to purchase of receivables markets have not already been taken into consideration in calculating the amount owed from the particular local distribution company and such net-amounts are reflected on Co-Borrowers books and records.

For purposes of applying the above requirements for determining an Eligible Account, if the Co-Borrowers request the approval of the Banks to treat an Account as an Eligible Account, the Banks shall have five (5) Business Days after receipt of such request (and all relevant supporting information) to respond thereto (but not necessarily make a decision with respect to eligibility). If a Bank does not respond to Agent within such five (5) Business Days period, such Bank shall be deemed to have approved the treatment of the Account as an Eligible Account. Notwithstanding the foregoing, the Banks shall be deemed to have approved the Accounts resulting from the sale to the account debtors listed on Annex C, up to the amounts set forth on Annex C for each such Account Debtor.

"Eligible Broker" means, with respect to hedging accounts and transactions, SG Americas Securities, LLC and any other broker reasonably acceptable to the Agent.

"Eligible Exchange Receivables" means all enforceable rights of any Co-Borrower to receive natural gas in exchange for the sale or trade of natural gas previously delivered to the exchange debtor by such Co-Borrower which, in each case, (a) are evidenced by a written agreement enforceable against the exchange debtor thereof, (b) are current pursuant to the terms of the contract or invoice, (c) are subject to a perfected, first Lien for the benefit of the Secured Parties subject only to Permitted Liens, and no other Lien, charge, offset or claim, (d) are not the subject of a dispute between the exchange debtor and such Co-Borrower, (e) are valued at Platt's spot market price or another independent posting acceptable to the Agent in its sole discretion, (f) are evidenced by contracts with exchangers pre-approved by the Agent in writing in its sole discretion, or contracts secured by letters of credit in form acceptable to the Agent in its sole discretion and issued by banks approved by the Agent in its sole discretion, (g) have not been otherwise determined by the Agent in its sole discretion to be unacceptable to it.

"Eligible Inventory" means, at the time of determination thereof, each Co-Borrower's inventory consisting of natural gas, valued at current market (as referenced by a published source acceptable to the Banks in their sole discretion) net of any setoff, counterclaim or netting, as to which the following requirements have been fulfilled to the satisfaction of the Agent:

(a) The inventory is owned by such Co-Borrower, free and clear of all Liens in favor of third parties, except Liens in favor of the Banks under the Loan Documents and except for Permitted Liens;

(b) The inventory has not been identified to deliveries with the result that a buyer would have rights to the inventory that would be superior to the Banks' security interest, nor shall such inventory have become the subject of a customer's ownership or Lien;

(c) The inventory is in transit in the U.S. or a bill of lading has been issued or endorsed to the Agent if such inventory is in the hands of a third party carrier, or is located at a storage facility or at the owned sites, or leased premises, at the locations

described on Schedule 7.18, or at such other place as has been specifically agreed to in writing by the Agent and the applicable Co-Borrower; and

(d) The inventory is subject to a fully perfected first priority security interest in favor of the Agent for the benefit of the Secured Parties pursuant to the Loan Documents.

Such Eligible Inventory shall not include "virtual storage", "winter bundled sales" and future purchase commitments made during bid week prior to the physical delivery thereof.

"Eligible RECs" means Renewable Energy Certificates valued at the REC Market Value, (i) which are owned by a Co-Borrower and have not been transferred, sold, assigned or encumbered by such Co-Borrower (by contract, law or otherwise), (ii) which are registered on a state or regional Renewable Energy Certificates tracking system, (iii) which are valid for use in a state with a Renewable Energy Standard Program, (iv) which shall not be required to be retired to cover REC Compliance Obligations incurred on or prior to the date of determination of Eligible RECs, (v) which are subject to the first priority perfected lien of the Agent and which are subject to no other liens, (vi) with respect which the Agent shall have been given read-only access to the applicable state or regional Renewable Energy Certificates tracking system, (vii) which are currently saleable in the normal course of the applicable Co-Borrower's business without any notice to, or consent of, any Governmental Authority, except for any immaterial notice or consent incident to such sale where the failure to give such notice or consent does not prevent or rescind the sale or materially adversely affect the first priority perfected lien of the Agent therein and (viii) which have not otherwise been determined by the Agent to be unacceptable (in its reasonable discretion). Notwithstanding the foregoing, the aggregate amount of Eligible RECs included in the Borrowing Base Advance Cap at any time shall not exceed the lesser of (i) $20,000,000 (after giving effect to the applicable advance rate) and (ii) 10% of the Borrowing Base Advance Cap.

"Embedded Gross Margin" means, with respect to all variable price contracts of the Co-Borrowers and calculated as of the most recent month end for the following 24 consecutive month period, the net present value of the projected aggregate Dollar gross margin (i.e., as to any contract, the difference between the projected contract price under such contract and the cost of supply for the remainder of the term of such contract) of the Co-Borrowers under all variable price contracts existing as of such month end (net of attrition (based on actual weighted average historical attrition rate during the past rolling 12 month period and updated on a monthly basis for the calculation of the Embedded Gross Margin) and assuming no new variable price customer additions (including conversions from fixed to variable contracts) during such 24 consecutive month period. Any calculation of the Embedded Gross Margin is subject to the approval of the Agent in its sole discretion.

"Engagement Letter" means that certain engagement letter dated as of March 15, 2017 among the Co-Borrowers and the Agent.

"Equity Interest" means, with respect to any Person, the shares of capital stock of (or other ownership or profit interests in) such Person, the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interest in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and any of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Equity Investment" means the purchase or other acquisition by a Loan Party of any Equity Interest in another Person engaged in a line of business similar or complimentary to the lines of business carried on by the Loan Parties or in other business activities in the energy business related to such lines of business.

"ERISA" means the Employee Retirement Income Security Act of 1974, and regulations promulgated thereunder.

"ERISA Affiliate" means, collectively, any Loan Party, and any Person under common control, or treated as a single employer, with any Loan Party, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means any of the following: (a) a reportable event described in Section 4043 of ERISA (other than those events with respect to which the 30-day notice requirement has been duly waived under the applicable regulations) with respect to a Title IV Plan, (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan, (d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA, or the existence of an "accumulated funding deficiency" (as defined in Section 431 of the Code or Section 304 of ERISA), whether or not waived, (e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041(c) of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due, (h) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Title IV Plan, (i) the imposition of a lien under Section 430 of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate, and (j) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for a distress or involuntary termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

"Erroneous Payment" has the meaning specified in Section 9.15(a).

"Erroneous Payment Deficiency Assignment" has the meaning specified in Section 9.15(d).

"Erroneous Payment Impacted Class" has the meaning specified in Section 9.15(d).

"Erroneous Payment Return Deficiency" has the meaning specified in Section 9.15(d).

"Erroneous Payment Subrogation Rights" has the meaning specified in Section 9.15(e).

"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.

"Eurodollar Rate" means, with respect to any Borrowing for any Interest Period, a rate per annum equal to the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for deposits in Dollars with a term equivalent to such Interest Period as displayed on the Reuters screen page that displays such rate (currently page LIBOR01) (or, in the event such rate does not appear on a Reuters page or screen, on the appropriate page of such other information service that publishes such rate as shall be selected by Agent from time to time in its reasonable discretion) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period (but, in respect of Daily Eurodollar Rate Loans, on the date of commencement of such Interest Period); *provided* that in no event shall the Eurodollar Rate be less than zero. In the event that such rate is not available at such time for any reason, then the Eurodollar Rate with respect to such Borrowing for such Interest Period shall be the rate at which dollar deposits in the amount of the requested Borrowing and for a maturity comparable to such Interest Period are offered by the principal London office of Rabobank in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period (but, in respect of Daily Eurodollar Rate Loans, on the date of commencement of such Interest Period).

"Eurodollar Rate Loan" means a Loan that bears interest at a rate based on the Eurodollar Rate.

"Event of Default" means any of the events or circumstances specified in Section 8.01.

"Excess Sales Proceeds" means Net Cash Proceeds from a Disposition which, within 180 days after the date of receipt by Parent or any of its Restricted Subsidiaries of such Net Cash Proceeds, have not been applied or committed to the purchase of Product or capital assets used by Parent or any of its Restricted Subsidiaries in its present line of business.

"Excluded Swap Obligation" means, with respect to any Loan Party, any CEA Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such CEA Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Loan Party or the grant of such security interest becomes effective with respect to such CEA Swap Obligation. If a CEA Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such CEA Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Bank, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) 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 or Commitment pursuant to a Requirement of Law in effect on the date on which (i) such Bank acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Co-Borrowers under Section 10.15) or (ii) such Bank changes its lending office, except in each case to the extent that, pursuant to Section 4.01 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 such Recipient's failure to comply with Section 4.10(f), and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means the Amended and Restated Credit Agreement dated July 8, 2015, among certain of the Co-Borrowers, Société Générale as administrative agent, and other lenders that are a party thereto.

"Expiration Date" means October 13, 2023.

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

"FCA" has the meaning specified in Section 4.06.

"FCPA" means the United States Foreign Corrupt Practices Act of 1977, as amended.

"Federal Funds Rate" means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by Agent from three federal funds brokers of recognized standing selected by it, provided, that the Federal Funds Rate shall not at any time be less than 0%.

"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor thereto.

"Fixed Charge Coverage Ratio" means the ratio of (a) Adjusted EBITDA to (b) the sum of the following calculated solely with respect the Loan Parties on a Consolidated basis for the most recent twelve (12) month period, without duplication: (i) Consolidated Interest Expense (other than interest paid-in-kind in respect of any Subordinated Debt but including interest in respect of the Verde Note), plus (ii) letter of credit fees paid pursuant to Section 3.08, plus (iii) non-utilization fees paid pursuant to Section 2.11, plus (iv) "earnout" payments (including (x) the Verde Earnout and (y) "executive earnout" payments and "earnout" payments under clause (a) of the Major Earnout, but, in each case, excluding "earnout" payments funded with the issuance of preferred or common Equity Interests of Parent) and Major Cash Installment Payments in connection with Permitted Acquisitions, in each case, to the extent paid by a Loan Party, plus (v) Restricted Payments made pursuant to Section 7.15(c), plus (vi) all Taxes (excluding, for the purpose of calculating compliance or pro forma compliance with Section 7.09(a) (other than pro forma compliance calculated pursuant to Section 7.15(e)(ii)), Restricted Payments made pursuant to Section 7.15(e)), plus (vii) intentionally omitted, plus (viii) all payments made by the Loan Parties on or after July 31, 2020 (other than such payments made from escrow accounts which were funded in connection with a Permitted Acquisition) related to the settlement of civil and regulatory matters, to the extent such amounts are not included in the calculation of Adjusted EBITDA.

"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 Eurodollar Rate.

"Foreign Bank" means any Bank that is not a U.S. Person.

"FRB" means the Board of Governors of the Federal Reserve System, and any Governmental Authority succeeding to any of its principal functions.

"Funding Borrower" has the meaning set forth in Section 10.06(f).

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, or any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, including any supra-national bodies (such as the European Union or the European Central Bank).

"Guarantors" means Parent and each Restricted Subsidiary of a Loan Party (other than a Co-Borrower) which has executed a Guaranty Agreement.

"Guaranty Agreement" means (i) that certain Guaranty Agreement made by Parent in favor of the Agent for the ratable benefit of the Secured Parties and (ii) any other guaranty agreement executed from time to time by any Person in favor of the Agent in respect of any or all of the Obligations, as each may be amended, restated, supplemented or otherwise modified from time to time.

"Hedged Eligible Inventory" means natural gas owned by a Co-Borrower (a) which has been presold in a manner resulting in, or which at the time of delivery, will result in, a Qualified Account, or (b) which has been hedged by a NYMEX contract or an over-the-counter contract acceptable to Agent, which NYMEX contract is subject to a tri-party account control agreement with Agent and which natural gas, upon such purchase by a Co-Borrower, shall qualify as Eligible Inventory. Such Hedged Eligible Inventory shall be valued at current market (as referenced by a public source acceptable to the Agent in its sole discretion) net of any setoff, counterclaim or netting. Such Hedged Eligible Inventory shall not include "virtual storage", "winter bundled sales" or future purchase commitments made during bid week prior to the physical delivery thereof.

"Honor Date" has the meaning specified in Subsection 3.03(b).

"IBA" has the meaning specified in Section 4.06.

"Increase Effective Date" has the meaning specified in Subsection 2.02(a)(iv).

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services, including the outstanding principal under the Verde Note, the Verde Earnout to the extent due and payable, and payments under clause (b) of the Provider Earnout (excluding (i) "earnout" payments, "executive earnout" payments, and "earnout" payments under clause (a) of the Provider Earnout in connection with Permitted Acquisitions, (ii) trade accounts payable in the ordinary course of business that are not paid for more than 90 days after the date on which such trade account payable was due, and (iii) obligations that are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by any Co-Borrower);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Lease Obligations and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends or distributions; and

(h) all guaranties of such Person in respect of any of the foregoing, but only to the extent that any such guaranty does not guaranty the payment of amounts owed or which may be owed by a Co-Borrower or is not otherwise included as Indebtedness of a Co-Borrower.

For all purposes hereof, the Indebtedness of any Person shall (i) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless, and to the extent that, such Indebtedness is non-recourse to such Person, and (ii) exclude any loans from an insurance company or an insurance premium finance company to finance all or any portion of the premium on any insurance policy maintained by any Co-Borrower or any of its Restricted Subsidiaries, but only to the extent consistent with past practice. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Indebtedness attributable in respect thereof as of such date. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date if the Swap Termination Value shows that the Loan Parties on a Consolidated basis is the party owing such amount.

"Indemnified Taxes" means (a) all Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Obligor under any Loan Document and (b) to the extent not otherwise described in clause (a) of this definition, Other Taxes.

"Indemnitee" has the meaning set forth in Section 10.05(a).

"Information" has the meaning set forth in Section 10.22(b).

"Insolvency Proceeding" means with respect to any Person (a) any case, action or proceeding with respect to such Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other similar arrangements in respect of its creditors generally or any substantial portion of its creditors; undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"Intercreditor Agreement" means the Intercreditor Agreement dated as of May 19, 2017 among the Banks and the Loan Parties relating to the sharing of Collateral with and among the Swap Banks, as amended from time to time.

"Interest Payment Date" means, (a) as to any Loan other than a Base Rate Loan or a Daily Eurodollar Rate Loan with an Interest Period of one day, the last day of each Interest Period applicable to such Loan except if the Interest Period for such Loan is longer than 90 days, then the 90th day after such Loan is made; (b) as to any Base Rate Loan, the later of (i) the 5th Business Day of each fiscal quarter, or (ii) the date of payment shown on the billing delivered to the Co-Borrowers by the Agent, but in no event later than the Expiration Date, and (c) as to any Daily Eurodollar Rate Loan with an Interest Period of one day, the earlier of (1) the last Business Day of the fiscal month and (ii) the Conversion/Continuation Date on which the Loan is converted into or continued as a Loan (other than a Daily Eurodollar Rate Loan with an Interest Period of one day).

"Interest Period" means, as to any Eurodollar Rate Loan, the period commencing on the Borrowing Date of such Loan or on the Conversion/Continuation Date on which the Loan is converted into or continued as a Eurodollar Rate Loan, and ending on the date that is one, three or six months or, in the case of Daily Eurodollar Rate Loans, one day, thereafter as selected by HoldCo in its Notice of Borrowing or Notice of Conversion/Continuation as the ending date thereof; *provided*, *however*, that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the preceding Business Day;

(b) any Interest Period pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the scheduled Expiration Date.

"Interest Rate Contract" means any agreement entered into with any Swap Bank, whether or not in writing, relating to any single transaction that is an interest rate protection agreement, interest rate future, interest rate option, interest rate swap, interest rate cap, collar or other interest rate hedge arrangement. No Interest Rate Contract will be executed hereunder unless it is subject to the applicable ISDA Master Agreement or its equivalent (i.e., long-form confirmations).

"In-the-Money Positions" means the in-the-money marked-to-market value of forward positions from Co-Borrower's forward book from (i) any Accounts of the Co-Borrowers which are Eligible Accounts (other than those Accounts which fail to meet the requirements of

subparagraph (h) in the definition of "Eligible Accounts," which Accounts shall be included) and which are attributable to Product which has been contracted to be delivered to an account debtor and (ii) any open financial forward contracts not included in Approved Brokerage accounts, net of, in each case (on a counterparty by counterparty basis) remaining forward out-of-the-money positions, accounts payable and offsets and counterclaims of Co-Borrowers to such counterparty, as such amounts may be adjusted to account for the effective amount of posted cash and Letter of Credit support to such counterparty.

"IRS" means the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

"ISP" means "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"Issue" means, with respect to any Letter of Credit, to issue or to extend the expiry of, or to renew or increase the amount of, such Letter of Credit; and the terms "Issued," "Issuing" and "Issuance" have corresponding meanings.

"Issuing Bank" means Rabobank and any of its Affiliates, BOKF, NA (d/b/a Bank of Texas) and any of its Affiliates, and any other Bank or any Affiliate of any Bank that has requested and has received Agent's consent to Issue Letters of Credit hereunder, in such Bank's or Affiliate's capacity as an issuer of one or more Letters of Credit hereunder.

"Issuing Bank Sub-Limit" means, with respect to each Issuing Bank, the limit set opposite such Issuing Bank under the heading "Sub-Limit" in the table below or such other amount as may be agreed to in writing by the Co-Borrowers, the Agent and the applicable Issuing Bank:

Issuing Bank	**Sub-Limit**
Rabobank	$50,000,000
BOKF, NA (d/b/a Bank of Texas)	$30,000,000

"L/C Advance" means each Bank's participation in any L/C Borrowing in accordance with its Pro Rata Share (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Agreement, with respect to each Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable).

"L/C Amendment Application" means an application form for amendment of outstanding Standby or Documentary Letters of Credit as shall at any time be in use at an Issuing Bank, as such Issuing Bank shall request.

"L/C Application" means an application form for Issuances of Standby or Documentary Letters of Credit as shall at any time be in use at an Issuing Bank, as such Issuing Bank shall request.

"L/C Borrowing" means an extension of credit under Article 3 resulting from a drawing under any Letter of Credit, which extension of credit shall not have been reimbursed on the date when made nor converted into a Borrowing of Loans under Section 3.03.

"L/C Caps" means the following sub-limit caps upon L/C Obligations under particular types of Letters of Credit Issued as follows:

(a) Documentary and Standby Letters of Credit issued for the purpose of financing the purchase of Product and Performance Standby Letters of Credit, in each case with terms of up to 90 days – $227,500,000 in the aggregate, subject to increase as set forth in Section 2.02(b)(ii) and decrease as set forth in Section 2.08.

(b) Documentary and Standby Letters of Credit issued for the purpose of financing the purchase of Product and Performance Standby Letters of Credit, in each case with terms of greater than 90 days and up to 365 days - $136,500,000 in the aggregate, subject to increase as set forth in Section 2.02(b)(ii) and decrease as set forth in Section 2.08.

Provided that, any Letters of Credit that do not match the terms stated above due to the inclusion of an automatic renewal provision shall be permitted as long as the maximum number of days required for notice of non-renewal is ninety (90) days for Performance Standby Letters of Credit, and sixty (60) days for all other types of Letters of Credit.

"L/C Disbursement" means a payment made by an Issuing Bank pursuant to a Letter of Credit.

"L/C Obligations" means at any time the sum of (a) the aggregate undrawn amount of all Letters of Credit then outstanding, plus (b) the amount of all unreimbursed drawings under all Letters of Credit, which will constitute an L/C Borrowing until reimbursed or converted into a Borrowing of Loans.

"L/C-Related Documents" means the Letters of Credit, the L/C Applications, the L/C Amendment Applications and any other document relating to any Letter of Credit, including, but not limited to, any of the Issuing Bank's standard form documents for letter of credit issuances.

"LDCs" means storage, transportation, and performance requirements to utility companies and/or local distribution companies.

"Letters of Credit" means any letters of credit (whether Standby Letters of Credit or Documentary Letters of Credit) issued by the Issuing Banks pursuant to Article 3.

"Letters of Credit Fee Rate" means the following percentages per annum:

(a) if the average daily Aggregate Amount during the most recently ended fiscal quarter was less than fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) two and one-quarter percent (2.25%) for Letters of Credit described in clause (a) under L/C Caps and (ii) two and one-half percent (2.50%) for Letters of Credit described in clause (b) under L/C Caps; and

(b) if the average daily Aggregate Amount during the most recently ended fiscal quarter was greater than or equal to fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) two and one-

half percent (2.50%) for Letters of Credit described in clause (a) under L/C Caps and (ii) two and three-quarters percent (2.75%) for Letters of Credit described in clause (b) under L/C Caps.

The Letter of Credit Fee Rate for any fiscal quarter shall be determined by the Agent based upon the average Aggregate Amount outstanding and the average aggregate Commitments of the Banks in effect, in each case, on each day during the fiscal quarter most recently ended, and any such determination shall be conclusive and binding absent manifest error. Any increase or decrease in the Letter of Credit Fee Rate resulting from a change in the average daily Aggregate Amount or aggregate Commitments of the Banks during any fiscal quarter shall become effective as of the first day of the subsequent fiscal quarter, as notified by the Agent to the Co-Borrowers. Notwithstanding the foregoing, the Letter of Credit Fee Rate shall be deemed to be the Letter of Credit Fee Rate described in clause (a) above from and after the Closing Date through and including the last day of the first full fiscal quarter ending after the Closing Date.

"Letters of Credit for Product Not Yet Delivered" shall mean an amount equal to the face amount of any Letter of Credit for the purchase of Product minus (i) the value (determined by means of a commercially reasonable method agreed to between Co-Borrowers and Agent) of accounts payable and any other costs and liabilities incurred by the Co-Borrowers for the purchase of Products related to such Letter of Credit by the Co-Borrowers under such Letters of Credit with respect to which title to such Products has passed to a Co-Borrower as of the date of calculation thereof and is included as part of the Co-Borrowers' Eligible Inventory, minus (ii) any marked-to-market loss liability on any open forward contract or open over-the-counter transaction, minus (iii) any liability pertaining to an exchange payable, minus (iv) any other counterclaim that can be made against such Letter of Credit. The amounts resulting from such calculation shall be calculated solely with respect to the Co-Borrowers and shall not be duplicative of amounts included in the calculation of any other line item in the Borrowing Base Advance Cap for any reason.

"Lien" means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or other encumbrance, lien (statutory or otherwise) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming any Co-Borrower as debtor, under the Uniform Commercial Code or any comparable law).

"Liquidity Premium" means a liquidity premium amount to be added to the interest rate for each Daily Eurodollar Rate Loan, to be determined by the Agent in its sole discretion for each such Borrowing on the first day of each Interest Period therefor.

"Loan" means an extension of credit by the Banks to the Co-Borrowers under Article 2 or Article 3, including Working Capital Loans and Acquisition Loans.

"Loan Documents" means this Agreement, the Notes, the Guaranty Agreement, the Security Documents, the Intercreditor Agreement, the L/C-Related Documents, each Subordination Agreement, if and when in effect, and all other documents delivered to the Banks (excluding Swap Contracts) in connection herewith, each as amended, modified or restated from time to time.

"Loan Party" means each Co-Borrower and each Guarantor.

"Lock Box" has the meaning specified in Subsection 7.08(a).

"Long Position" means for each Co-Borrower and any Subsidiary, (a) the aggregate number of MMBtus of natural gas which are either held in inventory by such Co-Borrower or such Subsidiary or which such Co-Borrower or such Subsidiary has contracted to purchase (whether by purchase of a contract on a commodities exchange or otherwise), or which such Co-Borrower or such Subsidiary will receive on exchange or under a swap contract including, without limitation, all option contracts representing the obligation of such Co-Borrower or such Subsidiary to purchase natural gas at the option of a third party, and in each case, for which a fixed purchase price has been set or (b) the aggregate number of megawatt hours of electricity, which such Co-Borrower or such Subsidiary has contracted to purchase (whether by purchase of a contract on a commodities exchange or otherwise), or which such Co-Borrower or such Subsidiary will receive on exchange or under a swap contract including, without limitation, all option contracts representing the obligation of such Co-Borrower or such Subsidiary to purchase electricity at the option of a third party, and in each case, for which a fixed purchase price has been set. Long Positions will be expressed as a positive number.

"Major Acquisition" means the acquisition by HoldCo of 100% of the outstanding Equity Interests of each Major Company pursuant to the Major Acquisition Documents.

"Major Acquisition Documents" means, collectively, each of the documents, instruments and agreements set forth on Annex D-2.

"Major Cash Installment Payments" means the cash installment payments to be made in accordance and as contemplated by Article 2 of the Major MIPA, which cash installment payments shall not exceed $15,000,000 in the aggregate or $5,000,000 annually.

"Major Companies" means Major, Electric, and Respond.

"Major Earnout" means, (a) the "earnout" payable pursuant to and as contemplated by Article 2 of the Major MIPA and (b) the "executive earnout" payable pursuant to and as contemplated by Article 2 of the Major MIPA, collectively, in an aggregate amount not to exceed (x) 27.27% of Major Companies' Adjusted EBITDA (as defined in the Major MIPA) for fiscal year ended December 31, 2016, (y) 36.36% of Major Companies' Adjusted EBITDA (as defined in the Major MIPA) for the fiscal year ended December 31, 2017, and (z) 36.36% of Major Companies' Adjusted EBITDA (as defined in the Major MIPA) for the fiscal year ended December 31, 2018.

"Majority Banks" means, as of any date of determination, (a) other than as provided in clause (b), two or more Banks having more than 50% of Commitments or, if the Commitments of each Bank to make Loans and the obligation of the Issuing Banks to Issue Letters of Credit have been terminated pursuant to Section 8.02, two or more Banks holding in the aggregate more than 50% of the Effective Amount of all Loans and L/C Obligations (with the aggregate amount of each Bank's risk participation and funded participation in L/C Obligations being deemed "held" by such Bank for purposes of this definition) and (b) at any time there is only one Bank, such Bank.

"Major MIPA" means the Membership Interest Purchase Agreement, dated May 3, 2016 among HoldCo, Parent, National Gas & Electric, LLC and Retailco.

"Major MIPA Payments" means (a) the payment of Major Cash Installment Payments by HoldCo or any other Loan Party, (b) the payment of the Major Earnout by HoldCo or any other Loan Party and (c) any other cash payments (other than cash payments of acquired net working capital) made by HoldCo or any other Loan Party pursuant to the Major MIPA as consideration for the Major Acquisition.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U or X of the FRB.

"Marketable Securities" means (a) certificates of deposit issued by any bank with a Fitch rating of A or better, (b) commercial paper rated P-1, A-1 or F-1, (c) bankers acceptances rated Prime, or (d) U.S. Government obligations with tenors of 90 days or less.

"Master Service Agreement" means the Master Service Agreement dated January 1, 2016, among Holdco, Parent and Retailco Services, LLC.

"Material Adverse Effect" means (a) a material adverse effect upon, the operations, business, properties, or condition (financial or otherwise) of the Loan Parties taken as a whole, (b) a material impairment of the ability of any Loan Party or the Loan Parties to perform under any Loan Document, or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or the rights and remedies of the Agent, any Issuing Bank or the Banks thereunder.

"Maximum Borrower Liability" has the meaning set forth in Section 10.06(c).

"Maximum Rate" has the meaning set forth in Section 2.10(e).

"Minimum Shares" has the meaning set forth in Section 8.01(j).

"MIPA Payment Availability" means (a) the amount calculated under clause (b) of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b) minus (b) the Effective Amount of the Working Capital Loans plus the Effective Amount of the Acquisition Loans plus the Effective Amount of all L/C Obligations.

"Multiemployer Plan" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"Net Cash Proceeds" means the remainder of (a) the gross proceeds received by Parent or any of its Restricted Subsidiaries from (i) a Disposition, (ii) the issuance of Additional Debt, or (iii) the issuance of Equity Interests, other than Equity Interests issued in connection with a Cure Contribution, less (b) underwriter discounts and commissions, investment banking fees, legal, accounting and other professional fees and expenses, and other usual and customary transaction costs, in each case only to the extent paid or payable by Parent or any of its Restricted Subsidiaries in cash and related to such Disposition, Additional Debt issuance, or Equity Interest issuance.

"Net Position" means the sum of all Long Positions and Short Positions of each of the Co-Borrowers and their respective Subsidiaries.

"Net Position Report" means a report which details the Net Position of each of the Co-Borrowers and its Subsidiaries and includes each Co-Borrower's certification that it is in compliance with Section 7.17 of this Agreement, substantially in the form attached hereto as Exhibit C, or in any other form acceptable to the Agent, which Net Position Report shall include, on a monthly basis, detailed information on volumetric positions with mark to market valuation on a dollar basis.

"New Bank Agreement" means a New Bank Agreement, substantially in the form of Exhibit H, among the Co-Borrowers, the Agent, and a new financial institution making a Commitment pursuant to Section 2.02 of this Agreement.

"New Co-Borrower Supplement" means the supplement to the Credit Agreement substantially in the form attached hereto as Exhibit L.

"Non-Defaulting Bank" means, at any time, each Bank that is not a Defaulting Bank at such time.

"Note" means a promissory note made by a Co-Borrower in favor of a Bank evidencing such Bank's Commitment, substantially in the form of Exhibit B.

"Notice of Borrowing" means a request by the Co-Borrowers to the Agent for either a Borrowing of Loans or an Issuance of a Letter of Credit, each such notice to be in the appropriate form attached hereto as Exhibit A-1 or in any other form acceptable to the Agent.

"Notice of Conversion/Continuation" means a notice in substantially the form of Exhibit A-2.

"NuDevco Retail" means NuDevco Retail, LLC, a Delaware limited liability company.

"NYMEX" means the New York Mercantile Exchange.

"Obligations" means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, including, but not limited to, the obligation to reimburse L/C Obligations to an Issuing Bank, due or to become due, now existing or hereafter arising and, including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof or any proceeding under any debtor relief laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding (including, without limitation, Erroneous Payment Subrogation Rights), and (b) all indebtedness, liabilities and obligations owing by any Loan Party to any Swap Bank under a Swap Contract, whether due or to become due, absolute or contingent, or now existing or hereafter arising, including Swap Contracts in effect on the Closing Date (as such Swap Contracts may be amended from time to time); *provided* that (i) when any Swap Bank assigns or otherwise transfers any interest held by it under any Swap Contract to any other Person pursuant to the terms of such agreement, the obligations thereunder shall constitute Swap Obligations only if such assignee or transferee is also then a Bank or an Affiliate of a Bank and a party to the Intercreditor Agreement and (ii) if a Swap Bank ceases to be a Bank or an Affiliate of a Bank hereunder, obligations owing to such Swap Bank shall be included as Swap Obligations only to the extent such obligations arise from transactions under such individual Swap Contracts (and not the master agreement between such parties) entered into prior to the time such Swap Bank ceases to be a Bank or an Affiliate of a Bank hereunder, without giving effect to any extension, increases, or modifications thereof which are made after such Swap Bank ceases to be a Bank or an Affiliate of a Bank hereunder; provided further that, "Obligations" shall exclude any Excluded Swap Obligations. For purposes of determining the amount of the Loan Parties' Swap Obligations, the amount of such Swap Obligation shall be an amount equal to the Close-Out Amount with respect to any Swap Contract.

"OFAC" has the meaning assigned to such term in the definition of "Sanctions".

"Other Debtor Relief Law" has the meaning set forth in Section 10.06(c)(iii).

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

"Other Taxes" means all present or future stamp, court, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or registration of, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 10.15).

"Participant" has the meaning specified in Section 10.07(e).

"Participant Register" has the meaning specified in Section 10.07(e).

"Payment in Full" means the termination of this Agreement, termination of all Swap Contracts with such Persons (other than Swap Contracts as to which arrangements satisfactory to the applicable counterparty in its sole discretion have been made), termination of all Letters of Credit (other than Letters of Credit as to which arrangements satisfactory to the applicable Issuing Bank in its sole discretion have been made), and the payment in full in cash of all outstanding Obligations.

"Payment Recipient" has the meaning specified in Section 9.15(a).

"PBGC" means the Pension Benefit Guaranty Corporation and any successor thereto.

"Performance Standby Letters of Credit" means Standby Letters of Credit securing performance obligations, transportation and storage obligations, performance requirements to LDCs, swap obligations or other obligations of the Co-Borrowers owing to pipeline and storage companies.

"Permitted Acquisitions" means (a) the acquisition of customer contracts for consideration equal to or greater than $4,000,000 for any single transaction, (b) the acquisition of 50% or more of the Equity Interest in another Person (such Person, the "Target"), or (c) the acquisition of any business, division or enterprise, or all or substantially all of the assets of a Target, *provided* that, in each case, (i) such acquisition is consistent with or complimentary to the lines of business presently conducted by the Co-Borrowers or in other business activities in the energy business related to such lines of business, (ii) before and immediately after giving effect to such acquisition no Default or Event of Default shall have occurred and be continuing, (iii) immediately after giving effect to such acquisition, the Loan Parties shall be in pro forma compliance with the financial covenants in Section 7.09, (iv) the Adjusted Purchase Price (excluding the portion of such purchase price consisting of the cash cost of acquired net working capital) for any such acquisition does not exceed $7,500,000 without the prior written consent of the Agent or $10,000,000 without the prior written consent of the Majority Banks; provided that, in the case of the Verde Acquisition, no such consent shall be required so long as any payments made by any Loan Party with respect thereto comply with Section 7.12(k); (v) intentionally omitted; (vi) the Acquisition Loans used to fund each Permitted Acquisition do not exceed the sum of (A) 75% of the Adjusted Purchase Price (excluding the portion of such purchase price

consisting of the cash cost of acquired net working capital) and (B) the Adjusted Purchase Price consisting of the cash cost of acquired net working capital, in each case, of the Permitted Acquisition to be financed by such Acquisition Loan; and (vii) (A) in the case of an acquisition of Equity Interests, the acquisition is structured so that the acquired Person becomes a Restricted Subsidiary of a Co-Borrower, and the Co-Borrowers comply with Section 7.23 with respect to such Person and (B) in the case of an acquisition of assets, such acquisition is structured so that a Loan Party acquires such assets.

"Permitted Liens" has the meaning specified in Section 7.10.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority.

"Platform" has the meaning specified in Subsection 10.02(d).

"Pledge Agreement" means each pledge agreement listed on the Security Schedule and each other pledge agreement executed from time to time by any Person in favor of the Agent in respect of any or all of the Obligations, as each may be amended, restated, supplemented or otherwise modified from time to time.

"POR Agreement" means any agreement for billing services and for the assignment of accounts receivables between a Co-Borrower and a third party as may be approved by the Agent from time to time in its sole discretion, including those POR Agreements in effect as of the Closing Date as set forth in Schedule 1.01(a).

"POR Collateral" means accounts receivable assigned by a Co-Borrower pursuant to a POR Agreement.

"Prime Rate" means the rate of interest per annum published in the Wall Street Journal as the U.S. dollar "prime rate" for such day and if the Wall Street Journal does not publish such rate on such day then such rate as most recently published prior to such day.

"Product" means natural gas and electricity.

"Pro Rata Adjusted Percentage" means, at any time that one or more Banks qualifies as a Defaulting Bank hereunder, with respect to each Non-Defaulting Bank, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of such Bank's Commitments divided by the aggregate Commitments (excluding the Commitments of all Defaulting Banks); *provided* that the application of the Pro Rata Adjusted Percentage shall in no event result in a Non-Defaulting Bank being obligated to extend credit in an amount in excess of its Commitments, and no adjustment to a Non-Defaulting Bank's Commitments shall arise from such Non-Defaulting Bank's agreement herein to fund in accordance with its Pro Rata Adjusted Percentage.

"Pro Rata Share" means, as to any Bank at any time, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of such Bank's Credit Percentage.

"Provider Acquisition" means the acquisition by HoldCo of 100% of the outstanding Equity Interests of each Provider Company pursuant to the Provider Acquisition Documents.

"Provider Acquisition Documents" means, collectively, means, collectively, each of the documents, instruments and agreements set forth on Annex D-1.

"Provider Companies" means Maine, NH and Mass.

"Provider Earnout" means the (a) "earnout" payable pursuant to the Provider MIPA in an aggregate amount not to exceed $4,000,000 and (b) any minimum required payment pursuant to Section 2.2(c) of the Provider MIPA in an aggregate amount not to exceed $5,000,000.

"Provider MIPA" means the Membership Interest Purchase Agreement, dated May 3, 2016, among HoldCo, Provider Power, LLC, Parent and Kevin B. Dean and Emile L. Clavet.

"Provider MIPA Payments" means (a) the payment of the Provider Earnout by HoldCo or any other Loan Party and (b) any other cash payments (other than cash payments of acquired net working capital) made by HoldCo or any other Loan Party pursuant to the Provider MIPA as consideration for the Provider Acquisition.

"Qualified Accounts" means receivables under contracts which upon performance by the applicable Co-Borrower will become Eligible Accounts of such Co-Borrower.

"Qualified ECP Guarantor" means, in respect of any CEA Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such CEA Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Rabobank" means Coöperatieve Rabobank U.A., New York Branch.

"REC Compliance Obligations" means, with respect to any Co-Borrower and as of any date, in any state with a "Renewable Portfolio Standard Program", the Renewable Energy Certificates (expressed in units) that such Co-Borrower will be required to retire in order to meet its compliance obligations under the "Renewable Portfolio Standard Program" in such state.

"REC Market Value" means the market value of Renewable Energy Certificates, based on a pricing methodology reasonably acceptable to the Agent, provided, that the quantity of Eligible RECs (for which the REC Market Value shall be calculated) shall be calculated at the lower of the quantity shown in the books and records of the applicable Co-Borrower and the quantity shown in the applicable state or regional Renewable Energy Certificates tracking system and in the case of a manifest error in the applicable state or regional Renewable Energy Certificates tracking system, Eligible RECs shall be calculated based on the quantity shown in the books and records of the applicable Co-Borrower.

"Recipient" means (i) any Bank, (ii) the Agent, and (iii) any Issuing Bank, as applicable.

"Register" has the meaning specified in Section 10.07(d).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, attorneys-in-fact, and representatives of such Person and of such Person's Affiliates.

"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.

"Renewable Energy Certificates" means renewable energy certificates, renewable energy credits, green tags, renewable electricity certificates or tradable renewable certificates that, in each case, represent evidence that one megawatt-hour of electricity was generated from an eligible renewable energy source in a state in which a "Renewable Portfolio Standard Program" has been implemented, and which are valid for the purpose of satisfying the compliance requirements imposed by such "Renewable Portfolio Standard Program.

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject but excluding any such determination of an arbitrator or Governmental Authority that is being appealed or is being validly challenged in good faith by such Person.

"Reserves" means reserves for any warehouse, bailee or storage charges or rent where inventory is located in an amount not less than an amount necessary to pay all such charges or rents for three months.

"Residential Customer Equivalent" or "RCE" means a natural gas customer with a standard consumption of 100 MMBtus per year or an electricity customer with a standard consumption of 10 MWhs per year.

"Resignation Effective Date" has the meaning set forth in Section 9.06(a).

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

"Responsible Officer" means (a) with respect to any Person that is a corporation, the officers of such Person listed on the Responsible Officer List provided by the Loan Parties to the Agent from time to time, (b) with respect to any Person that is a limited liability company, if such Person has officers, then the officers of such Person listed on the Responsible Officer List provided by the Loan Parties to the Agent from time to time, and if such Person is managed by members, then a Responsible Officer of such Person's managing member, and if such Person is managed by managers, then a manager (if such manager is an individual) or a Responsible Officer of such manager (if such manager is an entity), and (c) with respect to any Person that is a general partnership, limited partnership or a limited liability partnership, the Responsible Officer of such Person's general partner or partners.

"Responsible Officer List" means the list of Responsible Officers provided by the Loan Parties to the Agent from time to time.

"Restricted Subsidiary" means each Subsidiary of Parent other than an Unrestricted Subsidiary.

"Retailco" means Retailco, LLC, a Texas limited liability company.

"Risk Management and Credit Policy" means the energy commodity risk management policy of Co-Borrowers, as such policy may be amended from time to time pursuant to Section 7.25.

"Sanctioned Person" has the meaning assigned to such term in Section 6.22(b).

"Sanctions" means any sanctions administered by or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Netherlands, or other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission.

"Second Amendment Effective Date" means July 17, 2018.

"Secured Parties" means the Agent, each Issuing Bank, each Bank, and each Swap Bank.

"Security Agreement" means that certain Security Agreement among the Co-Borrowers, the Guarantors and Rabobank, as Agent, dated as of May 19, 2017, for the ratable benefit of the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time.

"Security Documents" means the instruments listed in the Security Schedule and all other security agreements, deeds of trust, mortgages, chattel mortgages, pledges, assignments, deposit instruments, guarantees, financing statements, continuation statements, extension agreements and other agreements or instruments now, heretofore, or hereafter delivered by any Co-Borrower to the Agent for the ratable benefit of the Banks and the Swap Banks in connection with this Agreement or any transaction contemplated hereby to secure the payment of any part of the Obligations or the performance of any Co-Borrower's other duties and obligations under the Loan Documents.

"Security Schedule" means Annex A hereto.

"Senior Secured Leverage Ratio" means, as of any date, the ratio of (a) all Indebtedness of the Loan Parties on a Consolidated basis that is secured by a Lien on any Property of any Loan Party, as of such date (including the Effective Amount of all Loans then outstanding but excluding L/C Obligations and, for avoidance of doubt, Subordinate Debt permitted by Section 7.13(c)) to (b) Adjusted EBITDA for the most recent twelve (12) month period then ended.

"Sharing Event" shall have the meaning ascribed to it in the Intercreditor Agreement.

"Short Position" means for each Co-Borrower and any Subsidiary, (a) the aggregate number of MMBtus of natural gas which such Co-Borrower or such Subsidiary has contracted to sell (whether by sale of a contract on a commodities exchange or otherwise) or deliver on exchange or under a swap contract, including, without limitation, all option contracts representing the obligation of such Co-Borrower or such Subsidiary to sell natural gas at the option of a third party and in each case for which a fixed sales price has been set or (b) the aggregate number of megawatt hours of electricity which such Co-Borrower or such Subsidiary has contracted to sell (whether by sale of a contract on a commodities exchange or otherwise) or deliver on exchange or a swap contract, including, without limitation, all option contracts representing the obligation of such Co-Borrower or such Subsidiary to sell electricity at the option of a third party and in each case for which a fixed sales price has been set. Short Positions will be expressed as a negative number.

"SOFR" means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve

Bank of New York, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified by the administrator of the secured overnight financing rate from time to time).

"Subordinated Debt" means unsecured Indebtedness of the Co-Borrowers owed to an Affiliate of the Co-Borrowers (other than Parent and its Restricted Subsidiaries) (a) no part of the principal of which is required to be paid (whether by way of mandatory sinking fund, mandatory redemption, mandatory prepayment or otherwise) prior to the date that is six (6) months after the Expiration Date, (b) the terms and provisions of which are otherwise reasonably satisfactory to the Agent and (c) that has been subordinated to the Obligations in right and time of payment pursuant to the Subordination Agreement.

"Subordination Agreement" means a subordination agreement in substantially the same form as Exhibit M hereto with such changes as the Agent deems appropriate, or otherwise in form and substance acceptable to the Agent and the Majority Banks, among the Co-Borrowers, the owner and holder of the Subordinated Debt and the Agent.

"Subsidiary" of a Person means any corporation, association, partnership, joint venture or other business entity of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations), is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. For purposes of this Agreement and each other Loan Document, HoldCo and its Subsidiaries shall constitute Subsidiaries of Parent. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of any of the Loan Parties.

"Swap Banks" means any Person that, at the time it enters into a Swap Contract with a Co-Borrower permitted under Article 7, is a Bank or an Affiliate of a Bank and is a party to the Intercreditor Agreement, in its capacity as a party to such Swap Contract.

"Swap Contract" means any agreement entered into with any Swap Bank, whether or not in writing, relating to any single transaction that is a rate swap, a basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, currency option or any other similar transaction (including any transaction involving physical delivery and any option to enter into any of the foregoing) or any combination of the foregoing and, unless the context clearly requires, any master agreement relating to or governing any or all of the foregoing. No Swap Contract will be executed hereunder unless it is subject to the applicable ISDA Master Agreement or its equivalent (i.e., long-form confirmations). For the avoidance of doubt, the term "Swap Contract" shall include Interest Rate Contracts.

"Swap Obligations" means the obligations referred to in clause (b) of the definition of Obligations.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Bank or any Affiliate of a Bank).

"Synthetic Lease Obligation" means the monetary obligation of a Person under a so-called synthetic, off-balance sheet or tax retention lease.

"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.

"Tax Receivable Agreement" means the Tax Receivable Agreement dated as of August 1, 2014, among Parent, HoldCo, Retailco, and NuDevco Retail.

"Term SOFR" means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Term SOFR Adjustment" means, 0.11448% (11.448 basis points) for an Available Tenor of one month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three months' duration, 0.42826% (42.826 basis points) for an Available Tenor of six months' duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve months' duration.

"Term SOFR Notice" means a notification the Agent to the Banks and the Co-Borrowers of the occurrence of a Term SOFR Transition Event.

"Term SOFR Transition Event Effective Date" means, with respect to a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Banks and the Co-Borrowers pursuant to clause (iii) of Section 4.06.

"Term SOFR Transition Event" means the determination by the Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Agent in its sole discretion, and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 4.06 that is not Term SOFR.

"Tier I Account" means an Eligible Account with a Tier I Account Party.

"Tier I Account Party" means an Account Debtor which is (a) of the type listed as a Tier I Account Party on the Credit Limit Annex, or (b) approved by the Agent as a Tier I Account Party.

"Tier I Unbilled Qualified Account" means Unbilled Qualified Accounts with a Tier I Account Party.

"Tier II Account" means an Eligible Account with a Tier II Account Party.

"Tier II Account Party" means an Account Debtor which is (a) of the type listed on the Credit Limit Annex as a Tier II Account Party or (b) approved by the Agent as a Tier II Account Party.

"Tier II Unbilled Qualified Account" means Unbilled Qualified Accounts with a Tier II Account Party.

"Title IV Plan" means a pension plan (as defined in Section 3(2) of ERISA) that is subject to Title IV of ERISA, Section 302 of ERISA or Section 412 of the Code, other than a Multiemployer Plan, and that is sponsored, maintained or contributed to by any ERISA Affiliate,

or with respect to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"Total Available Commitments" means, at any time, the aggregate Commitments of the Banks minus the aggregate Commitments of all Defaulting Banks at such time.

"Type" means a Base Rate Loan or a Eurodollar Rate Loan.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, 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.

"Unbilled Qualified Accounts" means Eligible Accounts, based upon the value of underlying sales contracts, of the Co-Borrowers for Product which have been delivered to an account debtor and which would be Eligible Accounts but for the fact that such Accounts have not actually been invoiced at such time.

"United States" and "U.S." each means the United States of America.

"Unrestricted Subsidiary" means any Subsidiary of a Co-Borrower formed or acquired after the Closing Date that is designated by the Co-Borrowers, with the written consent of the Agent and Majority Banks, as an Unrestricted Subsidiary. As of the Closing Date, there are no Unrestricted Subsidiaries.

"Unused Commitment" means, with respect to each Bank at any time, the sum of such Bank's Commitment at such time minus such Bank's Credit Exposure at such time.

"USA Patriot Act" has the meaning assigned to such term in the definition of "Anti-Terrorism Laws".

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

"U.S. Tax Compliance Certificate" has the meaning specified in Section 4.01(f)(ii)(2)(iii).

"Verde Acquisition" means the acquisition by CenStar of 100% of the outstanding Equity Interests of each Verde Company pursuant to the Verde MIPA for consideration consisting of (i) cash consideration payable at closing of approximately $65,000,000 (including payments attributable to estimated closing date working capital), (ii) the Verde Earnout and (iii) the issuance of the Verde Note.

"Verde Acquisition Documents" means, collectively, means, collectively, each of the documents, instruments and agreements set forth on Annex D-3 and all other material acquisition documents.

"Verde Companies" means Verde Energy USA, Inc., a Delaware corporation, Verde Energy USA Commodities, LLC, a Delaware limited liability company, Verde Energy

USA Connecticut, LLC, a Delaware limited liability company, Verde Energy USA DC, LLC, a Delaware limited liability company, Verde Energy USA Illinois, LLC, a Delaware limited liability company, Verde Energy USA Maryland, LLC, a Delaware limited liability company, Verde Energy USA Massachusetts, LLC, a Delaware limited liability company, Verde Energy USA New Jersey, LLC, a Delaware limited liability company, Verde Energy USA New York, LLC, a Delaware limited liability company, Verde Energy USA Ohio, LLC, a Delaware limited liability company, Verde Energy USA Pennsylvania, LLC, a Delaware limited liability company, Verde Energy USA Texas Holdings, LLC, a Delaware limited liability company, Verde Energy USA Trading, LLC, a Delaware limited liability company, Verde Energy USA Texas, LLC, a Texas limited liability company and Verde Energy Solutions, LLC a Delaware limited liability company.

"Verde Earnout" means, collectively, the Earnout Payments (as defined in the Verde MIPA).

"Verde MIPA" means the Membership Interest Purchase Agreement, dated May 5, 2017, among CenStar, as buyer, Parent, as guarantor, and Verde Seller, as seller.

"Verde MIPA Payments" means (a) the payment of all or any portion of the Verde Earnout by CenStar or any other Loan Party, (b) the payment of principal and interest under the Verde Note in accordance with the terms thereof, and (c) any other cash payments (other than cash payments of acquired net working capital) made by CenStar or any other Loan Party pursuant to the Verde MIPA as consideration for the Verde Acquisition.

"Verde Note" means that certain promissory note made by CenStar to Verde Seller in the principal amount of $20,000,000. The Verde Note is the "Buyer Note" referred to, and defined in, the Verde MIPA.

"Verde Seller" means Verde Energy USA Holdings, LLC, a Delaware limited liability company.

"Withdrawal Liability" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

"Working Capital Advance Cap" means $227,500,000, as such amount may be increased pursuant to Section 2.02(b) or reduced as otherwise set forth in this Agreement.

"Working Capital Loans" shall have the meaning set forth in Section 2.01(a).

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions.

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "hereof," "herein," "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Subsection, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(c) The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however, evidenced.

(ii) The term "including" is not limiting and means "including without limitation."

(iii) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including."

(d) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms but only for the specific purposes for which they apply.

(g) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Banks and the Co-Borrowers, and are the products of all parties. Accordingly, they shall not be construed against any of the parties merely because of such parties' involvement in their preparation.

1.03 Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made in accordance with GAAP consistently applied.

(b) References herein to "fiscal year" and "fiscal quarter" refer to such fiscal periods of each of the Loan Parties.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either a Loan Party or the Majority Banks shall so request, the Agent, the Banks and the Loan Parties shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Banks); *provided* that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Loan Parties shall provide to the Agent and the Banks financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the financial statements referred to in Section 6.11(a) for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

1.04 Pro Forma Compliance Determination. "Pro forma compliance" determination as to any transaction shall be calculated after giving effect to such transaction with (a) Indebtedness to include any Indebtedness incurred and outstanding since the last day of the most recent fiscal month for which financial statements are available, (ii) Adjusted EBITDA being calculated based on the most recently ended trailing twelve month period for which financial statement are available, and (iii) clause (b) of the Fixed Charge Coverage Ratio being calculated as of the most recently ended trailing twelve month period for which financial statement are available.

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

Article 2
THE CREDITS

2.01 Loans.

(a) Working Capital Loans. Subject to the terms and conditions set forth herein, each Bank severally agrees to make loans (each such loan, a "Working Capital Loan") to the Co-Borrowers from time to time, on any Business Day during the Availability Period, the proceeds of which shall be used solely for a purpose set forth in Section 7.07(a), in an aggregate principal amount outstanding not at any time to exceed the Working Capital Advance Cap; *provided*, *however*, that after giving effect to any Borrowing:

(i) the Effective Amount of all Loans and all L/C Obligations shall not exceed the aggregate Commitments of the Banks or, if a Defaulting Bank exists hereunder, the Total Available Commitments,

(ii) the Effective Amount of all Loans and all L/C Obligations shall not exceed the Borrowing Base Advance Cap determined as of the date of such request on the basis of the Collateral Position

Report most recently received by the Agent pursuant to Section 7.02(b) two (2) Business Days prior to the date on which the requested Working Capital Loans are to be made, and

(iii) the aggregate Effective Amount of all Loans of each Bank, plus such Bank's Credit Percentage of the Effective Amount of all L/C Obligations shall not exceed such Bank's Commitment.

Within the limits of each Bank's Commitment, and subject to the other terms and conditions hereof, the Co-Borrowers' ability to obtain Working Capital Loans shall be fully revolving, and accordingly the Co-Borrowers may borrow under this Section 2.01(a), prepay under Section 2.06, and re-borrow under this Section 2.01(a). Working Capital Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) Acquisition Loans. Subject to the terms and conditions set forth herein, each Bank severally agrees to make loans (each such loan, an "Acquisition Loan") to the Co-Borrowers from time to time, on any Business Day during the Availability Period, the proceeds of which shall be used solely for a purpose set forth in Section 7.07(b), in an aggregate principal amount outstanding not at any time to exceed the Acquisition Advance Cap; *provided, however*, that after giving effect to any Borrowing:

(i) the Effective Amount of all Loans and all L/C Obligations shall not exceed the aggregate Commitments of the Banks or, if a Defaulting Bank exists hereunder, the Total Available Commitments;

(ii) the Effective Amount of all Loans and all L/C Obligations shall not exceed the Borrowing Base Advance Cap determined as of the date of such request on the basis of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b) two (2) Business Days prior to the date on which the requested Acquisition Loans are to be made;

(iii) the aggregate Effective Amount of all Loans of each Bank, plus such Bank's Credit Percentage of the Effective Amount of all L/C Obligations shall not exceed such Bank's Commitment; and

(iv) the aggregate Effective Amount of all Acquisition Loans of each Bank shall not exceed such Bank's Credit Percentage of the Acquisition Advance Cap.

Within the limits of each Bank's Commitment, and subject to the other terms and conditions hereof, the Co-Borrowers' ability to obtain Acquisition Loans shall be fully revolving, and accordingly the Co-Borrowers may borrow under this Section 2.01(b), prepay under Section 2.06, and re-borrow under this Section 2.01(b). Acquisition Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

2.02 Increase in Commitments.

(a) Increase in Commitments.

(i) Subject to the conditions set forth in clauses (ii) and (iii) of this Section 2.02(a), the Co-Borrowers may request that the amount of the aggregate Commitments be increased one or more times,

in each case in a minimum amount of $2,500,000 or in integral multiples of $2,500,000 in excess thereof; provided that the aggregate Commitments after any such increase may not exceed $250,000,000.

(ii) Each such increase shall be effective only upon the following conditions being satisfied: (A) no Default or Event of Default has occurred and is continuing at the time thereof or would be caused thereby, (B) immediately before and after giving effect to such increase, the Loan Parties shall be in pro forma compliance with the financial covenants in Section 7.09, together with calculations and any supporting documentation demonstrating such pro forma compliance in form and substance reasonably satisfactory to the Agent, (C) either the Banks having Commitments hereunder at the time the increase is requested agree to increase their Commitments in their sole discretion in the amount of the requested increase or other financial institutions agree to make a Commitment in the amount of the difference between the amount of the increase requested by the Co-Borrowers and the amount by which some or all of the Banks having Commitments hereunder at the time the increase is requested agree to increase their Commitments, (D) such increase shall be subject to the approval of the Agent and the Issuing Banks, which consent shall not be unreasonably withheld, conditioned or delayed, (E) such Banks and other financial institutions, if any, shall have executed and delivered to the Agent a Commitment Increase Agreement or a New Bank Agreement, as applicable, and (F) the Co-Borrowers shall have delivered such evidence of authority for the increase (including without limitation, certified resolutions of the applicable managers and/or members of the Co-Borrowers authorizing such increase) as the Agent may reasonably request.

(iii) Each financing institution to be added to this Agreement as described in Section 2.02(a)(ii)(C) above shall execute and deliver to the Agent a New Bank Agreement, pursuant to which it becomes a party to this Agreement. Each Bank agreeing to increase its Commitment as described in Section 2.02(a)(ii)(C) shall execute and deliver to the Agent a Commitment Increase Agreement pursuant to which it increases its Commitment hereunder. In addition, to the extent required by the applicable Bank, a Responsible Officer shall execute and deliver to the Agent, for each Bank being added to this Agreement, a Note payable to such new Bank in the principal amount of the Commitment of such Bank, and for each Bank increasing its Commitment, a Note (replacement Note, if applicable) payable to such Bank, in the principal amount of the increased Commitment of such Bank. Each such Note shall be dated the effective date of the pertinent New Bank Agreement or Commitment Increase Agreement. In the event a replacement Note is issued to a Bank, such Bank shall mark the original note as "REPLACED" and shall return such original Note to the Co-Borrowers. Upon execution and delivery to the Agent of the Note (if required by the applicable Bank) and the execution by

the Agent of the relevant New Bank Agreement or Commitment Increase Agreement, as the case may be, such new financing institution shall constitute a "Bank" hereunder with a Commitment as specified therein, or such existing Bank's Commitment shall increase as specified therein, as the case may be, and the Agent shall notify the Co-Borrowers and all Banks of such additions or increases, and the final allocations thereof, and provide a revised Schedule 2.01 reflecting such additions or increases together with a schedule showing the revised Working Capital Advance Cap and L/C Cap as increased pursuant to Section 2.02(b) below.

(iv) Notwithstanding anything to the contrary in this Section 2.02(a), the Banks having Commitments hereunder at the time any such increase is requested shall have the first right, but shall not be obligated, to participate in such increase by agreeing to increase their respective Commitments by their Credit Percentage to the extent of such increase. The Agent shall not, and shall not be obligated to, permit any financial institutions that do not have, at that time, Commitments hereunder to make commitments for portions of the requested increase not assumed by the Banks having Commitments hereunder until each of such Banks have agreed to increase their Commitments or declined to do so. To facilitate the Banks' right of first refusal, HoldCo shall, by written notice to the Agent (which shall promptly deliver a copy to each Bank) given not less than 15 days prior to the requested effective date of the increase in Commitments (the "Increase Effective Date"), request that the Banks increase their Commitments. Each Bank shall, by notice to HoldCo and the Agent given not later than 15 days following receipt of HoldCo's request, advise HoldCo whether or not it will increase its Commitment as of the Increase Effective Date. Any Bank that has not so advised HoldCo and the Agent by such day shall be deemed to have declined to agree to such increase in its Commitment. The decision to increase its Commitment hereunder shall be at the sole discretion of each Bank.

(v) If, after giving effect to any increase under this Section 2.02(a), the outstanding Working Capital Loans would not be held pro rata in accordance with the new Commitments, the Banks (including, without limitation, any new Bank) shall, on the effective date of the applicable increase, make advances among themselves so that after giving effect thereto the Working Capital Loans will be held by the Banks (including, without limitation, any new Banks), on a pro rata basis in accordance with their respective Commitments hereunder (after giving effect to the applicable increase). Each Bank agrees to wire immediately available funds to the Agent in accordance with this Agreement as may be required by Agent in connection with the foregoing. Upon the effective date of each increase under this Section 2.02(a), the Commitments of the Banks shall reflect the changes contemplated under the applicable New Bank Agreement and/or Commitment Increase Agreement without any further action or consent of any party, and each Bank hereby agrees to the

reallocation of the Commitments as necessary (but, for the avoidance of doubt, not any change in such Bank's Commitment unless otherwise agreed in writing) such that after giving effect thereto, all Banks shall hold Working Capital Loans in their respective Pro Rata Shares (after giving effect to the applicable increase).

(b) Increase in Working Capital Advance Cap and L/C Cap.

(i) The Working Capital Advance Cap shall increase on a dollar-for-dollar basis corresponding to the amount of each increase in the Commitments pursuant to clause (a) above; provided that, in no event shall the Working Capital Advance Cap exceed $250,000,000.

(ii) In connection with any such increase in Commitments under clause (a) above, (A) clause (a) of the L/C Cap shall be increased on a dollar-for-dollar basis in an amount equal to such increase; provided that, in no event shall clause (a) of the L/C Cap exceed $250,000,000, and (B) clause (b) of the L/C Cap shall be increased in an amount equal to 60% of such increase; provided that, in no event shall clause (b) of the L/C Cap exceed $150,000,000.

2.03 Loan Accounts. The Loans and Letters of Credit Issued may be evidenced by Notes (upon request of any Bank at any time) and loan accounts. Each Bank may endorse on the schedules annexed to its Note the date, amount and maturity of each Loan made by it and the amount of each payment of principal made by the Co-Borrowers with respect thereto. Each Bank is irrevocably authorized by the Co-Borrowers to endorse its Note and records and such Bank's records shall be conclusive absent manifest error; *provided*, *however*, that the failure of any Bank to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the Obligations of the Co-Borrowers hereunder or under such Note to such Bank.

2.04 Procedure for Borrowing.

(a) Each Borrowing of Loans consisting only of Base Rate Loans shall be made upon the Co-Borrowers' irrevocable written notice delivered to the Agent in the form of a Notice of Borrowing, which notice must be received by Agent prior to 1:00 p.m. (New York City time) on the Borrowing Date specifying the amount of the Borrowing. Each Borrowing of Loans that includes any Eurodollar Rate Loans (other than Daily Eurodollar Rate Loans) shall be made upon the Co-Borrowers' irrevocable written notice delivered to the Agent in the form of a Notice of Borrowing (which notice must be received by Agent prior to 1:00 p.m. (New York City time) three (3) Business Days prior to the requested Borrowing Date), specifying the amount of the Borrowing. Each Borrowing of Loans consisting only of Daily Eurodollar Rate Loans shall be made upon the Co-Borrowers' irrevocable written notice delivered to the Agent in the form of a Notice of Borrowing, which notice must be received by Agent prior to 12:00 p.m. (New York City time) on the Borrowing Date specifying the amount of the Borrowing Each such Notice of Borrowing shall be submitted by HoldCo by electronic transfer or facsimile, confirmed immediately in an original writing and shall specify (i) the Type of Loan requested, (ii) the aggregate amount of the requested Loan, (iii) the date of such Borrowing, which shall be a Business Day, (iv) whether such Borrowing is to be a Base Rate Loan or a Eurodollar Rate Loan, (v) in the case of a Eurodollar Rate Loan (including

Daily Eurodollar Rate Loans), the initial Interest Period to be applicable thereto (including specifying the duration of such Interest Period and the last day of such Interest Period), which shall be a period contemplated by the definition of "Interest Period", (vi) the location and number of a Co-Borrower's or Co-Borrowers' account, (vii) whether such Loan is a Working Capital Loan or an Acquisition Loan and (viii) the Co-Borrower(s) for whom such Loan is requested. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Loan. If no Interest Period is specified with respect to any requested Eurodollar Rate Loan (other than Daily Eurodollar Rate Loans), then the Co-Borrowers shall be deemed to have selected an Interest Period of one month's duration. If no Interest Period is specified with respect to any requested Daily Eurodollar Rate Loan, then the Co-Borrowers shall be deemed to have selected an Interest Period of one month's duration. Each requested Eurodollar Rate Loan must, (x) in the case of Working Capital Loans, be in a principal amount of at least $2,000,000 and any multiple of $1,000,000 in excess thereof and (y) in the case of Acquisition Loans, be in a principal amount of at least $1,000,000 and any multiple of $100,000 in excess thereof.

(b) Following receipt of a Notice of Borrowing, the Agent shall promptly notify each Bank of the amount of its Credit Percentage of the requested Loans.

(c) Each Bank will make the amount of its Pro Rata Share of such Borrowing available to Agent for the account of the Co-Borrowers at Agent's Payment Office by 3:00 p.m. (New York City time) on the Borrowing Date requested by the Co-Borrowers in funds immediately available to Agent. The proceeds of all such Loans will then be made available to the Co-Borrowers by the Agent by crediting the Bank Blocked Account designated by HoldCo with the aggregate of the amounts made available to the Agent by the Banks and in like funds as received by the Agent.

2.05 Conversion and Continuation Elections.

(a) The Co-Borrowers may, upon irrevocable written notice to Agent in accordance with Subsection 2.05(b):

(i) elect, as of any Business Day, in the case of Base Rate Loans, as of the last day of the applicable Interest Period, in the case of any Eurodollar Rate Loan, to convert any such Loans into Loans of any other Type (*provided*, however, the principal amount of each Eurodollar Rate Loan and Daily Eurodollar Rate Loan must be at least $2,000,000); or

(ii) elect, as of the last day of the applicable Interest Period, to continue any Loans having Interest Periods expiring on such day (*provided*, *however*, the principal amount of each Eurodollar Rate Loan must be at least $2,000,000);

provided, however, that if at any time the aggregate amount of Eurodollar Rate Loans in respect of any Borrowing is reduced, by payment, prepayment, or conversion of part thereof, to a principal amount that is less than $2,000,000, such Eurodollar Rate Loans shall automatically convert into Base Rate Loans, and on and after such date the right of the Co-Borrowers to continue such Loans as, and convert such Loans into, Eurodollar Rate Loans shall terminate.

(b) HoldCo shall deliver a Notice of Conversion/Continuation to be received by Agent not later than 1:00 p.m. (New York City time) on the Conversion/Continuation Date if the Loans are to be converted into Base Rate Loans; three (3) Business Day in

advance of the Conversion/Continuation Date, if the Loans are to be converted into or continued as Eurodollar Rate Loans (other than Daily Eurodollar Rate Loans); not later than 12:00 p.m. (New York City time) on the Conversion/Continuation Date if the Loans are to be converted into Daily Eurodollar Rate Loans, specifying:

(i) the proposed Conversion/Continuation Date;

(ii) the aggregate amount of Loans to be converted or continued;

(iii) the Type of Loans resulting from the proposed conversion or continuation; and

(iv) if the resulting Borrowing is a Eurodollar Rate Loan, the duration of the requested Interest Period. If any such Interest Election Request requests a Eurodollar Borrowing (other than Daily Eurodollar Rate Loans) but does not specify an Interest Period, then the Co-Borrowers shall be deemed to have selected an Interest Period of one month's duration. If any such Interest Election Request requests a Daily Eurodollar Rate Loan but does not specify an Interest Period, then the Co-Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(c) If upon the expiration of any Interest Period applicable to Eurodollar Rate Loans, the Co-Borrowers have failed to timely select a new Interest Period to be applicable to its Eurodollar Rate Loans, or if any Default or Event of Default then exists, the Co-Borrowers shall be deemed to have elected to convert such Eurodollar Rate Loans into Base Rate Loans effective as of the expiration date of such Interest Period.

(d) Agent will promptly notify each Bank of its receipt of a Notice of Conversion/Continuation, or, if no timely notice is provided by the Co-Borrowers, Agent will promptly notify each Bank of the details of any automatic conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Loans, with respect to which the notice was given, held by each Bank. Agent will promptly notify, in writing, each Bank of the amount of such Bank's applicable percentage of that Conversion/Continuation.

(e) Unless the Majority Banks otherwise agree, during the existence of a Default or Event of Default, (i) no outstanding Loan may be converted to or continued as a Eurodollar Rate Loan and (ii) unless repaid, each Eurodollar Rate Loan shall be converted to a Base Rate Loan at the end of the Interest Period applicable thereto.

(f) After giving effect to any Borrowing, conversion or continuation of Loans, there may not be more than 10 Interest Periods in effect.

2.06 Optional Prepayments. The Co-Borrowers may, at any time or from time to time, upon HoldCo's irrevocable written notice to Agent received prior to 12:00 p.m. (New York City time) on the date of prepayment, prepay Loans in whole or in part, without premium or penalty. Each such notice shall specify whether such prepayment relates to Acquisition Loans or Working Capital Loans. The Agent will promptly notify each Bank of its receipt of any such prepayment, and of such Bank's applicable percentage of such prepayment (which share may be affected by the allocation rules set forth in Section 2.17 with respect to Defaulting Banks).

2.07 Mandatory Prepayments of Loans.

(a) If on any date the Effective Amount of Working Capital Loans then outstanding exceeds the amount of such Working Capital Advance Cap, the Co-Borrowers shall within three Business Days, and without notice or demand, prepay the outstanding principal amount of the Working Capital Loans by an amount equal to the applicable excess, such payments to be applied pro rata.

(b) If on any date the Effective Amount of all Acquisition Loans then outstanding exceeds the Acquisition Advance Cap, the Co-Borrowers shall immediately, and without notice or demand, prepay the outstanding principal amount of the Acquisition Loans by an amount equal to the applicable excess, such payments to be applied pro rata.

(c) If on any date any L/C Obligations relating to a type of Letter of Credit described herein exceeds the applicable L/C Cap, the Co-Borrowers shall Cash Collateralize on such date the outstanding Letters of Credit, or the outstanding type of Letters of Credit, as the case may be, in an amount equal to such excess. Any cash deposited as Cash Collateral or portion thereof, shall be returned to Co-Borrowers as soon as reasonably practicable after notice to Agent of the expiration, termination or satisfaction of the Letters of Credit in sufficient amounts such that the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b).

(d) Intentionally omitted.

(e) If on any date the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations exceeds the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b), the Co-Borrowers shall immediately, and without notice or demand, (1) prepay the outstanding principal amount of the Loans and L/C Borrowings by an amount equal to the applicable excess, such payments to be applied pro rata between Working Capital Loans and Acquisition Loans or (2) Cash Collateralize on such date the excess amount, subject to the second sentence of clause (c) above.

(f) Any Net Cash Proceeds that are Excess Sale Proceeds from the Disposition by Parent or any of its Restricted Subsidiaries of any property or assets other than the following shall be immediately applied as a mandatory prepayment of the Loans:

(i) Dispositions permitted by Section 7.19(a), (b), or (f), and

(ii) Dispositions (not including Dispositions described in (i) above) not exceeding $5,000,000 in the aggregate during any twelve (12) month period.

With respect to any Disposition not included in (i) above and in excess of the amounts set forth in (ii) above, upon receipt of Net Cash Proceeds by Parent or its Restricted Subsidiaries and until application or commitment thereof as provided in the definition of "Excess Sales Proceeds," Parent or its Restricted Subsidiaries shall maintain such Net Cash Proceeds in a Bank Blocked Account.

(g) Immediately upon the consummation by Parent or any of its Restricted Subsidiaries of any issuance of Additional Debt (but without waiving the requirements of

the Agent and/or any Bank's consent to any such issuance in violation of any Loan Document), the Co-Borrowers shall make a mandatory prepayment on the Loans in an amount equal to the Net Cash Proceeds from any such issuance.

(h) Each prepayment under Section 2.07(f) and Section 2.07(g) shall be applied ratably among the Banks, *first*, to prepay the Effective Amount of the Acquisition Loans, and, *second*, to prepay the Effective Amount of the Working Capital Loans.

2.08 Termination or Reduction of Commitments. The Co-Borrowers may, upon notice to the Agent by HoldCo, terminate the Commitments, or from time to time permanently reduce the Commitments; *provided* that (i) any such notice shall be received by the Agent not later than 12:00 p.m. (New York City time) five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, and (iii) the Co-Borrowers may not terminate or reduce the Commitments if, after giving effect thereto, a mandatory prepayment would be required under Section 2.07(a), (b) or (e). The Agent will promptly notify the Banks of any such termination or reduction of the applicable Commitments. Any reduction of the Commitments shall be applied pro rata to the Commitments of each Bank according to its Credit Percentage. All fees accrued until the effective date of any termination of any Commitments and all other amounts payable shall be paid on the effective date of such termination. In connection with any such reduction, (a) the Working Capital Advance Cap shall be reduced in an amount equal to the amount of the reduction in Commitments, (b) intentionally omitted, (c) clause (a) of the L/C Cap shall be reduced in an amount equal to the amount of the reduction of the Commitments, and (d) clause (b) of the L/C Cap shall be reduced in an amount equal to 60% of the amount of the reduction of the Commitments.

2.09 Repayment.

(a) The Co-Borrowers shall repay the principal amount of each Working Capital Loan and Acquisition Loan on the Expiration Date.

(b) Intentionally omitted

2.10 Interest.

(a) Each Loan (except for a Loan made as a result of a drawing under a Letter of Credit) shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date (i) at the Base Rate plus the Applicable Margin at all times such Loan is a Base Rate Loan, (ii) at the Eurodollar Rate plus the Applicable Margin at all times such Loan is an Eurodollar Rate Loan (other than a Daily Eurodollar Rate Loan), or (iii) at the Eurodollar Rate plus the Applicable Margin plus the Liquidity Premium at all times such Loan is a Daily Eurodollar Rate Loan. Each Loan made as a result of a drawing under a Letter of Credit shall bear interest on the outstanding principal amount thereof from the date funded at a floating rate per annum equal to the Base Rate plus the Applicable Margin until such Loan has been outstanding for more than two (2) Business Days and, thereafter, shall bear interest on the outstanding principal amount thereof at a floating rate per annum equal to the Base Rate plus the Applicable Margin, plus two percent (2.0%) per annum (the "Default Rate").

(b) Interest on each Loan shall be paid in arrears on each Interest Payment Date.

(c) Notwithstanding subsection (a) of this Section, if any amount of principal of or interest on any Loan, or any other amount payable hereunder or under any other

Loan Document is not paid in full when due (whether at stated maturity, by acceleration, demand or otherwise), the Co-Borrowers agree to pay interest on such unpaid principal or other amount, from the date such amount becomes due until the date such amount is paid in full, and after as well as before any entry of judgment thereon to the extent permitted by law, payable on demand, at a fluctuating rate per annum equal to the Default Rate.

(d) Anything herein to the contrary notwithstanding, the Obligations of the Co-Borrowers to the Banks hereunder shall be subject to the limitation that payment of interest shall not be required for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the Banks would be contrary to the provisions of any law applicable to the Banks limiting the highest rate of interest that may be lawfully contracted for, charged or received by the Banks, and in such event the Co-Borrowers shall pay the Banks interest at the highest rate permitted by applicable law.

(e) Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges or other amounts that are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that 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 to 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 therefore) until such cumulated amount, shall have been received by such Bank. In determining whether or not the interest paid or payable under any specific contingency exceeds the Maximum Rate, the Co-Borrowers and the Banks shall, to the maximum extent permitted under applicable law, (i) characterize any non-principal payment as an expense, fee, or premium, rather than as interest, (ii) exclude voluntary prepayments and the effect thereof, and (iii) spread the total amount of interest throughout the entire contemplated term of such Notes so that the interest rate is uniform throughout such term; *provided*, *however*, that if all Obligations under the Notes and all Loan Documents are performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual term thereof exceeds the Maximum Rate, the Banks shall refund to the Co-Borrowers the amount of such excess, or credit the amount of such excess against the aggregate unpaid principal balance of the Banks' Notes at the time in question.

2.11 Non-Utilization Fees. The Co-Borrowers shall pay to the Agent for the account of each Bank in accordance with its Pro Rata Share, a non-utilization fee equal to 0.50% per annum times the average daily amount of the Unused Commitment of such Bank. The non-utilization fees shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article 5 are not met, and shall be due and payable quarterly in arrears within five (5) Business Days of the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Expiration Date. The non-utilization fees shall be calculated quarterly in arrears.

2.12 Computation of Fees and Interest.

(a) All computations in respect of interest at the Base Rate shall be made on the basis of a 365/366-day year. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365/366-day year). Interest and

fees shall accrue during each period during which interest or such fees are computed from the first day thereof through the last day thereof.

(b) Each determination of an interest rate by the Agent shall be conclusive and binding on the Co-Borrowers.

2.13 Payments by the Co-Borrowers.

(a) All payments to be made by the Co-Borrowers shall be made without set-off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Co-Borrowers shall be made to the Agent for the account of the Banks at Agent's Payment Office, and shall be made in dollars and in immediately available funds, no later than 1:00 p.m. (New York City time) on the date specified herein. Agent will promptly distribute to each Bank its Pro Rata Share (or after the occurrence of a Sharing Event, an amount determined pursuant to the Intercreditor Agreement) of such payment in like funds as received. Any payment received by Agent later than 1:00 p.m. (New York City time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue. If and to the extent the Co-Borrowers make a payment in full to Agent no later than 1:00 p.m. (New York City time) on any Business Day and Agent does not distribute to each Bank its Pro Rata Share of such payment in like funds as received on the same Business Day, Agent shall pay to each Bank on demand interest on such amount as should have been distributed to such Bank at the Federal Funds Rate for each day from the date such payment was received until the date such amount is distributed.

(i) For any payment received by the Agent from or on behalf of the Co-Borrowers in respect of Obligations that are then due and payable (and prepayments pursuant to Section 2.06), the Agent will promptly distribute such amounts in like funds to each Bank, its Pro Rata Share of the Acquisition Loans and Working Capital Loans except that any amount otherwise payable to a Defaulting Bank shall be distributed in the manner described in Section 2.17(g).

(ii) For any payment received from or on behalf of the Co-Borrowers by the Agent on or after the occurrence of a Sharing Event, the Agent will promptly distribute such payment in accordance with Section 2.01 of the Intercreditor Agreement.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(c) Unless Agent receives notice from the Co-Borrowers prior to the date on which any payment is due to the Banks that the Co-Borrowers will not make such payment in full as and when required, Agent may assume that the Co-Borrowers have made such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Bank on such due date an amount equal to the amount then due such Bank. If and to the extent the Co-Borrowers have not made such payment in full to Agent, each Bank shall repay to Agent on demand such amount distributed to such Bank, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Bank until the date repaid.

2.14 Payments by the Banks to Agent; Obligations of Banks Several; Certain Deductions by the Agent.

(a) Unless the Agent shall have received notice from a Bank prior to the proposed date of any Borrowing that such Bank will not make available to the Agent such Bank's share of such Borrowing, the Agent may assume that such Bank has made such share available on such date in accordance with Section 2.04 and may, in reliance upon such assumption but without any obligation to do so, make available to the Co-Borrowers a corresponding amount. In such event, if a Bank has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Bank on the one hand and the Co-Borrowers on the other severally agree to pay to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to any Co-Borrower to but excluding the date of payment to the Agent, at (i) in the case of a payment to be made by such Bank, for the first 3 Business Days the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation and thereafter at the Base Rate and (ii) in the case of a payment to be made by the Co-Borrowers, the interest rate applicable to Base Rate Loans. If the Co-Borrowers and such Bank shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Co-Borrowers the amount of such interest paid by the Co-Borrowers for such period. If such Bank pays its share of the applicable Borrowing to the Agent, then the amount so paid shall constitute such Bank's Loan included in such Borrowing. Any payment by the Co-Borrowers shall be without prejudice to any claim the Co-Borrowers may have against a Bank that shall have failed to make such payment to the Agent. A notice of the Agent to any Bank or the Co-Borrowers with respect to any amount owing under this Section shall be conclusive, absent manifest error.

(b) The obligations of the Banks hereunder to make Loans, to fund participations in Letters of Credit, and to make payments pursuant to Section 10.05(b) are several and not joint. The failure of any Bank to make any Loan, to fund any such participation or to make any payment under Section 10.05(b) on any date required hereunder shall not relieve any other Bank of its corresponding obligation to do so on such date, and no Bank shall be responsible for the failure of any other Bank to so make its Loan, to purchase its participation or to make its payment under Section 10.05(b).

(c) If any Bank shall fail to make any payment required to be made by it pursuant to this Agreement, then the Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Agent for the account of such Bank to satisfy such Banks obligations under such Sections until all such unsatisfied obligations are fully paid.

2.15 Sharing of Payments, Etc; Application of Insufficient Payments.

(a) If, other than as expressly provided elsewhere herein, any Bank shall obtain on account of the Loans made by it any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its Pro Rata Share (or after the occurrence of a Sharing Event, an amount determined pursuant to the Intercreditor Agreement), such Bank shall immediately (a) notify Agent of such fact, and (b) purchase from the other Banks such participations in the Loans made by them as shall be necessary to cause such purchasing Bank to share the excess payment pro rata with each of them; except that with respect to any Bank that is a Defaulting Bank by virtue of such Bank failing to fund its Pro Rata Share or Pro Rata Adjusted Percentage of any Working Capital Loan, Acquisition Loan or L/C Borrowing, such Defaulting Bank's pro

rata share of the excess payment shall be allocated to the Bank (or the Banks, pro rata) that funded such Defaulting Bank's Pro Rata Share or Pro Rata Adjusted Percentage; *provided*, *however*, that if all or any portion of such excess payment is thereafter recovered from the purchasing Bank, such purchase shall to that extent be rescinded and each other Bank shall repay to the purchasing Bank the purchase price paid therefor, together with an amount equal to such paying Bank's ratable share (according to the proportion of (i) the amount of such paying Bank's required repayment to (ii) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. The Co-Borrowers agree that any Bank so purchasing a participation from another Bank may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 10.08) with respect to such participation as fully as if such Bank were the direct creditor of the Co-Borrowers in the amount of such participation; *provided further*, the provisions of this Section 2.15 shall not be construed to apply to any payment made by any Loan Party pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Bank) or any payment obtained by a Bank as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Co-Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 2.15 shall apply). The Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Banks following any such purchases or repayments.

(b) If at any time insufficient funds are received by and available to the Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest, and fees then due hereunder, such funds shall be applied (i) first, to pay interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, to pay principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

2.16 Return of Proceeds. If at any time payment, in whole or in part, of any amount distributed by the Agent hereunder is rescinded or must otherwise be restored or returned by the Agent as a preference, fraudulent conveyance, or otherwise under the Bankruptcy Code or any Other Debtor Relief Law, then each Person receiving any portion of such amount agrees, upon demand, to return the portion of such amount it has received to the Agent together with a pro rata portion of any interest paid by or other charges imposed on the Agent in connection with such rescinded or restored payment.

2.17 Defaulting Bank. Notwithstanding any other provision in this Agreement to the contrary, if at any time a Bank becomes a Defaulting Bank, the following provisions shall apply so long as any Bank is a Defaulting Bank:

(a) Until such time as the Defaulting Bank ceases to be a Bank under this Agreement, it will retain its Commitments and will remain subject to all of its obligations as a Bank hereunder, although it will be presumed that such Defaulting Bank will fail to satisfy any funding obligation and, accordingly, all other Banks hereby agree to fund L/C Borrowings in accordance with the terms hereof and their respective Pro Rata Adjusted Percentage.

(b) The Fees under Section 2.11 shall cease to accrue on that portion of such Defaulting Bank's Commitments that remains unfunded or which has not been included in any L/C Obligations;

(c) A Defaulting Bank may cease to be a Defaulting Bank as specified in the definition thereof.

(d) At any time during a Default Period, the Agent may and upon the direction of the Majority Banks shall, upon three (3) Business Days prior notice to the applicable Defaulting Bank (so long as such Default Period remains in effect at the end of such notice period), require such Defaulting Bank to assign all right, title and interest that it may have in all Loans and any other Obligations of the Co-Borrowers under this Agreement and the Loan Documents to another Bank (if another Bank will consent to purchase such right, title and interest) or another financial institution in accordance with Section 10.07 of this Agreement, if such financial institution can be found by the Co-Borrowers, for a purchase price equal to 100% of the principal amount of such Loans and any other Obligations *plus* the amount of any interest and fees accrued and owing to such Defaulting Bank as of the date of such assignment.

(e) with respect to any L/C Obligation that exists at the time a Bank becomes a Defaulting Bank or thereafter:

(i) all or any part of such Defaulting Bank's Pro Rata Share of the L/C Obligations shall be reallocated among the Non-Defaulting Banks in accordance with their respective Pro Rata Adjusted Percentage but only to the extent (x) the sum of all of the Effective Amounts of the Non-Defaulting Banks plus such Defaulting Bank's Pro Rata Share of the L/C Obligations does not exceed the Total Available Commitments, (y) any Non-Defaulting Bank's Effective Amount plus such Non-Defaulting Bank's Pro Rata Adjusted Percentage of such Defaulting Bank's Pro Rata Share of the L/C Obligations does not exceed such Non-Defaulting Bank's Commitment and (z) the conditions set forth in Section 5.02 of this Agreement are satisfied at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially be effected, then the Co-Borrowers shall within two (2) Business Days following notice by the Agent Cash Collateralize such Defaulting Bank's Pro Rata Share of the L/C Obligations (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the terms of this Agreement, including without limitation Section 3.07, for so long as such L/C Obligation is outstanding;

(iii) if the Co-Borrowers Cash Collateralize any portion of such Defaulting Bank's Pro Rata Share of the L/C Obligations pursuant to this Section 2.17(e) and Section 3.07 then the Co-Borrowers shall not be required to pay any fees for the pro rata benefit of such Defaulting Bank pursuant to Section 3.08 with respect to such Defaulting Bank's Pro Rata Share of the L/C Obligations during the period such Defaulting Bank's Pro Rata Share of the L/C Obligations is Cash Collateralized; and

(iv) if any Defaulting Bank's Pro Rata Share of the L/C Obligations is neither cash collateralized nor reallocated pursuant to Section 2.17(e)(i), then, without prejudice to any rights or remedies of the Letter of Credit Issuer or any Bank hereunder, all letter of credit fees payable under this Agreement with respect to such Defaulting Bank's Pro Rata Share of the L/C Obligations shall be payable to the Issuing Banks until such Pro Rata Share of the L/C Obligations is Cash Collateralized, reallocated, or repaid in full.

(f) So long as any Bank is a Defaulting Bank, the Issuing Banks shall not 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 Commitment of the Non-Defaulting Banks and/or cash collateral will be provided by Defaulting Bank or the Co-Borrowers in accordance with Section 3.07, if so required, and participating interests in any such newly issued or increased Letter of Credit shall be allocated among the Non-Defaulting Banks in a manner consistent with Section 3.03 (and the Defaulting Banks shall not participate therein).

(g) Any amount payable to such Defaulting Bank hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Bank, be retained by the Agent in a segregated account and subject to any applicable requirements of law, be applied (i) *first*, to the payment of any amounts owing by such Defaulting Bank to the Agent hereunder, (ii) *second*, to the payment of any amounts owing by such Defaulting Bank to the Issuing Banks hereunder, (iii) *third*, to the funding of cash collateralization of any participating interest in any Letter of Credit in respect of which such Defaulting Bank has failed to fund its portion thereof as required by this Agreement, as determined by the Agent or applicable Issuing Bank with the amount so funded reducing the amount the Co-Borrowers were required to Cash Collateralize pursuant to Section 2.17(e)(ii), (iv) *fourth*, if so determined by the Agent, the Issuing Bank and the Co-Borrowers, held in such account as cash collateral for future funding obligations of any Defaulting Bank under this Agreement, (v) *fifth*, pro rata, to the payment of any amounts owing to the Co-Borrowers or the Banks as a result of any judgment of a court of competent jurisdiction obtained by the Co-Borrowers or any Bank against such Defaulting Bank as a result of such Defaulting Bank's breach of its obligations under this Agreement and (vi) *sixth*, to such Defaulting Bank or as otherwise directed by a court of competent jurisdiction, *provided* that if such payment is a prepayment of the principal amount of any Loans or reimbursement obligations in respect of L/C Advances which a Defaulting Bank has funded in accordance with its participation obligations, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all non-Defaulting Banks *pro rata* prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Bank.

(h) In the event that the Agent, the Co-Borrowers and the Issuing Bank each agree that a Defaulting Bank has adequately remedied all matters that caused such Bank to be a Defaulting Bank, then the Pro Rata Share of the L/C Obligations of the Banks shall be readjusted to reflect the inclusion of such Bank's Commitment and on such date such Bank shall purchase at par such of the Loans of the other Banks as the Agent shall determine may be necessary in order for such Bank to hold such Loans in accordance with its Pro Rata Share as though it were not a Defaulting Bank.

(i) No Swap Contract entered into by a Swap Bank shall benefit from the security package provided by the Security Documents, if at the time such Swap Contract was entered, such Swap Bank (or its Affiliate) was a Defaulting Bank.

(j) Notwithstanding anything to the contrary herein, the Commitments of such Defaulting Bank shall not be included for purposes of determining the "Majority Banks".

Article 3
THE LETTERS OF CREDIT

3.01 The Letter of Credit Lines.

(a) Each Issuing Bank agrees, (A) from time to time on any Business Day during the Availability Period, to Issue Letters of Credit for the account of the Co-Borrowers and to amend or renew Letters of Credit previously Issued by it, in accordance with Subsections 3.02(c) and 3.02(d), and (B) to honor drafts under the Letters of Credit. Each of the Banks will be deemed to have approved such Issuance, amendment or renewal, and shall participate in Letters of Credit Issued for the account of the Co-Borrowers. Subject to the other terms and conditions hereof, the Co-Borrowers' ability to request that an Issuing Bank Issue Letters of Credit shall be fully revolving, and, accordingly, the Co-Borrowers may, during the foregoing period, request that an Issuing Bank Issue Letters of Credit to replace Letters of Credit which have expired or which have been drawn upon and reimbursed. Letters of Credit Issued or amended hereunder shall constitute utilization of the Commitments.

(b) No Issuing Bank shall Issue any Letter of Credit unless Agent shall have received notice of the request for Issuance of such Letter of Credit and Agent shall have consented to the Issuance of such Letter of Credit, such consent not to be unreasonably withheld, conditioned or delayed. Additionally, no Issuing Bank shall Issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from Issuing such Letter of Credit, or any Requirement of Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the date hereof, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the date hereof and which such Issuing Bank in good faith deems material to it;

(ii) such Issuing Bank has received written notice from the Agent or the Co-Borrowers, on or prior to the Business Day prior to the requested date of Issuance of such Letter of Credit, that one or more of the applicable conditions contained in Article 5 is not then satisfied;

(iii) the expiry date of any requested Letter of Credit is after the earlier to occur of (A) the expiry date of the applicable L/C Cap for such Letter of Credit or (B) 365 days after the Expiration Date, unless all the Banks have approved such expiry date in writing;

(iv) the expiry date of any such requested Letter of Credit is prior to the maturity date of any financial obligation to be supported by the requested Letter of Credit;

(v) such requested Letter of Credit is not in form and substance acceptable to such Issuing Bank, or the Issuance of such requested Letter of Credit shall violate any applicable policies of Issuing Bank;

(vi) such Letter of Credit is for the purpose of supporting the Issuance of any letter of credit by any other Person other than another Co-Borrower;

(vii) such Letter of Credit is denominated in a currency other than Dollars;

(viii) the amount of such requested Letter of Credit, plus the Effective Amount of L/C Obligations relating to Letters of Credit Issued under a particular L/C Cap exceeds the applicable L/C Cap;

(ix) the amount of such requested Letter of Credit, plus the Effective Amount of all of the L/C Obligations, plus the Effective Amount of all Loans exceeds the lesser of (A) the Borrowing Base Advance Cap determined as of the date of such request on the basis of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b) two (2) Business Days prior to the date on which the requested Letter of Credit is to be Issued, or (B) the aggregate Commitments of the Banks, or, if a Defaulting Bank exists hereunder, the Total Available Commitments;

(x) the amount of such Letter of Credit would result in exposure of an Issuing Bank to exceed its Issuing Bank Sub-Limit.

(c) Any Letter of Credit requested by the Co-Borrowers to be Issued hereunder may be Issued by any Issuing Bank or any Affiliate of such Issuing Bank acceptable to the Co-Borrowers, and if a Letter of Credit is Issued by an Affiliate of such Issuing Bank, such Letter of Credit shall be treated, for all purposes of this Agreement and the Loan Documents, as if it were issued by such Issuing Bank.

3.02 Issuance, Amendment and Auto-extension of Letters of Credit.

(a) Each Letter of Credit Issued hereunder shall be Issued upon the irrevocable written request of HoldCo pursuant to a Notice of Borrowing in the applicable form attached hereto as Exhibit A-1 received by an Issuing Bank and the Agent by no later than 12:00 p.m. (New York City time) on the Business Day of the proposed date of Issuance. Each such request for Issuance of a Letter of Credit shall be by electronic transfer or facsimile (if arrangements for doing so have been approved by

the applicable Issuing Bank), confirmed immediately in an original writing or by electronic transfer, in the form of an L/C Application, and shall specify in form and detail satisfactory to such Issuing Bank: (i) the proposed date of Issuance of the Letter of Credit (which shall be a Business Day); (ii) the face amount of the Letter of Credit; (iii) the expiry date of the Letter of Credit; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by the beneficiary of the Letter of Credit in case of any drawing thereunder; (vi) the full text of any certificate to be presented by the beneficiary in case of any drawing thereunder; and (vii) such other matters as such Issuing Bank may require. If requested by any Issuing Bank, the Co-Borrowers also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit and such other L/C Related Documents as such Issuing Bank may require.

(b) From time to time while a Letter of Credit is outstanding and prior to the Expiration Date, an Issuing Bank will, upon the written request of HoldCo received by such Issuing Bank (with a copy sent by HoldCo to Agent) prior to 12:00 p.m. (New York City time) on the Business Day of the proposed date of amendment, consider the amendment of any Letter of Credit issued by it. Each such request for amendment of a Letter of Credit shall be made by electronic transfer or facsimile (if arrangements for doing so have been approved by the applicable Issuing Bank), confirmed immediately in an original writing or by electronic transfer, made in the form of an L/C Amendment Application and shall specify in form and detail satisfactory to such Issuing Bank and Agent: (i) the Letter of Credit to be amended; (ii) the proposed date of amendment of the Letter of Credit (which shall be a Business Day); (iii) the nature of the proposed amendment; and (iv) such other matters as such Issuing Bank may require. Such Issuing Bank shall be under no obligation to amend any Letter of Credit.

(c) The Co-Borrowers may request and any Issuing Bank may issue Letters of Credit that may automatically be extended for one or more successive periods not to exceed one year each, *provided* that such Issuing Bank has the option to elect not to extend for any such additional period; and provided, further, (i) that each Issuing Bank shall not elect at any time after the Expiration Date to extend such Letter of Credit, and (ii) each Issuing Bank shall not elect to extend such Letter of Credit if it has knowledge or has received written notice that an Event of Default has occurred and is continuing prior to or at the time such Issuing Bank must elect whether or not to allow such extension or, subject to Section 3.07, if such extension would be terminated on or after the date 5 days prior to the Expiration Date. Unless a Co-Borrower has previously notified an Issuing Bank not to do so, if any outstanding Letter of Credit Issued by an Issuing Bank shall provide that it shall be automatically extended unless the beneficiary thereof is sent a notice from such Issuing Bank that such Letter of Credit shall not be extended, and if at the time of extension such Issuing Bank would be entitled to authorize the automatic extension of such Letter of Credit in accordance with this Subsection 3.02(c), then such Issuing Bank shall be permitted to allow such Letter of Credit to auto-extend, and the Co-Borrowers and the Banks hereby authorize such extension, and, accordingly, such Issuing Bank shall be deemed to have received instructions from the Co-Borrowers requesting such extension.

(d) Any Issuing Bank may, at its election, deliver any notices of termination or other communications to any Letter of Credit beneficiary or transferee, and take any other action as necessary or appropriate, at any time and from time to time, in order to cause the expiry date of such Letter of Credit to be a date not later than the Expiration Date. No Letter of Credit expiry shall be deemed to have occurred after such earlier date due to the effectiveness of the ISP.

(e) This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(f) Each Issuing Bank will deliver to Agent a true and complete copy of each Letter of Credit or amendment to or renewal of a Letter of Credit Issued by it.

3.03 Risk Participations, Drawings and Reimbursements.

(a) Immediately upon the Issuance of each Letter of Credit Issued by Issuing Bank, each Bank shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such Issuing Bank a participation in such Letter of Credit and each drawing thereunder in an amount equal to the product of (i) the Credit Percentage of such Letter of Credit (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable), times (ii) the maximum amount available to be drawn under such Letter of Credit and the amount of such drawing. For purposes of Section 2.01(a), each Issuance of a Letter of Credit shall be deemed to utilize the Commitment of each Bank by an amount equal to the amount of such participation.

(b) In the event of any request for a drawing under a Letter of Credit Issued by an Issuing Bank by the beneficiary or transferee thereof, such Issuing Bank will promptly notify HoldCo. Any notice given by an Issuing Bank or Agent pursuant to this Subsection 3.03(b) may be oral if immediately confirmed in writing (including by facsimile); *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice. The Co-Borrowers shall reimburse an Issuing Bank prior to 5:00 p.m. (New York City time), on each date that any amount is paid by such Issuing Bank under any Letter of Credit (each such date, an "Honor Date"), in an amount equal to the amount so paid by such Issuing Bank. In the event the Co-Borrowers fail to reimburse such Issuing Bank for the full amount of any drawing under any Letter of Credit, by 5:00 p.m. (New York City time) on the Honor Date, such Issuing Bank will promptly notify Agent and Agent will promptly notify each Bank thereof, and HoldCo shall be deemed to have requested that Working Capital Loans be made by the Banks to be disbursed to such Issuing Bank not later than one (1) Business Day after the Honor Date under such Letter of Credit, subject to the amount of the unutilized portion of the Commitments of the Banks at such time but without giving effect to the Working Capital Advance Cap.

(c) Each Bank shall upon any notice pursuant to Subsection 3.03(b) make available to Agent for the account of any Issuing Bank an amount in Dollars and in immediately available funds equal to its Credit Percentage (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of the amount of the drawing, whereupon the participating Banks shall (subject to Subsection 3.03(d)) each be deemed to have made a Working Capital Loan to the Co-Borrowers in that amount without giving effect to the Working Capital Advance Cap If any Bank so notified fails to make available to Agent for the account of the applicable Issuing Bank the amount of such Bank's Credit Percentage (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of the amount of the drawing, by no later than 3:00 p.m. (New York City time) on the Business Day following the Honor Date, then interest shall accrue on such Bank's obligation to make such payment, from the Honor Date to the date such Bank makes such payment, at a rate per annum then applicable to Base Rate Borrowings; *provided* that, if the Co-Borrowers fail to reimburse such L/C Disbursement when due

pursuant to Section 3.03(b), then Section 2.10 shall apply. Interest accrued pursuant to this Section shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Bank pursuant to Section 3.03(b) to reimburse such Issuing Bank shall be for the account of such Bank to the extent of such payment. Agent will promptly give notice of the occurrence of the Honor Date, but failure of Agent to give any such notice on the Honor Date or in sufficient time to enable any Bank to effect such payment on such date shall not relieve such Bank from its obligations under this Section 3.03.

(d) With respect to any unreimbursed drawing that is not converted into Working Capital Loans in whole or in part for any reason, the Co-Borrowers shall be deemed to have incurred from the relevant Issuing Bank an L/C Borrowing in the amount of such drawing, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at a rate per annum equal to the Default Rate, and each Bank's payment to the applicable Issuing Bank pursuant to Subsection 3.03(c) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Bank in satisfaction of its participation obligation under this Section 3.03.

(e) Each Bank's obligation in accordance with this Agreement to make the Loans or L/C Advances, as contemplated by this Section 3.03, as a result of a drawing under a Letter of Credit, shall be absolute and unconditional and without recourse to the relevant Issuing Bank and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Bank may have against such Issuing Bank, the Co-Borrowers or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, an Event of Default or a Material Adverse Effect; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

3.04 Repayment of Participations.

(a) Upon (and only upon) receipt by Agent for the account of an Issuing Bank of immediately available funds from the Co-Borrowers (i) in reimbursement of any payment made by such Issuing Bank under a Letter of Credit or (ii) in payment of interest thereon, Agent will pay to each Bank, in the same funds as those received by Agent for the account of such Issuing Bank, the amount of such Bank's Credit Percentage (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.04, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of such funds, and such Issuing Bank shall receive the amount of the Credit Percentage of such funds of any Bank that did not so pay Agent for the account of such Issuing Bank.

(b) If Agent or an Issuing Bank is required at any time to return to the Co-Borrowers, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of the payments made by the Co-Borrowers to Agent for the account of such Issuing Bank pursuant to Subsection 3.04(a) in reimbursement of a payment made under a Letter of Credit or interest or fee thereon, each Bank shall, on demand of such Issuing Bank, forthwith return to Agent or such Issuing Bank the amount of its Credit Percentage (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.04, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of any amounts so returned by Agent or such Issuing Bank plus interest thereon from the date such demand is made to the date such amounts are returned by such Bank to Agent or such Issuing Bank, at a rate per annum equal to the Federal Funds Rate in effect from time to time.

3.05 Exculpation.

(a) Neither the Agent, the Banks, and Issuing Banks, nor any of their respective Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance (or the amendment, renewal or extension) or transfer of any Letter of Credit by any Issuing Bank or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in Section 3.06), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank; *provided* that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Co-Borrowers to the extent of any direct damages (as opposed to indirect, punitive, exemplary or consequential or exemplary damages, claims in respect of which are hereby waived by the Co-Borrowers to the extent permitted by applicable law) suffered by the Co-Borrowers that are caused by such Issuing Bank's gross negligence or willful misconduct (as finally determined by a court of competent jurisdiction in a non-appealable judgment) when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. In furtherance and not in limitation of the foregoing, the parties hereto expressly agree that:

(i) The Issuing Banks may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit;

(ii) Any Issuing Bank shall have the right, in its sole discretion, to decline to accept such documents and to decline to make payment upon presentation of such documents if such documents are not in strict compliance with the terms of the related Letter of Credit; and

(iii) clauses (i) and (ii) of Section 3.05 establish the standard of care to be exercised by an Issuing Bank when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable law, any standard of care inconsistent with the foregoing).

3.06 Obligations Absolute. The Co-Borrowers' obligation to reimburse LC Disbursements as provided in this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any other L/C Related Document or any Loan Document, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does

not comply strictly with the terms of such Letter of Credit, or any payment by any Issuing Bank under any Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under the Bankruptcy Code or any Other Debtor Relief Law, (iv) the existence of any claim, counterclaim, set-off, defense or other right that Parent or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction, (v) any amendment or waiver of or consent to any departure from any or all of the Loan Documents, (vi) any improper use which may be made of any Letter of Credit or any improper acts or omissions of any beneficiary or transferee of any Letter of Credit in connection therewith, (vii) the existence of any claim, set-off, defense or any right which any Co-Borrower may have at any time against any beneficiary or any transferee of any Letter of Credit (or Persons for whom any such beneficiary or any such transferee may be acting), any Bank or any other Person, whether in connection with any Letter of Credit, any transaction contemplated by any Letter of Credit, this Agreement, or any other Loan Document, or any unrelated transaction, (viii) the insolvency of any Person issuing any documents in connection with any Letter of Credit, (ix) any breach of any agreement between any Co-Borrower and any beneficiary or transferee of any Letter of Credit, (x) any irregularity in the transaction with respect to which any Letter of Credit is issued, including any fraud by the beneficiary or any transferee of such Letter of Credit, (xi) any errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, wireless, or otherwise, whether or not they are in code, (xii) any act, error, neglect or default, omission, insolvency, or failure of business of any of the correspondents of any Issuing Bank, and (xiii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of or defense to the Co-Borrowers' obligations hereunder. Nothing in this Agreement shall impact the rights of any Loan Party to bring action against the beneficiary of any Letter of Credit.

3.07 Cash Collateral Pledge. Upon the request of the Agent or the Majority Banks, (a) if an Issuing Bank has honored any full or partial drawing request on any Letter of Credit and such drawing has resulted in an L/C Borrowing hereunder, or (b) upon the occurrence of an Event of Default (and automatically without any requirement for notice or a request upon the occurrence of the events described in Sections 8.01(e) or (f)), the Co-Borrowers shall immediately Cash Collateralize the L/C Obligations in an amount equal to one hundred and five percent (105%) of such L/C Obligations. At least 15 days prior to the Expiration Date the Co-Borrowers shall Cash Collateralize all then outstanding Letters of Credit in an amount equal to one hundred and five percent (105%) of the Effective Amount of all L/C Obligations related to such Letters of Credit.

3.08 Letter of Credit Fees.

(a) The Co-Borrowers shall pay to Agent, for the account of each of the Banks, a letter of credit fee with respect to each of the Letters of Credit Issued hereunder equal to the greater of (i) $750 per quarter, or (ii) an amount equal to the applicable Letters of Credit Fee Rate for the number of days such Letter of Credit is outstanding, calculated on a 360-day basis, taking into consideration all increases, decreases or extensions thereto. Such amount shall be computed on a quarterly basis in arrears as of the last Business Day of each fiscal quarter based upon each Letter of Credit outstanding during that fiscal quarter and only for the days each such Letter of Credit is outstanding during that fiscal quarter as calculated by the Agent.

(b) The Co-Borrowers shall pay to each Issuing Bank, for its own account, a negotiation fee equal to $250 for each Letter of Credit that is presented to such Issuing Bank for payment.

(c) The Co-Borrowers shall pay to each Issuing Bank, for its own account, an amendment fee equal to $150 for each amendment to any Letter of Credit Issued hereunder.

(d) The Co-Borrowers shall pay to each Issuing Bank, for its own account, a letter of credit fronting fee with respect to each of the Letters of Credit Issued hereunder by such Issuing Bank equal to 0.375% per annum times the undrawn maximum amount of such Letter of Credit for the number of days such Letter of Credit is outstanding, calculated on a 360-day basis, taking into consideration all increases, decreases or extensions thereto. Such amount shall be computed on a quarterly basis in arrears as of the last Business Day of each fiscal quarter based upon each Letter of Credit outstanding during that fiscal quarter and only for the days each such Letter of Credit is outstanding during that fiscal quarter as calculated by such Issuing Bank and payable quarterly in arrears.

(e) The Co-Borrowers shall pay to each Issuing Bank, for its own account, an out-of-pocket fee of $50 in connection with the issuance or amendment of each Letter of Credit.

(f) Such letter of credit fees as described in sub-paragraph (a) and (b) above for each Letter of Credit shall be due and payable quarterly in arrears on the later to occur of (i) the fifth Business Day of the fiscal quarter for the preceding fiscal quarter during which Letters of Credit are outstanding, or (ii) two (2) Business Days after receipt of the invoice delivered to the Co-Borrowers by the Agent for such fees, but in no event later than the Expiration Date.

(g) The Co-Borrowers agree to pay to the Agent, for its own account or otherwise (as applicable), fees payable in the amounts and at the times separately agreed upon between the Co-Borrowers and the Agent and such other fees required by the Engagement Letter.

(h) All fees payable hereunder shall be paid on the dates due, in immediately available funds in Dollars, to the Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, other than in the case of fees payable solely for account of the Agent, to the Banks entitled thereto. Fees paid shall not be refundable under any circumstances.

3.09 Applicability of ISP and UCP. Unless otherwise expressly agreed by any Issuing Bank and the Co-Borrowers when a Letter of Credit is issued and subject to applicable laws, the Letters of Credit shall be governed by and subject to ISP or the rules of the Uniform Customs and Practice for Documentary Credits, as published in its most recent version by the International Chamber of Commerce on the date any Letter of Credit is issued.

3.10 Disbursement Procedures. The relevant Issuing Bank for any Letter of Credit shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Agent and the Co-Borrowers by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice

shall not relieve any Co-Borrower of its obligation to reimburse such Issuing Bank and the Banks with respect to any such LC Disbursement.

3.11 Replacement of Issuing Bank. Any Issuing Bank may be replaced at any time, at its sole option, by written agreement between the Co-Borrowers, the Agent, the replaced Issuing Bank and the successor Issuing Bank. The Agent shall notify the Banks of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Co-Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to include such successor or the previous Issuing Bank (if applicable), or such successor and the previous Issuing Bank (if applicable), as the context shall require. After the replacement of Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

3.12 Issuing Bank. Each Issuing Bank shall act on behalf of the Banks with respect to any Letters of Credit issued by it and the documents associated therewith. Each Issuing Bank shall not be obligated to issue Letters of Credit to any beneficiary subject to Sanctions and each Issuing Bank shall have all of the benefits and immunities (i) provided to the Agent in Article 9 with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and L/C Related Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article 9 included such Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such Issuing Bank.

3.13 Issuing Banks other than the Agent. Any Issuing Bank (other than an Issuing Bank that is also the Agent or one of its Affiliates) selected by Rabobank to issue a Letter of Credit hereunder shall (i) notify the Agent in writing no later than the Business Day immediately following the Business Day on which the issuance, termination, expiration, reduction, amendment, modification or replacement of any Letter of Credit issued by such Issuing Bank occurs; *provided* that any notice by an Issuing Bank of the issuance, termination, expiration, reduction, amendment, modification or replacement of a Letter of Credit pursuant to this Section received by the Agent on a day that is not a Business Day, or after 11:00 a.m. (New York City time) on a Business Day, shall be deemed to have been given at the opening of business on the next Business Day, and (ii) deliver to the Agent once each week (on such day of the week as the Agent and Issuing Bank shall agree) or, during the existence of an Event of Default, as frequently as requested by the Agent, a written report for the prior week of the daily aggregate undrawn amounts of all outstanding Letters of Credit issued by such Issuing Bank.

3.14 Illegality under Letters of Credit. If, at any time, it becomes unlawful for any Issuing Bank to comply with any of its obligations under any Letter of Credit (including, but not limited to, as a result of any sanctions imposed by the United Nations, the European Union, the Netherlands, the United Kingdom and/or the United States), the obligations of such Issuing Bank with respect to such Letter of Credit shall be suspended (and all corresponding rights shall cease to accrue) until such time as it may again become lawful for such Issuing Bank to comply its obligations under such Letter of Credit, and such Issuing Bank shall not be liable for any losses that the Loan Parties may incur as a result.

Article 4
TAXES, YIELD PROTECTION AND ILLEGALITY

4.01 Taxes.

(a) Any and all payments by the Loan Parties under this Agreement or any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by a Requirement of Law. If any Requirement of 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 an applicable 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 Co-Borrowers shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Co-Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse the Agent for the payment of, any Other Taxes.

(c) The Loan Parties shall jointly and severally indemnify each Recipient, 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 Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Co-Borrowers by a Bank (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Bank, shall be conclusive absent manifest error.

(d) Each Bank shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Bank (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Bank's failure to comply with the provisions of Section 10.07(e) 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 Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Bank by the Agent shall be conclusive absent manifest error. Each Bank hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Bank under any Loan Document or otherwise payable by the Agent to the Bank from any other source against any amount due to the Agent under this paragraph (d).

(e) Within 30 days after the date of any payment by the Co-Borrowers of Indemnified Taxes or Other Taxes, the Co-Borrowers shall furnish the Banks the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to the Banks.

(f) 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 Loan Document shall deliver to the Co-Borrowers and the Agent, at the time or times reasonably requested by the Co-Borrowers or the Agent, such properly completed and executed documentation reasonably requested by the Co-Borrowers or the 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 Co-Borrowers or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Co-Borrowers or the Agent as will enable the Co-Borrowers or the 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 clauses (1), (2), and (4) of Section 4.01(f)(ii)) 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 commercial position of such Bank.

(ii) Without limiting the generality of the foregoing,

(1) any Bank that is a U.S. Person shall deliver to the Co-Borrowers and the 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 Co-Borrowers or the Agent), executed copies of IRS Form W-9 certifying that such Bank is exempt from U.S. federal backup withholding tax;

(2) any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Co-Borrowers and the 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 Co-Borrowers or the Agent), whichever of the following is applicable:

i) in the case of a Foreign Bank claiming the benefits of an income tax treaty to which the United States is a party (I) with respect to payments of interest under any Loan 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 (II) with respect to any other applicable payments under any Loan

Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

ii) executed copies of IRS Form W-8ECI;

iii) in the case of a Foreign Bank claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (I) a certificate substantially in the form of Exhibit K-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 Obligors within the meaning of Section 871(h)(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 (II) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

iv) 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, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-2 or Exhibit K-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 K-4 on behalf of each such direct and indirect partner;

(iii) any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Co-Borrowers and the 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 Co-Borrowers or the 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 Co-Borrowers or the Agent to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Bank under any Loan 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 Co-Borrowers and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Co-Borrowers or the 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 Co-Borrowers or the Agent as may be necessary for the Co-Borrowers and the 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.

(v) Each Bank agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrowers and Agent in writing of its legal inability to do so.

(g) 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 4.01 (including by the payment of additional amounts pursuant to this Section 4.01), 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 reasonable 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 (f) (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 (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) 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.

(h) Each party's obligations under this Section 4.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Bank, or the occurrence of Payment in Full.

4.02 Increased Costs and Reduction of Return.

(a) If a Bank determines that, due to either (i) the introduction of or any change after the date hereof in or in the interpretation of any law or regulation or (ii) the compliance by the Bank with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) issued after the date hereof, there shall be any increase in the cost to the Bank in the cost of agreeing to make or making, funding or maintaining any Loans or to Issue, Issuing or maintaining any Letter of Credit or unpaid drawing under any Letter of Credit, then the Co-Borrowers shall be liable for, and shall from time to time, upon demand, pay to such Bank, additional amounts as are sufficient to compensate such Bank for such increased costs.

(b) If a Bank shall have determined that (i) the introduction of any guideline, request, directive, law, rule or regulation effective after the date hereof, (ii) any change in any guideline request, directive, law, rule or regulation after the date hereof, (iii) after the date hereof, any change in the interpretation or administration of any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of the Bank or of any corporation controlling the Bank, or (iv) the compliance by the Bank (or its lending office) or any corporation controlling the Bank with any such guideline request, directive, law, rule or regulation effective after the date hereof, affects or would affect the amount of capital or liquidity required or expected to be maintained by the Bank or any corporation controlling the Bank and (taking into consideration the Bank's or such corporation's policies with respect to capital adequacy and liquidity and the Bank's desired return on capital) determines that the amount of such capital or liquidity is increased as a consequence of its loans, credits or obligations under this Agreement (excluding for the purposes of this Section 4.02 any such increased costs or reduction in amount resulting from Excluded Taxes under the laws of which such Bank or such Issuing Bank is organized or has its lending office), then, upon demand of such Bank to the Co-Borrowers, the Co-Borrowers shall pay to such Bank, from time to time as specified by such Bank, additional amounts sufficient to compensate such Bank for such increase.

Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes of this Section 4.02, regardless of the date enacted, adopted or issued.

4.03 Compensation for Losses. Upon demand of any Bank (with a copy to the Agent) from time to time, the Co-Borrowers shall promptly compensate such Bank for and hold such Bank harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by any Co-Borrower (for a reason other than the failure of such Bank to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by such Co-Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefore as a result of a request by any Co-Borrower pursuant to Section 10.15;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by the Co-Borrowers to the Banks under this Section 4.03, each Bank shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank Eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

4.04 Illegality.

(a) If any Bank determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for such Bank or its applicable Lending Office to make Eurodollar Rate Loans, then, on notice thereof by such Bank to the Co-Borrowers through the Agent, any obligation of that Bank to make Eurodollar Rate Loans, or to convert Base Rate Loans to Eurodollar Rate Loans, shall be suspended until the Bank notifies the Agent and the Co-Borrowers that the circumstances giving rise to such determination no longer exist.

(b) If a Bank determines that it is unlawful to maintain any Eurodollar Rate Loan, the Co-Borrowers shall, upon receipt of notice of such fact and demand from such Bank (with a copy to the Agent), prepay in full, without premium or penalty, such Eurodollar Rate Loans of that Bank then outstanding, together with interest accrued thereon either on the last day of the Interest Period thereof, if the Bank may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if the Bank may not lawfully continue to maintain such Eurodollar Rate Loan. If the Co-Borrowers are required to so prepay any Eurodollar Rate Loan, then concurrently with such prepayment, the Co-Borrowers may, but shall not be required to, borrow from the affected Bank, in the amount of such repayment, a Base Rate Loan at the sole discretion of the Co-Borrowers.

4.05 Inability to Determine Rates. If the Agent (or any Bank) determines in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks (or such Bank) in the applicable offshore Dollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or adequate and reasonable means do not exist for determining the Eurodollar Rate for such Eurodollar Rate Loan, or (b) if the Agent (or any Bank) determines that the Eurodollar Rate for such Eurodollar Rate Loan does not adequately and fairly reflect the cost to the Banks (or such Bank) of funding such Eurodollar Rate Loan, then the Agent will notify the Co-Borrowers and all Banks as promptly as practicable thereafter. Thereafter, the obligation of the Banks to make or maintain Eurodollar Rate Loans shall be suspended until all of the Banks revoke such notice. Upon receipt of such notice, the Co-Borrowers may revoke any pending request for a Borrowing, conversion, or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

4.06 Benchmark Replacement Setting. On March 5, 2021 the Financial Conduct Authority ("***FCA***"), the regulatory supervisor of the Eurodollar Rate's administrator ("***IBA***"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12- month Eurodollar Rate tenor settings. Notwithstanding anything to the contrary herein or in any other Loan Document,

(i) Replacing Eurodollar Rate. On the earlier of (A) the date that all Available Tenors of the Eurodollar Rate have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (B) the Early Opt-in Effective Date, if the then-current Benchmark is the Eurodollar Rate, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Replacing Non-Eurodollar Rate Benchmarks. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Banks without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from the Majority Banks. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Co-Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Co-Borrowers' receipt of notice from the Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Co-Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of the Base Rate based upon the Benchmark will not be used in any determination of the Base Rate.

(iii) Flip Forward. Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this clause, if a Term SOFR Transition Event and its related Term SOFR Transition Event Effective Date have occurred prior to the reference time in respect of any setting of the then-current Benchmark, then Term SOFR plus the Term SOFR Adjustment will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; **provided** that, this clause (iii) shall not be effective unless the Agent has delivered to the Banks and the Co-Borrowers a Term SOFR Notice. Notwithstanding anything contained herein to the contrary, the Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion. For the avoidance of doubt, any applicable provisions set forth in this Section 4.06 shall apply with respect to any Term SOFR transition pursuant to this clause (iii) as if such forward-looking term rate was initially determined in accordance herewith including, without limitation, the provisions set forth in clauses (iv) and (vii) of this Section 4.06.

(iv) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(v) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Co-Borrowers and the Banks of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Agent or, if applicable, any Bank (or group of Banks) pursuant to this Section 4.06, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 4.06.

(vi) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or the Eurodollar Rate), then the Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(vii) Disclaimer. The Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration of, submission of, calculation of, or any other matter related to the London interbank offered rate or other rates in the definition of "Eurodollar Rate" or any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (A) any such alternative, successor or replacement rate implemented pursuant to this Section 4.06, whether upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, and (B) the implementation of any Benchmark Replacement Conforming Changes pursuant to this Section 4.06, including without limitation, (i) whether the composition or characteristics of any such alternative, successor or replacement reference rate for any currency will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the applicable Eurodollar Rate for Loans denominated in such currency as did the London interbank offered rate prior to its discontinuance or unavailability, and (ii) the impact or effect of such alternative, successor or replacement reference rate or Benchmark Replacement Conforming Changes on any other financial products or agreements in effect or offered by or to the Co-Borrowers, any Bank or any of their respective Affiliates, including, without limitation, any Swap Contract.

4.07 Reserves on Eurodollar Rate Loans. The Co-Borrowers shall pay to each Bank, as long as such Bank shall be required under regulations of the FRB to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities"), additional costs on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by the Bank (as determined by the Bank in good faith, which determination shall be conclusive), payable on each date on which interest is payable on such Loan, *provided*, *however*, that the Co-Borrowers shall have received at least 15 days' prior written notice (with a copy to the Agent) of such additional interest from the Bank. If a Bank fails to give notice 15 days prior to the relevant Interest Payment Date, such additional interest shall be payable 15 days from receipt of such notice.

4.08 Certificates of Bank. If a Bank claims reimbursement or compensation under this Article 4, it shall deliver to the Co-Borrowers a certificate setting forth in reasonable detail the amount payable to such Bank hereunder and the basis for same and such certificate shall be conclusive and binding on the Co-Borrowers in the absence of manifest error.

4.09 Survival. The agreements and Obligations of the Co-Borrowers in this Article 4 shall survive the payment of all other Obligations.

Article 5
CLOSING ITEMS

5.01 Matters to be Satisfied Prior to Initial Request for Extension of Credit. The obligations of each Bank to make the initial Loan or any Issuing Bank to issue the initial Letter of Credit, shall be subject to the conditions precedent that:

(a) Loan Documents. The Agent shall have received this Agreement, the Notes, the Security Documents (in recordable form where applicable), UCC financing statements, UCC-3 financing statement amendments and assignments, the Intercreditor Agreement, the Guaranty Agreement, any Subordination Agreements, and each other document or certificate executed in connection with this Agreement, executed by each party thereto;

(b) Resolution; Incumbency. The Agent shall have received:

(i) Copies of the resolutions of each Loan Party authorizing the transactions contemplated hereby, certified as of the Closing Date by a Responsible Officer of such Loan Party; and

(ii) A certificate of a Responsible Officer of each Loan Party certifying the names and true signatures of any Responsible Officers of such Loan Party who are authorized to act on behalf of each Loan Party.

(c) Organization Documents; Good Standing. The Agent shall have received the certificate of incorporation, certificate of formation, or certificate of limited partnership, as applicable, of each Loan Party as in effect on the Closing Date, each certified by the Secretary of State of each such Person's state of organization, the bylaws, regulations, operating agreement or partnership agreement, as applicable, of each Loan Party, each certified by a Responsible Officer of such Loan Party as a true and correct copy thereof as of the Closing Date, and evidence satisfactory to the Agent, that each Loan Party is in good standing under the laws of its state of organization;

(d) Legal Opinion. The Agent shall have received an opinion of outside Texas and New York counsel to the Loan Parties addressed to the Agent and the Banks, in form and substance acceptable to the Agent;

(e) Payment of Fees. The Agent shall have received evidence of payment by the Co-Borrowers of all fees, costs and expenses to the extent then due and payable on or prior to the Closing Date, together with Attorney Costs and including, without limitation, the fees set forth in Schedule I to the Engagement Letter and any such costs, fees and expenses arising under or referenced in Section 10.04, without duplication;

(f) Certificate. The Agent shall have received a certificate signed by a Responsible Officer of Parent and each Co-Borrower, dated as of the Closing Date, in the form attached hereto as Exhibit F, or in any other form acceptable to the Agent;

(g) Filings. The Agent shall have received evidence that all filings needed to perfect the security interests granted by the Loan Documents have been completed or due provision has been made therefor and that all previous filings against any portion of the Collateral (other than Permitted Liens) have been terminated;

(h) Pro Forma Financial Statements. The Agent shall have received pro forma Consolidated and consolidating financial statements of Parent and its Subsidiaries as of March 31, 2017, together with a funds flow memorandum for the transactions contemplated hereby to occur on the Closing Date, in form and substance satisfactory to the Agent;

(i) Know Your Customer. The Agent shall have received all documentation and other information requested by the Agent, any Issuing Bank, or any Bank that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the USA Patriot Act;

(j) Insurance. Agent shall have received evidence of insurance required to be maintained by the Loan Parties hereunder, which certificates shall name the Agent as additional insured and loss payee, as applicable;

(k) Collateral Position Report. Agent shall have received a pro-forma Collateral Position Report dated as of April 30, 2017 for the month of April 2017, in form and substance satisfactory to the Agent, that has been duly executed by a Responsible Officer;

(l) Risk Management and Credit Policy. Agent shall have received a copy of the Risk Management and Credit Policy in form and substance satisfactory to Agent.

(m) Capital Structure. The capital and ownership structure and the equity-holder arrangements of the Loan Parties and their respective Subsidiaries (and all agreements relating thereto) shall be reasonably satisfactory to the Agent.

(n) Due Diligence. The Agent shall have completed and be satisfied in its sole discretion with the corporate (or other organizational), environmental and financial due diligence of the Loan Parties and their respective Subsidiaries.

(o) Notice of Borrowing. The Agent shall have received a duly completed and signed Notice of Borrowing for the Working Capital Loan to be made on the Closing Date.

(p) Existing Credit Agreement. The Agent shall have received evidence that the Existing Credit Agreement has been or concurrently with the Closing Date is being terminated and all Liens securing obligations under the Existing Credit Agreement have been or concurrently with the Closing Date are being released.

(q) Master Service Agreement. The Agent shall have received the Master Service Agreement and all amendments or other modifications or supplements thereto, in each case, in form and substance satisfactory to the Agent.

(r) Other Documents. The Agent and Banks shall have received such other approvals, opinions, documents or materials as the Agent or such Banks may request.

For purposes of determining compliance with the conditions specified in this Section 5.01, each Bank that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Bank unless the Agent shall have received notice from such Bank prior to the Closing Date specifying its objection thereto.

5.02 Matters to be Satisfied Prior to Each Request for Extension of Credit. On any date on which the Banks make any Loans or Issue any Letter of Credit hereunder, unless otherwise waived by the Banks, each of the following shall be true:

(a) Representations and Warranties. Each of the representations and warranties made by the Loan Parties in or pursuant to this Agreement or the other Loan Documents shall be true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which representation and warranty shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to the extent such representations and warranties relate solely to an earlier date).

(b) Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extension of credit requested to be made on such date.

(c) No Material Adverse Effect. Since the Closing Date, there shall have been no Material Adverse Effect.

(d) No Prohibition or Penalty. The making of such Loan or the Issuance of such Letter of Credit shall not be prohibited by any applicable law or subject the Agent, any Issuing Bank or any Bank to any penalty under applicable law.

5.03 Matters to be Satisfied Prior to Each Request for Borrowing of Acquisition Loans for Permitted Acquisitions. On any date on which the Banks make any Acquisition Loans hereunder for the purpose of funding the Adjusted Purchase Price of any Permitted Acquisition, unless otherwise waived by the Banks, each of the following shall be true:

(a) Adjusted Purchase Price. Such Acquisition Loan (when combined with all other Acquisition Loans used to finance such Permitted Acquisition) does not exceed the sum of (A) 75% of the Adjusted Purchase Price (excluding the portion of such purchase price consisting of the cash cost of acquired net working capital) and (B) the Adjusted Purchase Price consisting of the cash cost of acquired net working capital, in each case of the Permitted Acquisition to be financed by such Acquisition Loan.

(b) Consent. The Agent or the Majority Banks provided written consent to such Permitted Acquisition to be financed by the requested Acquisition Loan to the extent required by the definition of Permitted Acquisition.

(c) Financial Covenant Compliance. The Co-Borrowers are in pro forma compliance with the financial covenants in Section 7.09, together with calculations and any supporting documentation demonstrating such pro forma compliance in form and substance reasonably satisfactory to the Agent.

(d) Due Diligence. The Agent shall have completed and be satisfied in its sole discretion with its due diligence review of the Permitted Acquisition.

(e) Notice of Borrowing. The Agent shall have received a duly completed and signed Notice of Borrowing for the Acquisition Loan.

(f) Consummation of the Permitted Acquisition. The Agent shall have received evidence, in form and substance satisfactory to the Agent, of the consummation of the Permitted Acquisition in accordance with the terms and conditions of such material documentation relating to such Permitted Acquisition, without giving effect to any modifications, consents, amendments or waivers thereto that are materially adverse to the Agent or the Banks, substantially concurrently with the making of such Acquisition Loan.

Article 6
REPRESENTATIONS AND WARRANTIES

Parent and each Co-Borrower represents and warrants to the Banks that:

6.01 Corporate Existence and Power.

(a) Each Loan Party and each Restricted Subsidiary is a corporation, limited liability company or limited partnership, as applicable, duly formed and validly existing under the laws of its state of formation.

(b) Each Loan Party and each Restricted Subsidiary has the power and authority and all governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and to execute, deliver, and perform its Obligations under the Loan Documents and is licensed under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such license, except for those jurisdictions in which the failure to obtain such licenses and authorizations could not reasonably be expected to have a Material Adverse Effect.

6.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of this Agreement and each other Loan Document to which such Loan Party is party, has been duly authorized by all necessary corporate, limited liability company, or partnership action, as applicable, and do not and will not contravene, conflict with or result in any breach or contravention of, or the creation of any Lien under any of such Loan Party's organizational and governing documents, or any document evidencing any contractual obligation to which such Loan Party is a party or any order, injunction, writ or decree of any Governmental Authority to which such Loan Party or its property is subject or any Requirement of Law, to the extent any such contravention, conflict or breach has or could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

6.03 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for filings, recordation or similar steps necessary to perfect the Liens of the Agent under applicable law.

6.04 Binding Effect. This Agreement and each other Loan Document to which each Loan Party is a party constitute the legal, valid and binding obligations of such Loan Party except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

6.05 Litigation. There are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of each Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Loan Party, any Subsidiary or any of their respective properties which purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or thereby or which could reasonably be expected to have a Material Adverse Effect; and no injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

6.06 No Default. No Default or Event of Default exists or would result from the incurring of any Obligations by any Loan Party and no Loan Party nor any Restricted Subsidiary is in default under or with respect to any other obligation in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect.

6.07 Compliance with Laws and Agreements. Except as could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, each Loan Party and each Subsidiary, before and after giving effect to this Agreement, is in compliance with laws applicable to such entity, including all requirements of ERISA. No Loan Party nor any Subsidiary is in default under or with respect to any contract, agreement, lease or any other types of agreement or instrument to which such Loan Party or such Subsidiary is a party and which could reasonably be expected to cause a Material Adverse Effect.

6.08 Use of Proceeds; Margin Regulations. The proceeds of the Loans are to be used solely for the purposes set forth in and permitted by Section 7.07. No Co-Borrower is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock, and none of the proceeds of the Loans will be used to purchase or carry Margin Stock.

6.09 Title to Properties. Each Loan Party and each Restricted Subsidiary has good and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. As of the Closing Date, the property of each Loan Party and each Restricted Subsidiary is subject to no Liens except Permitted Liens.

6.10 Taxes. Each Loan Party and each Subsidiary has filed all federal, state, and other material Tax returns and reports to be filed, and has paid all federal, state, and other material Taxes, assessments, fees and other governmental charges, levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment against any Loan Party or Subsidiary that would, if made, have a Material Adverse Effect on the Loan Parties, taken as a whole.

6.11 Financial Condition.

(a) The Consolidated and consolidating financial statements of Parent and its Subsidiaries (x) dated December 31, 2020, and statements of income or operations, shareholders' equity and cash flows for the year ended on that date and (y) dated June 30, 2021, and statements of income or operations, shareholders' equity and cash flows for the three month period ended on that date:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present the financial condition of the Loan Parties and their Restricted Subsidiaries as of the dates thereof and results of operations for the periods covered thereby, subject to normal year-end adjustments in the case of the financial statements dated June 30, 2021; and

(iii) except as set forth on Schedule 6.11, show all material indebtedness and other liabilities, direct or contingent, of the Loan Parties and their Subsidiaries as of the dates thereof, including liabilities for Taxes, material commitments and contingent obligations.

(b) Since December 31, 2020, there has been no Material Adverse Effect.

6.12 Environmental Matters. Except to the extent such violation could not reasonably be expected to have a Material Adverse Effect, to each Loan Party's knowledge neither its business operations nor any of its properties nor any Subsidiary nor any of such Subsidiary's properties are in violation of any federal or state law or regulation relating to the protection of the environment (hereinafter "Environmental Laws"), including without limitation requirements to obtain, maintain, and comply with any permits, licenses, registrations, or other authorizations under Environmental Laws. No claims of any nature have been filed, or to the Loan Parties' knowledge threatened, against any Loan Party or any Subsidiary pursuant to any Environmental Law that could reasonably be expected to have a Material Adverse Effect. Except to the extent such release(s) could not reasonably be expected to have a Material Adverse Effect, to the knowledge of the Loan Parties, no release of hazardous substances or other pollutants (as those terms are defined by Environmental Laws) has occurred in connection with the Loan Parties' or any Subsidiary's business or operations. Except as could not be reasonably expected to have a Material Adverse Effect, to the Loan Parties' knowledge, the Loan Parties and their Subsidiaries are not subject to any liabilities under Environmental Law or relating to releases of hazardous substances or pollutants.

6.13 Regulated Entities. No Loan Party, nor any Person controlling any Loan Party, or any of its Subsidiaries, is an "Investment Company" within the meaning of the Investment Company Act of 1940. No Loan Party is subject to any Requirement of Law limiting its ability to incur indebtedness or perform its obligations hereunder.

6.14 Copyrights, Patents, Trademarks and Licenses, etc. Each Loan Party and each Restricted Subsidiary owns or is licensed or otherwise has the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of its business, without conflict with the rights of any other Person. To the best knowledge of each Loan Party, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Restricted Subsidiary infringes upon any rights held by any other Person, to the extent such failure to own, license or possess the right to use has or could reasonably be expected to have a Material Adverse Effect, taken as a whole.

6.15 Subsidiaries. No Loan Party or any Restricted Subsidiary has any Subsidiaries or has any equity investments in any other corporation or entity other than those specifically disclosed on Schedule 6.15.

6.16 Insurance. The properties of each Loan Party and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of a Loan Party with an AM Best rating of not less than "B+", in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or Restricted Subsidiary operates.

6.17 Full Disclosure. None of the representations or warranties made by any Loan Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Loan Party to any Secured Party in connection with the Loan Documents, when taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

6.18 Deposit and Hedging Brokerage Accounts. Each of the Loan Parties' bank depository accounts and securities accounts and each of the Loan Parties' hedging brokerage accounts with Eligible Brokers is listed on Schedule 6.18.

6.19 Solvency. None of the Loan Parties nor any Restricted Subsidiary is "insolvent" (that is, the sum of such Person's absolute and contingent liabilities, including the Obligations, does not exceed the fair market value of such Person's assets, including any rights of contribution, reimbursement or indemnity). Each Loan Party and each Restricted Subsidiary has capital which is adequate for the businesses in which such Person is engaged and intends to be engaged. None of the Loan Parties nor any Restricted Subsidiary has incurred (whether hereby or otherwise), nor do the Loan Parties intend to incur or believe that they will incur, liabilities which will be beyond their respective ability to pay as such liabilities mature.

6.20 ERISA. Except for those that would not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the knowledge of any Loan Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Loan Party or any Subsidiary has incurred or otherwise has or could have an obligation or any liability and (z) no ERISA Event is reasonably expected to occur. Except for those that would not, in the aggregate, have a Material Adverse Effect, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. Except for those that would not, in the aggregate, have a Material Adverse Effect, no ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made. Except for those that would not, in the aggregate, have a Material Adverse Effect, no ERISA Affiliate has incurred any liability under Title IV of ERISA that remains outstanding (other than PBGC premiums due but not delinquent). None of the assets of any ERISA Affiliate is the subject of any Lien arising under Section 303(k) of ERISA or Section 430(k) of the Code, and there are no facts which could be expected to give rise to such a Lien.

6.21 Transmitting Utility and Utility. None of the Loan Parties nor any Restricted Subsidiary is a "transmitting utility", as that term is defined in the Uniform Commercial Code of any applicable jurisdiction, or a "utility", as that term is defined in Section 261.001 of the Texas Business and Commerce Code.

6.22 Sanctions/Anti-Corruption Representations.

(a) No Loan Party nor any of its Affiliates is in violation of any Anti-Terrorism Laws, Anti-Corruption Laws, or Sanctions or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Laws, Anti-Corruption Laws, or Sanctions.

(b) No Loan Party nor any of its Affiliates or any director, officer, employee, agent or affiliate of any Loan Party or any of its Affiliates is a Person (each such Person, a "Sanctioned Person") that is, or is owned or controlled by Persons that are: (i) the subject of any Sanctions, or (ii) located, organized or resident in a region, country or territory that is, or whose government is, the subject of Sanctions, including, without limitation, currently the Region of Crimea, Cuba, Iran, North Korea, Sudan and Syria.

6.23 EEA Financial Institution. None of the Loan Parties is an EEA Financial Institution.

Article 7
CERTAIN COVENANTS

So long as the Banks shall be obligated to make Loans or Issue Letters of Credit hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding:

7.01 Financial Statements. Parent and each of the Co-Borrowers shall deliver to the Agent (who will promptly make such deliverable available to the Banks), in form and detail satisfactory to the Agent and the Majority Banks:

(a) (i) as soon as possible, but not later than 120 days after the end of each fiscal year (or, if earlier, not later than 15 days after delivering such financial statements to the SEC), a copy of the audited Consolidated and consolidating financial statements of Parent (which include the Co-Borrowers and all Subsidiaries) to include a balance sheet as at the end of such year and the related statements of income and loss, shareholders' equity and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the opinion of a nationally-recognized independent public accounting firm which report shall state that such financial statements present fairly the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years. Such opinion shall not be qualified or limited because of a restricted or limited examination by the public accounting firm of any material portion of Co-Borrowers' records;

(ii) for any fiscal year during which an Unrestricted Subsidiary exists, as soon as possible, but not later than 120 days after the end of each fiscal year, a consolidated balance sheet of the Loan Parties on a Consolidated basis, as at the end of such year and the related statements of income and loss, shareholders' equity and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller as fairly presenting the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years;

(b) (i) as soon as available, but not later than forty-five (45) days after the end of each month (except for the month ending December 31, which shall be delivered no later than sixty (60) days after the end of such month) (or, if earlier, not later than 5 days after delivering such financial statements to the SEC) unaudited Consolidated and

consolidating financial statements of Parent (which include the Co-Borrowers and all Subsidiaries) prepared by Parent in form acceptable to the Agent; and

(ii) for any fiscal month during which an Unrestricted Subsidiary exists, as soon as available, but not later than forty-five (45) days after the end of each month (except for the month ending December 31, which shall be delivered no later than sixty (60) days after the end of such month), unaudited financial statements of the Loan Parties on a Consolidated basis, in form acceptable to the Agent.

7.02 Certificates; Other Information. Parent and the Co-Borrowers shall furnish to the Agent (who will promptly make such deliverable available to the Banks) and shall notify the Agent of:

(a) concurrently with the delivery of the financial statements referred to in Subsections 7.01(a) and (b), a Compliance Certificate executed by a Responsible Officer of Parent, who is authorized to act on behalf of each of the Loan Parties, setting forth in reasonable detail the basis for the calculations and determinations made therein; provided, however, that if at any time any Loan Party anticipates mark-to-market losses for Product, which such losses are not reflected on the Compliance Certificate most recently delivered to the Banks, then Parent and the Co-Borrowers shall, by the Business Day following the day such Co-Borrower realizes such losses are expected, deliver to the Banks an additional Compliance Certificate which shall reflect such anticipated losses;

(b) delivered within fifteen (15) Business Days of the last day of each month, a Collateral Position Report calculated as of the last day of such month, certified by a Responsible Officer of HoldCo, who is authorized to act on behalf of the Loan Parties, and at such other times as the Agent may request; *provided*, *however*, if the excess Collateral Position as shown on the most recent Collateral Position Report is less than the greater of $10,000,000 and 10% of clause (b) of the Borrowing Base Advance Cap, then Collateral Position Reports calculated as of the 15th and last day of each month shall be delivered within fifteen (15) Business Days of the 15th and last day of such month, until such time as the excess Collateral Position is equal to or greater than the greater of $10,000,000 and 10% of clause (b) of the Borrowing Base Advance Cap (in which case reporting will revert to the last day of each month); *provided further*, that Holdco may, with the consent of the Agent (in its sole discretion), deliver to the Agent a collateral position report and such other information reflecting the eligible assets and liabilities of the Loan Parties necessary to calculate an updated Borrowing Base Advance Cap, in each case, in form and substance satisfactory to the Agent in its sole discretion.

(c) delivered within ten (10) Business Days of the last day of each month (or the next succeeding Business Day after such date in the event that such date is not a Business Day), a Net Position Report calculated as of the last day of such month, certified by a Responsible Officer of HoldCo, who is authorized to act on behalf of each of the Loan Parties and each Subsidiary;

(d) within 90 days of the end of each calendar quarter, with respect to Unbilled Qualified Accounts, a reconciliation setting forth estimated volumes and gross sales revenues versus actual volumes and gross sales revenues for such period, in a form acceptable to Agent;

(e) within 15 days of the end of each calendar quarter (or within 15 days of when requested by Agent following the occurrence and during the continuance of an

Event of Default), an accounts receivable aging analysis, in a form reasonably acceptable to Agent;

(f) as soon as reasonably possible after a written request is made by Agent from time to time, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary;

(g) within ten (10) Business Days of each calendar quarter end, a report of inventory storage locations for each Loan Party as of such quarter end;

(h) as soon as available and in any event within 60 days after the end of each fiscal year of Parent, an annual budget summary in the form of an income statement for the immediately following fiscal year and detailed on a quarterly basis with a description of the underlying assumptions utilized therein;

(i) promptly of the occurrence of any Default or Event of Default, and of the occurrence or existence of any event or circumstance that foreseeably will become a Default or Event of Default;

(j) promptly of any matter that has resulted or may reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a contractual obligation of any Loan Party or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between (1) any Loan Party or any Subsidiary and (2) any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, in the case each of clauses (i), (ii) and (iii), which has resulted or may reasonably be expected to result in a Material Adverse Effect;

(k) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, and (ii) promptly, and in any event within 10 days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that an ERISA Event has occurred;

(l) within fifteen (15) Business Days after the Chief Executive Officer of any Loan Party ceases to hold such office;

(m) within two Business Days after making a public filing with the SEC with respect to those activities requiring a public filing or as soon as available with respect to those activities in which no public filing is made, the Co-Borrowers shall provide to the Agent copies of each amendment or modification to, waiver of, or consent to departure from, the Risk Management and Credit Policy;

(n) promptly after the same are available, the Co-Borrowers shall make available to the Agent copies of each annual report, proxy or financial statement or other material report or communication sent to the holders of Equity Interests of Parent, and copies of all annual, regular, periodic and special reports and registration statements which the Loan Parties may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or any other securities Governmental Authority, and not otherwise required to be delivered to the Agent pursuant hereto;

(o) promptly upon execution thereof, a copy of any material amendments, waivers or other modifications to the Major Acquisition Documents, the Provider Acquisition Documents, or the Verde Acquisition Documents;

(p) concurrently with the delivery of the Collateral Position Report referred to in Section 7.02(b), (i) a customer count calculated on the actual number of customers and a RCE basis, including (A) customer information categorized by fixed or variable price contracts (including remaining contract tenor reporting for fixed price customers) and commercial and industrial or residential contracts, (B) monthly attrition rates, (C) monthly customer additions, (D) monthly customer acquisition costs, with categorization for organic growth and acquisitions, both on a gross basis and RCE basis, (ii) an itemized and aggregate calculation of the Embedded Gross Margin, together with supporting documentation to the extent requested by the Agent, in each case in form and substance reasonably satisfactory to the Agent, (iii) a report of (A) total variable price RCEs, (B) expected weighted average gross margin per RCE under variable price contracts, and (C) actual weighted average historical attrition rate during the prior twelve month period, in each case, calculated as of the last day of the applicable month, (iv) a summary of the cash collateral covering storage and transportation expenses included in clause (b)(xviii) of the definition of Borrowing Base Advance Cap, (v) a summary of Eligible RECs and related environmental and other obligations and liabilities and (vi) all other information set forth in Exhibit D hereto and as otherwise requested by the Agent, in each case (under this clause (p)) in form and substance acceptable to the Agent; and

(q) concurrently with the delivery of the financial statements referred to in Subsections 7.01(a) and (b), a report of the Actual Embedded Gross Margin, together with calculations and any supporting documentation demonstrating such calculations in form and substance reasonably satisfactory to the Agent;

(r) not less than 5 Business Days prior to making any payments on account of principal (whether by redemption, purchase, retirement, defeasance, set-off or otherwise), interest, fees or other amounts in respect of Subordinated Debt permitted under Section 7.31(a), a certificate certified by a Responsible Officer of HoldCo (i) certifying that the conditions set forth in Section 7.31(a) will have been met after giving effect to such payment, together with calculations and any supporting documentation demonstrating such pro forma compliance with Section 7.09 in form and substance reasonably satisfactory to the Agent, and (ii) setting forth the amount, date and purpose of such payment;

(s) not less than three (3) Business Days prior to making any payments on account of principal (whether by redemption, purchase, retirement, defeasance, set-off or otherwise), in respect of any Indebtedness permitted by Section 7.13(l), a certificate certified by a Responsible Officer of HoldCo (i) certifying that the conditions set forth in Section 7.31(c) will have been met after giving effect to such payment, together with calculations and any supporting documentation demonstrating such pro forma compliance with Section 7.09 in form and substance reasonably satisfactory to the Agent, and (ii) setting forth the amount and date of such payment;

(t) not less than 5 Business Days prior to making any payments under Section 7.15(e), notice that such payment is to be made, including the amount and date of such payment;

(u) promptly in the event that, in Parent's quarterly and annual reviews of whether or not an impairment exists under GAAP in accordance with FASB ASC Topic 350, management determines that a triggering event has occurred during the period that would require Parent to perform an impairment test prior to the annual impairment test; and

(v) promptly upon knowledge of any of the Co-Borrowers, notice of any change in the information provided in the certifications regarding beneficial ownership as required by 31 C.F.R. § 1010.230 that would result in a change to the list of beneficial owners identified in parts II(c) or II(d) of such certifications.

Each notice under clauses (i)-(m) of this Section shall be accompanied by a written statement by a Responsible Officer of Parent, who is authorized to act on behalf of the Loan Parties setting forth details of the occurrence referred to therein, and stating what action such Loan Party proposes to take with respect thereto and at what time. Each notice under Subsection 7.02(i) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

7.03 Insurance.

(a) Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, maintain, with financially sound and reputable insurers independent of any Loan Party and with an AM Best rating of not less than "B+", insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including, without limitation, cargo insurance. Agent shall be named as an additional insured and/or loss payee under all such policies, without liability for premiums or club calls. Each Loan Party shall use the standard of care typical in the industry in the operation and maintenance of its facilities.

(b) Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to, obtain flood insurance in such total amount as the Agent may from time to time require, if at any time the area in which a Building located on any real property encumbered by a mortgage in favor of Agent is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

7.04 Payment of Obligations. Each Loan Party shall, and shall cause each of its Subsidiaries to, pay and discharge, as the same shall become due and payable, all its material obligations and liabilities, including, without limitation, Taxes, except for such obligations and liabilities that are being diligently contested in good faith by appropriate proceedings.

7.05 Compliance with Laws. Each Loan Party shall, and shall cause each of its Subsidiaries to, comply, in all material respects, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, including, without limitation, the Federal Fair Labor Standards Act, ERISA, the FCPA, and the rules and regulations promulgated by OFAC, except such as may be contested in good faith or as to which a bona fide dispute may exist or which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

7.06 Inspection of Property and Books and Records and Audits. Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain proper books and records in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Person. Each Loan Party shall, and shall cause each of its Subsidiaries to, permit representatives and independent contractors of the Agent to visit and inspect any of its respective properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its respective affairs, finances and accounts with its respective directors, officers, and

independent public accountants, all at the expense of such Loan Party and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Loan Party; *provided*, *however*, when an Event of Default exists the Agent may do any of the foregoing at the expense of such Loan Party at any time during normal business hours and without advance notice. One time per fiscal year as designated by the Agent and at such other times as the Agent deems advisable, each Loan Party will, and will cause each of its Restricted Subsidiaries to, allow the Agent or an entity satisfactory to the Agent to conduct a thorough examination of the Collateral Position, and such Loan Party will, and will cause each of its Restricted Subsidiaries to, fully cooperate in such examination. In the absence of an Event of Default, such Loan Party will pay the costs and expenses of one such examination per fiscal year. At the request of any Bank and once available, the Agent will promptly provide the final report of the examination of the Collateral Position to such Bank on a confidential basis on terms acceptable to the Agent.

7.07 Use of Proceeds.

(a) Co-Borrowers shall use the proceeds of the Working Capital Loans solely for the purposes of (i) paying fees and expenses in connection with this Agreement; (ii) financing such Co-Borrowers' working capital requirements, including LDCs, related to the trading and marketing of Product and Renewable Energy Certificates and for related hedging requirements; and (iii) general corporate purposes (other than Permitted Acquisitions and other acquisitions of customer contracts).

(b) Co-Borrowers shall use the proceeds of Acquisition Loans solely for the purpose of, subject to Section 5.03, financing a portion of the Adjusted Purchase Price (including the portion of such purchase price consisting of the cash cost of acquired net working capital) of Permitted Acquisitions, including the purchase of acquired net working capital in connection with Permitted Acquisitions, as and when such payments become due and payable, and other acquisitions of customer contracts permitted under this Agreement.

(c) No proceeds of any Credit Extension shall be used, directly or indirectly, to purchase or carry Margin Stock.

(d) The Co-Borrowers will not, directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise), or (iii) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Laws that may be applicable.

7.08 Payments to Bank Blocked Accounts.

(a) Each Co-Borrower shall, if such Co-Borrower receives payments from account debtors in the ordinary course of business, establish and maintain a lock box ("Lock Box") through the applicable Bank Blocked Account or at another depositary institution acceptable to the Agent, and shall notify in writing and otherwise take such reasonable steps to ensure that all of its account debtors under any of its Accounts forward payment under such Accounts in the form of cash, checks, drafts or other similar

items of payment directly to such Lock Box or directly by wire transfer to such Bank Blocked Account, and shall provide Agent with reasonable evidence of such notification. Any payment in the form of cash, checks, drafts or similar items of payment received by any Co-Borrower in its Lock Box or otherwise shall be deposited into the applicable Bank Blocked Account no later than two Business Days following the date on which the applicable Co-Borrower receives such payment.

(b) In the event that any account debtor does not make any payment directly to the applicable Lock Box or the applicable Bank Blocked Account but instead makes such payment to a Loan Party, such Loan Party shall promptly deposit or cause to be deposited such amounts into the applicable Bank Blocked Account as soon as reasonably possible after receipt thereof.

(c) Agent may at any time following the occurrence of an Event of Default initiate the "Activation Period" or other analogous defined term (as defined in the Blocked Account Agreements) and thereafter all amounts deposited in the Bank Blocked Accounts shall be transferred as directed by the Agent. Co-Borrowers agree that, during the Activation Period, (a) no monies shall be withdrawn or otherwise transferred from any Bank Blocked Account without the Agent's approval and (b) Agent is authorized to apply amounts contained in the Bank Blocked Accounts toward satisfaction of the Obligations.

7.09 Financial Covenants.

(a) Fixed Charge Coverage Ratio. Parent shall not permit the Fixed Charge Coverage Ratio as of the last day of any month, commencing the first month-end after the Closing Date, to be less than 1.25 to 1.00.

(b) Total Leverage Ratio. Parent shall not permit as of the last day of any month, commencing the first month-end after the Second Amendment Effective Date, the ratio of (i) the sum of (x) all Indebtedness of the Loan Parties on a Consolidated basis, on such date (excluding (A) the Subordinated Debt permitted by Section 7.13(c) and (B) the Effective Amount of the L/C Obligations) plus (y) gross amounts reserved for potential civil and regulatory liabilities identified in the most recent Form 10-K or 10-Q filing filed by Parent with the SEC to (ii) Adjusted EBITDA for the most recent twelve (12) month period then ended to be more than 2.50 to 1.00.

(c) Maximum Senior Secured Leverage Ratio. Parent shall not permit, as of the last day of any month, commencing the first month-end after the Second Amendment Effective Date, the Senior Secured Leverage Ratio as such date, to be more than 1.85 to 1.00.

(d) Right to Cure. In the event that the Co-Borrowers fail to comply with the financial covenants set forth above by an amount not exceeding forty percent (40%) of the then-required applicable covenant level for any calendar month, until the expiration of the fifth (5th) Business Day subsequent to the date on which monthly financial statements are required to be delivered pursuant to Section 7.01 (the "Cure Period"), the Co-Borrowers shall be permitted to cure such failure to comply by way of receiving Cure Contributions, and upon the date on which the Cure Period expires, such covenants shall be recalculated giving effect to the Cure Contributions. Solely for the purpose of curing a financial covenant pursuant to a Cure Contribution, any such Cure Contributions shall be included in the calculation of Adjusted EBITDA for the most recently ended month. If, after giving effect to the foregoing recalculations, Co-Borrowers shall then be in compliance with the requirements of such covenants, Co-Borrowers shall be deemed to

have satisfied the requirements of such covenants as of the relevant earlier required date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of any such covenant that had occurred shall be deemed cured for the purposes of this Agreement and the other Loan Documents. Co-Borrowers shall provide Agent with notice of intent to exercise their right to cure contained in this subsection within 45 days of the end of the calendar month for which the cure is sought. Notwithstanding anything to the contrary contained this Agreement, from the date of receipt of such notice until the date on which the Cure Period expires, neither Agent nor any Bank shall exercise rights or remedies with respect to any Default or Event of Default solely on the basis that an Event of Default has occurred and is continuing under Section 7.09 (a) or (b). The Cure Contributions, in the aggregate, must be received no later than the end of the applicable Cure Period. In any rolling twelve month period, there shall be no more than two (2) Cure Contributions submitted under this Section 7.09(d) permitted, and no more than three (3) Cure Contributions submitted under this Section 7.09(d) shall be permitted during the term of this Agreement.

7.10 Limitation on Liens. The Loan Parties shall not, nor shall the Loan Parties suffer or permit any of their Restricted Subsidiaries to make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its property, whether now owned or hereafter acquired, other than

(a) any Lien existing on property of the Loan Parties on the date hereof and set forth in Schedule 7.10;

(b) any Lien created under any Loan Document;

(c) Liens for Taxes, fees, assessments or other governmental charges or levies which are not delinquent or remain payable without penalty or the validity of which is being diligently contested in good faith by appropriate proceedings (and fully reserved for on the books of such Person to the extent such item is material);

(d) Liens on POR Collateral;

(e) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person, and Liens of interest owners arising pursuant to Texas Bus. & Com. Code Section 9.343, or comparable law of other states, or Liens securing the Loan Parties' obligations under leases or deferred payment purchases of equipment and automobiles used in the Loan Parties' business;

(f) non-consensual statutory Liens arising in the ordinary course of the Loan Parties' business to the extent such Liens secure indebtedness which is not past due or such Liens secure indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or are being contested in good faith by appropriate proceedings diligently pursued and available to such Loan Party prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(g) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of real property which do not interfere in any material respect with the use of such real property or ordinary conduct of the business of the Loan Parties as

presently conducted thereon or materially impair the value of the real property which may be subject thereto;

(h) pledges and deposits of cash by any Loan Party in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits consistent with the current practices of such Loan Party (other than any Liens imposed by ERISA);

(i) pledges and deposits of cash by any Loan Party after the date hereof to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of indebtedness), public or statutory obligations, surety bonds, performance bonds and other similar obligations in each case in the ordinary course of business consistent with the current practices of such Loan Party;

(j) Liens arising from operating leases and the precautionary UCC financing statement filings in respect thereof and equipment or other materials which are not owned by any Loan Party located on the owned or leased premises of such Loan Party (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and the precautionary UCC financing statement filings in respect thereof;

(k) judgments and other similar Liens arising in connection with court proceedings that do not constitute an Event of Default, *provided*, that, such Liens are being contested in good faith and by appropriate proceedings diligently pursued, adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefor and a stay of enforcement of any such Liens is in effect;

(l) Liens granted by any Loan Party on its or their rights under any insurance policy, but only to the extent that such Lien is granted to the insurers under such insurance policies or any insurance premium finance company to secure payment of the premiums and other amounts owed to the insurers or such premium finance company with respect to such insurance policy;

(m) Liens on cash deposits in the nature of a right of setoff, banker's Lien, counterclaim or netting of cash amounts owed arising in the ordinary course of business on deposit accounts;

(n) Liens by way of cash collateral or letters of credit under and as provided for in Master Agreements such as NAESB Gas Contracts, EEI Master Agreements, ISDA Master Agreements, or similar types of agreements provided the aggregate outstanding amount of cash collateral does not exceed $30,000,000 (all of the foregoing collectively, "Permitted Liens"); and

(o) Liens arising from the escrow account and related escrow agreement in connection with the Verde Acquisition, provided, that the aggregate amount of cash in such escrow account does not exceed $5,000,000.

7.11 Fundamental Changes. The Loan Parties shall not, nor suffer or permit any of their Restricted Subsidiaries to, merge, consolidate with or into, liquidate or dissolve, or convey, transfer, lease or otherwise Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except (a) as permitted pursuant to Section 7.19 and (b) if no Default or Event of Default has occurred and is continuing, the merger of any Co-Borrower into any other Co-Borrower; *provided* that, the surviving Co-Borrower executes and delivers to Agent all additional

security documentation as the Agent may reasonably require in order to reaffirm the security interest of the Agent for the benefit of the Secured Parties in the Collateral.

7.12 Loans, Investments and Acquisitions. The Loan Parties shall not, nor suffer or permit any of their Restricted Subsidiaries to (without the consent of Agent), purchase or acquire or make any commitment therefor, any equity interest, or any obligations or other securities of, or any interest in, any Person or make or commit to make any acquisitions, or make or commit to make any advance, loan, extension of credit (other than pursuant to sales on open account in the ordinary course of any Loan Party's business) or capital contribution to or any other investment in, any Person, except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business;

(b) investments in cash or cash equivalents, *provided*, that, subject to Section 7.21, Agent shall have been granted a valid enforceable first priority security interest with respect to the deposit account, investment account or other account in which such cash or cash equivalents are held;

(c) loans and advances by any Loan Party to employees of such Loan Party for: (i) reasonably and necessary work-related travel or other ordinary business expenses to be incurred by such employee in connection with their work for such Loan Party, (ii) reasonable and necessary relocation expenses of such employees, and (iii) hardship situations being experienced by any such employee(s); *provided* that the aggregate amount of (i), (ii) and (iii) above does not exceed $1,000,000 at any one time outstanding;

(d) stock or obligations issued to any Loan Party by any Person (or the representative of such Person) in respect of indebtedness of such Person owing to such Loan Party in connection with the insolvency, bankruptcy, receivership or reorganization of such Person or a composition or readjustment of the debts of such Person; *provided*, that, the original of any such stock or instrument evidencing such obligations shall be promptly delivered to Agent, together with such stock power, assignment or endorsement by such Loan Party in order to perfect the security interest of Agent and the Banks in any such stock or instrument;

(e) obligations of account debtors to any Loan Party arising from Accounts which are past due that are evidenced by a promissory note made by such account debtor payable to such Loan Party; *provided*, that, promptly upon the receipt of the original of any such promissory note by such Loan Party, such promissory note shall be endorsed to the Agent by such Loan Party and promptly delivered to Agent as so endorsed in order to perfect the security interest of Agent and the Banks in any such promissory note;

(f) loans by a Loan Party to another Loan Party after the date hereof, *provided*, that, as to all of such loans, within thirty (30) days after the end of each fiscal year, the Co-Borrowers shall provide to Agent a report in form and substance satisfactory to Agent of the outstanding amount of such loans as of the last day of such year, the indebtedness arising pursuant to any such loan shall not be evidenced by a promissory note or other instrument, unless the original of such note or other instrument is promptly delivered to Agent to hold as part of the Collateral, with such endorsement and/or assignment by the payee of such note or other instrument as Agent may require, as of the date of any such loan and after giving effect thereto, the Loan Party making such loan shall be solvent, and as of the date of any such loan and after giving effect thereto, no Event of Default shall have occurred and be continuing;

(g) investments (other than loans) of any Loan Party in another Loan Party;

(h) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit or prepayments or similar transactions entered into in the ordinary course of business, and investments received in satisfaction or partial satisfaction thereof from financial troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(i) investments consisting of non-cash consideration for any Dispositions permitted under this Agreement, *provided* that such investments become subject to the first priority, perfected liens created under the Loan Documents;

(j) Equity Investments in any Person that is not a Loan Party, *provided* that:

(i) no Default or Event of Default has occurred and is continuing at the time of such Equity Investment or would result therefrom; and

(ii) no single Equity Investments may exceed $10,000,000 without the prior written consent of the Majority Banks;

(iii) (A) after giving effect to such Equity Investment, the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed 90% of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b) and (B) without the prior written consent of the Majority Banks, such Equity Investments plus outstanding Affiliate Obligations do not exceed $20,000,000 (less Major MIPA Payments made pursuant to Section 7.12(k) unless such Major MIPA Payments are made with cash distributions received by the Major Companies) in the aggregate at any time outstanding; and

(iv) immediately after giving effect to such Equity Investment, the Loan Parties shall be in pro forma compliance with the financial covenants in Section 7.09, together with calculations and any supporting documentation demonstrating such pro forma compliance in form and substance reasonably satisfactory to the Agent.

(k) Permitted Acquisitions; *provided* that,

(i) if the Adjusted Purchase Price (excluding the portion of such purchase price consisting of the cash cost of acquired net working capital) of such Permitted Acquisition is greater than $7,500,000, prior to the consummation of any Permitted Acquisition, the Co-Borrowers shall deliver to Agent (A) a valuation model specific to such Permitted Acquisition detailing historical performance metrics and reasonably detailed projections for the succeeding twenty four months pertaining to the Person or business to be acquired and updated projections for the Loan Parties after giving effect to such Permitted Acquisition, (B) copies of all material documentation pertaining to such Permitted Acquisition, (C) all such other information and

data relating to such Permitted Acquisition or the Person or business to be acquired as may be reasonably requested by the Agent; and (D) at least 5 Business Days (or such lesser period as is reasonably acceptable to the Agent) prior to the proposed date of consummation of the Permitted Acquisition, the Co-Borrowers shall have delivered to the Agent a certificate of a Responsible Officer certifying that (1) such acquisition is a Permitted Acquisition, including calculations in form and substance satisfactory to the Agent reflecting pro forma compliance with the financial covenants in Section 7.09, and (2) such Permitted Acquisition could not reasonably be expected to result in a Material Adverse Effect; and

(ii) if the Adjusted Purchase Price (excluding the portion of such purchase price consisting of the cash cost of acquired net working capital) of such Permitted Acquisition is less than or equal to $7,500,000 but greater than $4,000,000, at least two Business Days (or such lesser period as is reasonably acceptable to the Agent) prior to the proposed date of consummation of the Permitted Acquisition, the Co-Borrowers shall have delivered to the Agent a certificate of a Responsible Officer certifying that (A) such acquisition is a Permitted Acquisition, setting forth in reasonable detail the basis for the calculations and determinations, and (B) such Permitted Acquisition could not reasonably be expected to result in a Material Adverse Effect;

(iii) in the case of the Provider Acquisition, (A) the aggregate amount of cash payments made in respect of the Provider Earnout shall not exceed $9,000,000, and (B) the aggregate amount of cash payments made in respect of all other Provider MIPA Payments shall not exceed $28,000,000 in the aggregate; *provided* that, in each case, such payments shall be made only when due and payable;

(iv) in the case of any Major MIPA Payment:

(1) no Default or Event of Default has occurred and is continuing before or after giving effect to such Major MIPA Payment;

(2) all Major MIPA Payments are made in accordance with or as contemplated by Article 2 of the Major MIPA;

(3) immediately after giving effect to any Major MIPA Payment, the Loan Parties shall be in pro forma compliance with the financial covenants in Section 7.09; and

(4) immediately after giving effect to any Major MIPA Payment, MIPA Payment Availability is greater than the greater of (A) $10,000,000 and (B) 10% of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b).

(v) in the case of the Verde Acquisition:

(1) the cash consideration paid by the Loan Parties on the closing date thereof (excluding payments attributable to estimated closing date working capital) of approximately $45,000,000;

(2) no Default or Event of Default has occurred and is continuing before or after giving effect to any Verde MIPA Payment;

(3) all Verde MIPA Payments are made in accordance with or as contemplated by Article II of the Verde MIPA and the Verde Note;

(4) immediately after giving effect to any Verde MIPA Payment, the Loan Parties shall be in pro forma compliance with the financial covenants in Section 7.09, together with calculations and any supporting documentation demonstrating such calculations in form and substance reasonably satisfactory to the Agent; and

(5) immediately after giving effect to any Verde MIPA Payment, MIPA Payment Availability is greater than the greater of (A) $10,000,000 and (B) 10% of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b).

(l) Loans to Affiliates resulting in an Affiliate Obligation so long as after giving effect to such Loan to an Affiliate, the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed 90% of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b); provided that outstanding Affiliate Obligations plus Equity Investments plus Major MIPA Payments made pursuant to Section 7.12(k) (unless such Major MIPA Payments are made with cash distributions by the Major Companies) may not exceed $20,000,000 in the aggregate at any time outstanding without the prior consent of the Majority Banks;

(m) loans to Affiliates not to exceed $3,000,000 in the aggregate at any time outstanding for general and administrative expense reimbursement; and

(n) the acquisition of customer contracts for consideration less than $4,000,000 for any single transaction.

7.13 Limitation on Indebtedness and Other Monetary Obligations. The Loan Parties shall not, nor suffer or permit any of their Restricted Subsidiaries to, create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness or other monetary obligations, including guaranties, except:

(a) Indebtedness and obligations incurred pursuant to this Agreement or pursuant to a Swap Contract;

(b) Indebtedness and obligations consisting of trade payables in the ordinary course of business and consistent with past practices;

(c) Subordinated Debt owed to an Affiliate of the Co-Borrowers (other than Parent and its Restricted Subsidiaries);

(d) Indebtedness and obligations existing on the date hereof and described on Schedule 7.10;

(e) purchase money Indebtedness (including Capital Leases) in a maximum principal amount not exceeding $5,000,000 to the extent secured by purchase money security interests in automobiles and/or equipment (including Capital Leases) so long as such security interests do not apply to any property of such Loan Party other than the automobiles and equipment so acquired, and the Indebtedness secured thereby does not exceed the cost of such automobiles or equipment so acquired, as the case may be, or any refinancings, refundings, renewals or extensions thereof;

(f) guarantees by any Loan Party of the Obligations of the other Loan Parties in favor of Agent for the benefit of the Secured Parties;

(g) guarantees by any Loan Party of any Indebtedness permitted pursuant to this Section 7.13 of any other Loan Party;

(h) the Indebtedness of any Loan Party to another Loan Party pursuant to loans permitted under the terms of this Agreement;

(i) the obligations of any Loan Party or any of its Restricted Subsidiaries to pay the deferred purchase price of goods or services or progress payments in connection with such goods or services, so long as such obligations are incurred in the ordinary course of business;

(j) (i) unsecured Indebtedness owed to the seller in connection with a Permitted Acquisition (other than Major Cash Installment Payments) in an aggregate principal amount not exceeding $5,000,000 at any time outstanding without the consent of the Agent; *provided* that such Indebtedness is subordinated to the Obligations on terms satisfactory to the Agent, (ii) Provider MIPA Payments; (iii) the Major Cash Installment Payments, (iv) Verde MIPA Payments, and (v) the Verde Note;

(k) other unsecured Indebtedness on terms and conditions reasonably satisfactory to the Agent and the Majority Banks in an aggregate principal amount not exceeding $20,000,000 at any time outstanding;

(l) other unsecured Indebtedness so long as (i) no Default or Event of Default has occurred and is continuing at the time thereof or would be caused thereby, (ii) at the time thereof and after giving effect thereto, the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed the Borrowing Base Advance Cap, (iii) such Indebtedness does not require any scheduled amortization of principal or at any time have a maturity date prior to one year after the Expiration Date, (iv) after giving effect to the incurrence of such Indebtedness, the Loan Parties shall be in pro forma compliance with the financial covenants in Section 7.09, (v) after giving effect to the incurrence of such Indebtedness, the Loan Parties demonstrate projected pro forma compliance with the financial covenants in Section 7.09 through the Expiration Date based on projections through the Expiration Date delivered to the Agent in connection with such incurrence which projections shall be in form and substance

satisfactory to the Agent in its sole discretion; provided that, in the case of unsecured Indebtedness issued pursuant to an at-the-market or other similar bond issuance program, the Loan Parties shall demonstrate projected pro forma compliance upon the initial offering of any such indebtedness (and assuming all indebtedness capable of being issued under such program has been issued as of such date) and at such other times as requested by the Agent (and, in any event, no later than the third month anniversary of the most recent pro forma certificate provided pursuant to this clause (v) for any such programs with a tenor of more than three (3) months, (vi) the covenants and events of default contained in the documentation governing such Indebtedness are not more restrictive than the corresponding terms of this Agreement and the other Loan Documents, (vii) the documents governing such Indebtedness do not contain any mandatory prepayment or redemption provisions which would require a mandatory prepayment or redemption of such Indebtedness in priority to the Loans, and (viii) such Indebtedness does not prohibit prior repayment of the Loans;

(m) monetary obligations pursuant to settlements of civil and regulatory matters, so long as the Loan Parties shall have demonstrated pro forma compliance with the financial covenants in Section 7.09 through the Expiration Date based on projections (in form and substance satisfactory to the Agent in its sole discretion) through the Expiration Date delivered to the Agent in connection with the incurrence of such obligations; and

(n) other monetary obligations approved by the Agent in its sole discretion, so long as the Loan Parties shall have demonstrated pro forma compliance with the financial covenants in Section 7.09 through the Expiration Date based on projections (in form and substance satisfactory to the Agent in its sole discretion) through the Expiration Date delivered to the Agent in connection with the incurrence of such obligations.

7.14 Transactions with Affiliates. The Loan Parties shall not, nor suffer or permit any of their Restricted Subsidiaries to, enter into any transaction with any Affiliate of the Loan Parties that are not Loan Parties, except upon fair and reasonable terms no less favorable to any Loan Party than such Loan Party could obtain in a comparable arm's-length transaction with a Person not an Affiliate of such Loan Party, except for (a) transactions pursuant to the Provider Acquisition Documents and the Major Acquisition Documents, and (b) compensation and employee benefit arrangements paid to, and awards granted thereunder, and indemnities provided for the benefit of, directors, officers, consultants and employees of the Loan Parties in the ordinary course of business.

7.15 Restricted Payments. The Loan Parties shall not, nor permit any of their Restricted Subsidiaries to, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of their capital stock, or purchase, redeem or otherwise acquire for value any of their capital stock or any warrants, rights or options to acquire such shares, now or hereafter outstanding, or make any payments under the Tax Receivable Agreement; *except that* the Loan Parties may:

(a) declare and make dividend payments or other distributions payable solely in their preferred or common Equity Interests;

(b) purchase, redeem or otherwise acquire their preferred or common Equity Interests with the proceeds received from the substantially concurrent issue of new preferred or common Equity Interests; and

(c) declare and make cash distributions and cash dividends to the holders of Equity Interests of HoldCo and Parent in accordance with the organizational documents

of HoldCo and Parent, *provided* that before and immediately after giving effect to such proposed distributions or dividends, (i) no Default or Event of Default would exist, (ii) the Loan Parties are in pro forma compliance with the financial covenants in Section 7.09 and (iii) the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b);

(d) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities to another Loan Party, or purchase, redeem or otherwise acquire for value any of their capital stock or any warrants, rights or options to acquire such shares, now or hereafter outstanding, from another Loan Party; and

(e) make payments under the Tax Receivable Agreement; *provided* that before and immediately after giving effect to such proposed payment, (i) no event or circumstance exists which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default under Section 8.01(a), (e) or (f), (ii) the Loan Parties are in pro forma compliance with the financial covenants in Section 7.09 and (iii) the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b); and

(f) consummate repurchases by the Parent of its own Equity Interests, provided that, before and immediately after giving effect thereto, (i) no Default or Event of Default would exist, (ii) the Loan Parties are in pro forma compliance with the financial covenants in Section 7.09, and (iii) the Effective Amount of all Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed 90% of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b).

7.16 Certain Changes. The Loan Parties shall not, nor permit any of their Subsidiaries to, engage in any material line of business substantially different from those lines of business carried on by the Loan Parties and their Subsidiaries on the date hereof. No Loan Party shall make any significant change in accounting treatment or reporting practices, except as required by GAAP or to comply with SEC accounting rules and regulations, or change the fiscal year of any Loan Party and upon any such change shall promptly notify the Agent thereof.

7.17 Net Position. If at any time the aggregate Net Position of a Loan Party or any Subsidiary exceeds the amounts set forth in the Risk Management and Credit Policy, the Loan Parties shall promptly notify the Agent, which notification shall explain the circumstances of such deviation and set forth a plan that provides in reasonable detail the actions the Loan Party or such Subsidiary proposes to take to reduce the applicable position deviation to an amount to achieve compliance with the Risk Management and Credit Policy. The Agent will, upon receipt of such notification, notify the Banks. If the Majority Banks determine in their sole discretion that such excess could reasonably be expected to have a Material Adverse Effect on the Loan Parties taken as a whole, then such failure to comply with the Risk Management and Credit Policy shall constitute an Event of Default and Agent shall promptly notify the Loan Parties of such determination. In any event, if the Loan Parties or any Subsidiary allow their aggregate Net Position to exceed the amounts set forth in the Risk Management and Credit Policy for a period exceeding three (3) Business Days, an Event of Default shall be deemed to have occurred.

7.18 Location of Inventory. The Loan Parties will not, nor permit any of their Restricted Subsidiaries to (unless approved by the Agent in writing) maintain any inventory (other than Product inventory in transit) at any location except as set forth on Schedule 7.18 unless the Loan Parties have given the Agent at least two weeks' prior notice of the transfer to or storage of inventory at such other location and prior to maintaining any inventory at such location shall have disclosed to Agent the identity of the owner of the storage facility and shall have taken all steps necessary to provide the Banks with a first priority perfected security interest in such inventory.

7.19 Disposition of Assets. The Loan Parties shall not, nor shall the Loan Parties suffer or permit any of their Restricted Subsidiaries to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise Dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable, with or without recourse) or enter into any agreement to do any of the foregoing, *except for*:

(a) Dispositions of inventory in the ordinary course of business;

(b) Dispositions of worn-out, obsolete or surplus automobiles and/or equipment or the Disposition of automobiles and/or equipment no longer used or useful in the business of any Co-Borrower;

(c) Dispositions of accounts receivable pursuant to POR Agreements;

(d) Dispositions of accounts receivable to the insurer of such accounts receivable to the extent that one or more Co-Borrowers has account receivables insurance covering certain account receivables, subsequently makes a claim under such insurance, and the insurer of such accounts receivable requires such assignment;

(e) Dispositions in connection with sale and leaseback transactions in an amount not to exceed $5,000,000 in the aggregate during any twelve (12) month period;

(f) Dispositions between Loan Parties; and

(g) Dispositions (not including Dispositions described in (a) through (f) above) in an amount not to exceed $10,000,000 in the aggregate during any twelve (12) month period or $5,000,000 for any single transaction; *provided* that (i) such Disposition is made for fair market value, (ii) before and immediately after giving effect to such Disposition, no Default or Event of Default has occurred and is continuing and (iii) before and immediately after giving effect to such Disposition, the Loan Parties are in pro forma compliance with the financial covenants in Section 7.09.

7.20 Additional Security Documentation. The Loan Parties shall, and shall cause their Restricted Subsidiaries to, execute such additional security documentation as the Agent may from time to time require in order to maintain the security interest of the Agent for the benefit of the Secured Parties in the Collateral. The Loan Parties shall, and shall cause each Restricted Subsidiary to, execute and deliver to the Agent all such other documents, agreements and instruments reasonably requested by the Agent, delivered within a reasonable period of time after such request, concerning compliance with any provisions of the Loan Documents.

7.21 Cash in Accounts Not Subject to Control Agreement. The Loan Parties and their Restricted Subsidiaries shall not have, at any time, an amount in excess of $750,000, in the aggregate, in any accounts (excluding cash deposits subject to Liens permitted by Section 7.10(n)) which are not subject to a perfected security interest in favor of the Agent for the benefit

of the Secured Parties by virtue of a three-party control agreement in form and substance satisfactory to the Agent.

7.22 Security for Obligations. The Loan Parties shall, and shall cause their Restricted Subsidiaries to, at all times maintain security interests in favor of the Agent for the benefit of the Secured Parties so that the Agent shall have a first priority perfected lien on all Collateral of the Loan Parties and any of their Restricted Subsidiaries, to secure the Obligations.

7.23 Subsidiaries.

(a) If consented to by the Agent and HoldCo, on behalf of the Co-Borrowers, any Subsidiary of any Loan Party (other than (x) Subsidiaries which are Co-Borrowers and (y) Unrestricted Subsidiaries), now existing or created, acquired or coming into existence after the Closing Date (including any Unrestricted Subsidiary that is designated under Section 7.32 by HoldCo as a Restricted Subsidiary), may become a Co-Borrower under this Credit Agreement and in connection therewith shall execute and deliver to the Agent (i) a New Co-Borrower Supplement and (ii) a joinder to the applicable Security Documents, a Blocked Account Agreement (if applicable) and such other Loan Documents as the Agent may reasonably require. Each such Subsidiary shall deliver to the Agent, simultaneously with its delivery of such New Co-Borrower Supplement, written evidence satisfactory to the Agent and its counsel that such Subsidiary has taken all corporate, limited liability company or partnership action necessary to duly approve and authorize its execution, delivery and performance of the Credit Agreement and any Security Documents and other documents which it is required to execute. The Loan Parties shall also deliver (a) an updated Schedule 6.15 with respect to such Subsidiary in form and substance satisfactory to Agent if new Subsidiaries are formed or otherwise acquired subsequent to the date hereof and (b) all documentation and other information requested by the Agent, any Issuing Bank, or any Bank with respect to such Subsidiarity that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the USA Patriot Act. Upon execution and delivery of a New Co-Borrower Supplement by the Agent and such Subsidiary, such Subsidiary shall become a Co-Borrower hereunder with the same force and effect as if originally named as a Co-Borrower herein. The execution and delivery of any New Co-Borrower Supplement shall not require the consent of any other Loan Party hereunder. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Co-Borrower as a party to this Agreement.

(b) Each Subsidiary of any Loan Party (other than (x) Subsidiaries which are Co-Borrowers and (y) Unrestricted Subsidiaries), now existing or created, acquired or coming into existence after the Closing Date (including any Unrestricted Subsidiary that is designated under Section 7.32 by HoldCo as a Restricted Subsidiary), that does not become a Co-Borrower pursuant to Section 7.23(a) shall execute and deliver to the Agent for the benefit of the Secured Parties (i) its absolute and unconditional guaranty of the timely repayment of, and the due and punctual performance of the Obligations, which guaranty shall be in the form of the Guaranty Agreement and (ii) if requested by Agent, a joinder to the applicable Security Documents, a Blocked Account Agreement (if applicable) and such other Loan Documents as the Agent may reasonably require. Each Guarantor shall deliver to the Agent, simultaneously with its delivery of such a guaranty, written evidence satisfactory to the Agent and its counsel that such Guarantor has taken all corporate, limited liability company or partnership action necessary to duly approve and authorize its execution, delivery and performance of such guaranty and any Security Documents and other documents which it is required to execute. The Loan Parties shall also deliver (a) an updated Schedule 6.15 with respect to such Subsidiary in form and

substance satisfactory to Agent if new Subsidiaries are formed or otherwise acquired subsequent to the date hereof and (b) all documentation and other information requested by the Agent, any Issuing Bank, or any Bank with respect to such Subsidiarity that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the USA Patriot Act.

(c) HoldCo shall cause each Subsidiary (other than (x) Subsidiaries which are Co-Borrowers and (y) Unrestricted Subsidiaries) to become a Co-Borrower or Guarantor in accordance with clause (a) or (b) above (including the execution and delivery of any applicable Security Documents required pursuant thereto) within 15 days of its creation, acquisition, being designated as a Restricted Subsidiary or otherwise coming into existence.

7.24 Modifications to Billing Services Agreements, Master Service Agreement, Tax Receivable Agreement, Major Acquisition Documents, Provider Acquisition Documents, and Verde Acquisition Documents.

(a) None of the Loan Parties shall, nor permit any of their Restricted Subsidiaries to, enter into any amendment, supplement or other modification to any POR Agreement, any Major Acquisition Document, any Provider Acquisition Document, or any Verde Acquisition Document, in each case, which is materially adverse to the interests of the Agent, the Issuing Banks, or the Banks, without the prior written consent of the Agent (it being understood that (a) the POR Agreements may be extended by a Loan Party for additional periods as long as such extensions do not result in any material changes to the terms and conditions of such POR Agreements and (b) any increase in or acceleration of any Major MIPA Payments, Provider MIPA Payments, or Verde MIPA Payments, shall be deemed to be materially adverse to the interests of the Banks).

(b) None of the Loan Parties shall, nor permit any of their Restricted Subsidiaries to (i) enter into any amendment, supplement or other modification to the Master Service Agreement or the Tax Receivable Agreement which is materially adverse to the interests of the Agent, the Issuing Banks, or the Banks, without the prior written consent of the Agent or (ii) terminate or otherwise replace (or permit the termination or replacement of) the Master Service Agreement.

7.25 Risk Management and Credit Policy. The Loan Parties shall not, and shall not permit any Subsidiary to, make any material amendment or modification to the Risk Management and Credit Policy in a manner materially adverse to the interests of the Agent, the Issuing Banks, or the Banks, without the prior written consent of the Majority Banks. The Loan Parties and Agent agree that upon request by Agent or by the Loan Parties, from time to time, the Loan Parties and Agent will review and evaluate the Loan Parties' credit and risk management policies.

7.26 Compliance with Anti-Terrorism Laws and Anti-Corruption Laws. The Co-Borrowers will maintain in effect policies and procedures, if any, as it reasonably deems appropriate, in light of its business and international activities (if any) designed to promote compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with applicable Anti-Terrorism Laws and Anti-Corruption Laws.

7.27 Preservation of Existence, Etc. Each Loan Party shall, and shall cause each of its Restricted Subsidiaries to (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted by Section 7.11 and (b) take all reasonable action to maintain all rights,

privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

7.28 Burdensome Agreements.

(a) The Loan Parties shall not, and shall not permit any of their Subsidiaries to enter into or permit to exist any contractual obligation (other than this Agreement or any other Loan Document) that limits the ability (a) of any Subsidiary of Parent to make any dividend or distribution to Parent or any other Subsidiary of Parent or to otherwise transfer property to or invest in Parent or any other Subsidiary of Parent, in each case, except for any agreement in effect (i) on the Closing Date, or (ii) at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of a Loan Party, (b) of any Loan Party to be jointly and severally liable in respect of the Obligations or any Subsidiary to guarantee the Obligations or (c) of any Loan Party or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; provided, however, that this clause (c) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.13(e) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness.

(b) None of the Loan Parties shall permit any of their Unrestricted Subsidiaries to create, incur, assume or permit to exist any Lien on any property of such Unrestricted Subsidiary (other than Liens that would otherwise constitute Permitted Liens hereunder).

7.29 Transmitting Utility and Utility. The Loan Parties shall not knowingly take any action which would cause any Loan Party or any Restricted Subsidiary to be treated as a "transmitting utility", as that term is defined in the Uniform Commercial Code of any applicable jurisdiction, or as a "utility", as that term is defined in Section 261.001 of the Texas Business and Commerce Code.

7.30 Holding Company. Parent shall not engage in any business or activity other than (a) the ownership of Equity Interests in HoldCo, (b) maintaining its corporate existence, (c) participating in income Tax, accounting and other administrative activities as the managing member of HoldCo, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, (e) providing guarantees under Section 7.13(g), (f) making payments under the Tax Receivable Agreement, (g) performing obligations as a cosigner of Indebtedness permitted pursuant to Section 7.13(j) in connection with any Permitted Acquisition, and (h) activities incidental to the businesses or activities described in clauses (a) through (g) of this Section, including, without limitation, Parent's issuance of Equity Interests.

7.31 Subordinated Debt; Other Unsecured Debt. The Loan Parties shall not:

(a) Make any payments on account of principal (whether by redemption, purchase, retirement, defeasance, set-off or otherwise), interest, fees or other amounts in respect of Subordinated Debt, unless (i) no Default or Event of Default has occurred and is continuing or would result from such payment, (ii) Parent is in pro forma compliance with the financial covenants in Section 7.09 before and after giving effect to such payment and (iii) before and after giving effect to such payment, (A) the amount calculated under clause (b) of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section

7.02(b) minus (B) the Effective Amount of the Loans plus the Effective Amount of all L/C Obligations is no less than the greater of (x) $10,000,000 and (y) 10% of the amount calculated under clause (b) of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b), it being agreed that the payment-in-kind of interest on any Subordinated Debt or the conversion of such Subordinated Debt to common Equity Interests in HoldCo and Parent shall not be deemed a payment that is prohibited under this Section.

(b) Permit or suffer to exist any amendment, extension, restatement, renewal, replacement or other modification of any indenture, instrument or agreement pursuant to which any Subordinated Debt is outstanding in any manner that would be prohibited pursuant to the terms and provisions of the applicable Subordination Agreement.

(c) Make any payments on account of principal (whether by redemption, purchase, retirement, defeasance, set-off or otherwise), interest, fees or other amounts in respect of Indebtedness permitted by Section 7.13(l), unless (i) no Default or Event of Default has occurred and is continuing or would result from such payment, (ii) Parent is in pro forma compliance with the financial covenants in Section 7.09 before and after giving effect to such payment and (iii) before and after giving effect to such payment, (A) the amount calculated under clause (b) of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b) minus (B) the Effective Amount of the Loans plus the Effective Amount of all L/C Obligations is no less than the greater of (x) $10,000,000 and (y) 10% of the amount calculated under clause (b) of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b).

7.32 Designation of Subsidiaries.

(a) Unless designated after the Closing Date in writing to the Agent pursuant to this Section, any Person that becomes a Subsidiary of Parent shall be classified as a Restricted Subsidiary.

(b) The Co-Borrowers may designate a Subsidiary as an Unrestricted Subsidiary with the written consent of the Agent and Majority Banks.

(c) The Co-Borrowers may designate an Unrestricted Subsidiary to be a Restricted Subsidiary upon written notice to the Agent; so long as, after giving effect to such designation, (i) the representations and warranties made by the Loan Parties in or pursuant to this Agreement or the other Loan Documents shall be true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which representation and warranty shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to the extent such representations and warranties relate solely to an earlier date), (ii) no Default or Event of Default has occurred and is continuing or would result from such designation, and (iii) Parent is in pro forma compliance with the financial covenants in Section 7.09.

(d) All Subsidiaries of an Unrestricted Subsidiary shall be also Unrestricted Subsidiaries. The Co-Borrowers will not permit any Unrestricted Subsidiary to hold any Equity Interests in, or any Indebtedness of, any Restricted Subsidiary.

(e) The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an investment in such Unrestricted Subsidiary at the date of designation in an

amount equal to the fair market value of the applicable Co-Borrower's or applicable Loan Party's investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

(f) If, at any time, any Unrestricted Subsidiary would fail to meet the requirements of the definition of Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness and Liens of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Co-Borrowers as of such date.

7.33 Legal Separateness. The Loan Parties shall, and shall cause their Subsidiaries to,

(a) Cause the management, business and affairs of each of the Co-Borrowers and the Restricted Subsidiaries to be conducted in such a manner so that the Unrestricted Subsidiaries will be treated as entities separate and distinct from the Co-Borrowers and its Restricted Subsidiaries.

(b) Cause the management, business and affairs of each of the Co-Borrowers and the Restricted Subsidiaries to be conducted in such a manner, including, without limitation, by having separate bank accounts, keeping separate books of account, having separate financial statements for Unrestricted Subsidiaries and by not permitting properties of the Co-Borrowers and the Restricted Subsidiaries to be commingled, so that each Unrestricted Subsidiary will be treated as an entity separate and distinct from the Co-Borrowers and the Restricted Subsidiaries.

(c) Prohibit any of the Restricted Subsidiaries to, incur, assume, guarantee or be or become liable for any Indebtedness of any of the Unrestricted Subsidiaries.

(d) Prohibit any Unrestricted Subsidiary to hold any Equity Interest in, or any Indebtedness of, the Co-Borrowers or any other Restricted Subsidiary.

7.34 Multiemployer Plan Reporting.

(a) Parent and the Co-Borrowers shall deliver to the Agent prompt written notice of any ERISA Affiliate, after the Closing Date, becoming party to or bound to any Multiemployer Plan setting forth the relevant details of such Multiemployer Plan.

(b) On or before the last day of each calendar year after the Closing Date, Co-Borrowers shall, pursuant to Section 101(l) of ERISA, request in writing from the plan sponsor or administrator of each Multiemployer Plan a notice of potential Withdrawal Liability as of the last day of the preceding plan year with an explanation of how such estimated liability was determined and promptly deliver to the Agent copies of any such notices received from the plan sponsor or administrator of each Multiemployer Plan.

7.35 Post-Closing Obligations.

(a) Within thirty (30) days following the Closing Date (or a later date acceptable to the Agent in its sole discretion), the Loan Parties shall deliver to the Agent in form and substance satisfactory to the Agent:

(i) an updated Schedule 1.01(a) listing the POR Agreements as in effect as of the Closing Date; and

(ii) copies of endorsements of the Loan Parties' insurance policies maintained pursuant to Section 7.03 as reasonably requested by the Agent.

(b) Within ten (10) Business Days following the Closing Date (or a later date acceptable to the Agent in its sole discretion), the Agent shall have received an opinion of outside Maine counsel to the Loan Parties addressed to the Agent and the Banks, in form and substance acceptable to the Agent.

Article 8
EVENTS OF DEFAULT

8.01 Event of Default. Any of the following shall constitute an "Event of Default":

(a) Non-Payment. Any Loan Party fails to (i) pay when and as required to be paid herein (including at a date fixed for prepayment), any amount of principal of any Loan or any L/C Borrowing or deposit any funds as Cash Collateral, or (ii) pay within three days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Representation or Warranty. Any representation or warranty made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any Loan Party, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document, is incorrect or misleading in any material respect on or as of the date made or deemed made; or

(c) Covenant Defaults. (i) Any Loan Party fails to perform any of the terms, covenants, conditions or provisions contained in any of Sections 7.02(i), 7.07 through 7.17, 7.19, 7.24, or 7.25 through 7.30 of this Agreement or (ii) any Loan Party fails to perform any of the other terms, covenants, conditions or provisions contained in this Agreement or any of the other Loan Documents (other than those specified in Section 8.01(a) or (c)(i) above) and such failure referred to in this Section 8.01(c)(ii) shall continue unremedied for a period of fifteen (15) days after the earlier to occur of (A) notice thereof from the Agent to the Co-Borrowers (which notice will be given at the request of any Bank) or (B) a Responsible Officer otherwise becoming aware of such failure; or

(d) Cross-Default. Any of the Loan Parties or any Restricted Subsidiary of the Loan Parties, if any (i) fails to make any payment due (after giving effect to any applicable grace or cure period or waiver) in respect of any Indebtedness or contingent obligation having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $5,000,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise); or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or contingent obligation, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness or contingent obligation to cause such Indebtedness or contingent obligation to be declared to be due and payable, repurchased, repaid, defeased, or redeemed prior to its stated maturity; or

(e) Insolvency; Voluntary Proceedings. Any of the Loan Parties or any Subsidiary of the Loan Parties (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise, and, in the case of any Unrestricted Subsidiary, such insolvency or failure referred to in this clause (i) shall continue for a period of thirty (30) days; (ii) voluntarily ceases to conduct all or substantially all of its business in the ordinary course, except as otherwise permitted by Section 7.11; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(f) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against any of the Loan Parties or any Subsidiary of any Loan Party, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of the Loan Parties' or any Subsidiary of any Loan Party's, properties and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any of the Loan Parties or any Subsidiary of any Loan Party admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) any of the Loan Parties or any Subsidiary of any Loan Party acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property or business; or

(g) ERISA. The occurrence of an ERISA Event that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to subject any of the Loan Parties to liability in excess of $2,500,000; or

(h) Monetary Judgments. One or more non-interlocutory judgments, non-interlocutory orders, decrees or arbitration awards is entered against any of the Loan Parties involving in the aggregate a liability (to the extent not covered by independent third-party insurance as to which the insurer is contractually obligated to pay and which is reasonably expected to be paid by such insurer) as to any single or related series of transactions, incidents or conditions, of $5,000,000 or more; the liability for which is not the subject of an appeal, with appropriate bond or other surety being posted to suspend the effects of any such judgments; or

(i) Non-Monetary Judgments. Any non-interlocutory non-monetary judgment, order or decree is entered against any of the Loan Parties which does or would reasonably be expected to have a Material Adverse Effect; or

(j) Change of Control. At any time (i) W. Keith Maxwell III (or trusts established for the benefit of W. Keith Maxwell III or his family members which are Controlled by W. Keith Maxwell III) ceases to, directly or indirectly, own at least 6,800,000 of Class A common shares and Class B common shares calculated on a combined basis (collectively, the "Minimum Shares") and with the number of such Minimum Shares to be correspondingly adjusted by any stock split, subdivisions or other stock reclassification or recapitalization, in each case, in a manner determined by the Agent in good faith, (ii) W. Keith Maxwell III ceases to Control Parent, (iii) intentionally omitted, (iv) Parent ceases to be the sole managing member of HoldCo, (v) Parent ceases to maintain full operational and managerial control of each Co-Borrower and its Subsidiaries such that any such Person is not Consolidated with Parent in accordance with GAAP, (vi) Parent and TxEx Energy Investments, LLC, cease to, directly or

indirectly, own 100% of the Equity Interests of HoldCo, (vii) HoldCo ceases to, directly or indirectly, own 100% of the Equity Interests of any of Spark, SEG, CenStar, Censtar Opco, Oasis, Oasis Holdings, Maine, NH, Mass, Major, Electric, Respond, or Perigee, (viii) intentionally omitted, or (ix) intentionally omitted.

(k) Guarantor Defaults. Any Guarantor fails to perform or observe any term, covenant or agreement in the Guaranty Agreement; or the Guaranty Agreement is for any reason (other than upon the occurrence of Payment in Full) partially (including with respect to future advances) or wholly revoked or invalidated, or otherwise ceases to be in full force and effect, or any Guarantor or any other person contests in any manner the validity or enforceability thereof or denies that he has any further liability or obligation thereunder; any event described at subsections (e) or (f) of this Section occurs with respect to any Guarantor.

(l) Swap Obligations. There shall have occurred with respect to any Swap Contract to which a Co-Borrower is a party an "Event of Default" or a "Termination Event" (as defined in the applicable ISDA Master Agreement and any related Credit Support Annex or Schedule) which entitles the applicable Swap Bank to terminate the Swap Contract.

(m) Effectiveness of Loan Documents. At any time after the execution and delivery thereof, (i) this Agreement or any other Loan Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms of this Agreement or the satisfaction in full of the Obligations) or is declared (by a Governmental Authority) null and void, or Agent does not have or ceases to have a valid and perfected Lien in any Collateral purported to be covered by the Loan Documents with the priority required by the relevant Loan Document, except where the failure to have a valid and perfected Lien on any such Collateral and/or priority would not have a Material Adverse Effect on the security interest held by Agent on behalf of the Banks on all other Collateral, in each case for any reason other than the failure of Agent to take any action within its control, or (ii) any Loan Party contests the validity or enforceability of any Loan Document in writing or denies in writing that it has any further liability, including with respect to future advances by Banks, under any Loan Document to which it is a party.

8.02 Remedies. If any Event of Default occurs, exists and is continuing, the Agent may, with the consent of the Majority Banks, or shall, at the direction of the Majority Banks:

(a) terminate the Commitments of each Bank hereunder;

(b) declare an amount equal to the maximum aggregate amount that is or at any time thereafter may become available for drawing by the beneficiary under any outstanding Letters of Credit (whether or not any beneficiary shall have presented, or shall be entitled at such time to present, the drafts or other documents required to draw under such Letters of Credit), but only to the extent such amounts are not Cash Collateralized at the time, to be immediately due and payable, and declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Co-Borrowers;

(c) require the Co-Borrowers to Cash Collateralize all L/C Obligations in the manner described in Section 3.07; and

(d) exercise all rights and remedies available to it under the Loan Documents or applicable law including, without limitation, seeking to lift any stay that may be in effect under any Insolvency Proceeding;

provided, *however*, that upon the occurrence of any event specified in subsection (e) or (f) of Section 8.01, any obligation of the Banks to make Loans and to Issue Letters of Credit, if any, shall automatically terminate and an amount equal to the maximum aggregate amount that is or at any time thereafter may become available for drawing by the beneficiary under any outstanding Letters of Credit (whether or not any beneficiary shall have presented, or shall be entitled at such time to present, the drafts or other documents required to draw under such Letters of Credit) together with the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document shall automatically become due and payable without further act of the Banks.

8.03 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

8.04 Application of Payments. Except as expressly provided in this Agreement, all amounts thereafter received or recovered under this Agreement or any other Loan Document whether as a result of a payment by the Co-Borrowers, the exercise of remedies by the Agent under any of the Loan Documents, liquidation of collateral or otherwise, shall be applied for the benefit of the Secured Parties on a *pro rata* basis from and after the date of the occurrence of any Sharing Event as provided in Section 2.01 of the Intercreditor Agreement.

Article 9
AGENT

9.01 Authorization and Action.

(a) Each of the Banks and Issuing Banks hereby irrevocably appoints the Agent to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 9 are solely for the benefit of the Agent, the Banks, and Issuing Banks, and no Loan Party has rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Agent shall also act as the collateral agent under the Loan Documents, and each of the Banks and Issuing Banks hereby irrevocably appoints and authorizes the Agent to act as the agent of such Bank and Issuing Banks for purposes of acquiring, holding, and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Agent, as collateral agent and any co-agents, sub-agents, and attorneys-in-fact appointed by the Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any

portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Agent, shall be entitled to the benefits of all provisions of this Article 9 and 10 as if set forth in full herein with respect thereto. The Agent is authorized on behalf of all the Banks, without the necessity of any notice to or further consent from the Banks or Issuing Banks, from time to time to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Security Document.

9.02 The Agent and its Affiliates.

(a) The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Bank as any other Bank and may exercise the same as though it were not the Agent and the term "Bank" or "Banks" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, own securities of, lend money to, act as the financial advisor or in any advisory capacity for and generally engage in any kind of business with Parent or any Subsidiary or other Affiliate thereof as if it were not the Agent hereunder and without any duty to account therefor to the Banks.

(b) Each Bank and each Issuing Bank understands that the Person serving as the Agent, acting in its individual capacity, and its Affiliates (collectively, the "Agent's Group") is engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Article 9 as "Activities") and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the members of the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in Parent, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans, or other financial products of one or more of the Loan Parties or their Affiliates. Each Bank and each Issuing Bank understands and agrees that in engaging in the Activities, the members of the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective obligations hereunder and under the other Loan Documents) which information may not be available to any of the Banks that are not members of the Agent's Group. Neither the Agent nor any other member of the Agent's Group shall have any duty to disclose to any Bank or any Issuing Bank or use on behalf of any Bank or any Issuing Bank, nor be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Agent shall deliver or otherwise make available to each Bank such documents as are expressly required by any Loan Document to be transmitted by the Agent to the Banks.

(c) Each Bank and each Issuing Bank further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Banks or

Issuing Banks (including the interests of any Bank or Issuing Bank hereunder and under the other Loan Documents). Each Bank and each Issuing Bank agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of any Person serving as the Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification of any Bank or any Issuing Bank. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the any members of the Agent's Group of information (including information concerning the ability of the Loan Parties to perform their respective obligations hereunder and under the other Loan Documents), or (iii) any other matter, shall give rise to any fiduciary, equitable, or contractual duties (including any duty of trust, care or confidence) owing by the Agent or any member of the Agent's Group to any Bank or any Issuing Bank including any such duty that would prevent or restrict any member of the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

9.03 Duties. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Majority Banks (or such other number or percentage of the Banks as shall be expressly provided for herein or in the other Loan Documents)**;** *provided* that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under the Bankruptcy Code or any Other Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Bank in violation of the Bankruptcy Code or any Other Debtor Relief Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity; and

(d) shall not be liable for any damage or loss resulting from or caused by events or circumstances beyond the Agent's reasonable control, including nationalization, expropriation, currency or funds transfer restrictions, the interruption, disruption, or suspension of the normal procedures and practices of any securities market, power, mechanical, communications, or other technological failures or interruptions, computer viruses or the like, fires, floods, earthquakes, or other natural disasters, civil, and military disturbance, acts of war or terrorism, riots, revolution, acts of God, work stoppages, strikes, national disasters of any kind, or other similar events or acts, or errors by any Co-Borrower in its instructions to the Agent.

9.04 The Agent's Reliance, Etc.

(a) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Banks (or such other number or

percentage of the Banks as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article 8 and Section 10.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until any Loan Party, a Bank, or an Issuing Bank has given written notice describing such Default or Event of Default to the Agent. The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to the Agent.

(b) The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent, or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Bank or an Issuing Bank, the Agent may presume that such condition is satisfactory to such Bank or such Issuing Bank unless the Agent shall have received notice to the contrary from such Bank or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. the Agent may consult with legal counsel (who may be counsel for an Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Sub-Agents. The Agent may perform any and all its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The Agent is authorized on behalf of all the Banks, without the necessity of any notice to or further consent from the Banks or Issuing Banks, from time to time to permit any co-agents, sub-agents and attorneys-in-fact appointed by the Agent to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Security Document. The exculpatory provisions of this Article 9, as well as all other indemnity and expense reimbursement provisions of this Agreement (including, without limitation, Sections 10.04 and 10.05), shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent and as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents. The Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation.

(a) The Agent may resign at any time by giving notice of its resignation to the Banks, Issuing Banks, and the Co-Borrowers. Upon receipt of any such notice of resignation, the Majority Banks shall have the right, in consultation with and, so long as no Default or Event of Default then exists, subject to the approval (not to be unreasonably withheld or delayed) of, the Co-Borrowers, to appoint a successor, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States. If no successor shall have been so appointed by the Majority Banks and, if applicable, the Co-Borrowers and shall have accepted such appointment within 30 days after the retiring the Agent gives notice of its resignation (or such earlier day as shall be agreed by the Majority Banks)(the "Resignation Effective Date"), then the retiring the Agent may, on behalf of the Banks and Issuing Banks, appoint a successor the Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any possessory Collateral held by the Agent on behalf of the Banks or Issuing Banks under any of the Loan Documents, the retiring the Agent shall continue to hold such Collateral until such time as a successor Agent is appointed) and (ii) except for any indemnity payments owed to the retiring Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Bank and each Issuing Bank directly, until such time as the Majority Banks appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent (other than any rights to indemnity payments owed to the retiring Agent) and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Co-Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Co-Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Section and Section 10.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

(c) Any resignation by Rabobank as Agent pursuant to this Section shall also constitute its resignation as an Issuing Bank. Upon the acceptance of a successor's appointment as Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (ii) the retiring Issuing Bank shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

9.07 Bank Credit Decision. Each Bank and each Issuing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Bank and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank

or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. In this regard, each Bank further acknowledges that Zukerman Gore Brandeis & Crossman, LLP is acting in this transaction as special counsel to Rabobank only, except to the extent otherwise expressly stated in any legal opinion or any Loan Document. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

9.08 Other Agent Titles. Anything herein to the contrary notwithstanding, none of the "Active Bookrunner", "Joint Bookrunner", "Lead Arranger", any "Syndication Agent", "Co-Syndication Agent" or "Documentation Agent" listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent, a Bank or an Issuing Bank hereunder.

9.09 Agent May File Proofs of Claim; Bankruptcy Events. In case of the pendency of any proceeding under the Bankruptcy Code or any Other Debtor Relief Law or any other judicial proceeding relative to any Loan Party or any Subsidiary, the Agent (irrespective of whether the principal of any Loan or L/C Disbursement shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand any Loan Party or any other Person primarily or secondarily liable) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Banks, Issuing Banks, and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Banks, Issuing Banks, and the Agent and their respective agents and counsel and all other amounts due the Banks, Issuing Banks, and the Agent under Article 2 and Section 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same in accordance with this Agreement;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Bank and each Issuing Bank to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Banks and Issuing Banks, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Article 2 and Section 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept on behalf of any Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Bank to authorize the Agent to vote in respect of the claim of any Bank in any such proceeding.

9.10 Collateral.

(a) The Agent is authorized on behalf of all the Banks and the Swap Banks, without the necessity of any notice to or further consent from the Banks or the Swap Banks, from time to time to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Loan Documents.

(b) The Banks and the Swap Banks irrevocably authorize the Agent, at its option and in its discretion, to release any Lien granted to or held by the Agent upon any Collateral (i) upon the occurrence of Payment in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which the Loan Parties or any Subsidiary owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to the Loan Parties or any Subsidiary under a lease which has expired or been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by the Loan Parties or such Subsidiary to be, renewed or extended; (v) consisting of an instrument evidencing indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; (vi) in POR Collateral to the extent the release of the Agent's Lien in such POR Collateral is required by the applicable POR Agreement or any Requirement of Law; or (vii) if approved, authorized or ratified in writing by the requisite Banks in accordance with Section 10.01. Upon request by the Agent at any time, the Banks will confirm in writing the Agent's authority to release particular types or items of Collateral pursuant to this Subsection 9.10(b); *provided*, *however*, that the absence of any such confirmation for whatever reason shall not affect the Agent's rights under this Section 9.10.

(c) Upon request by the Agent at any time, the Secured Parties will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 9.10.

(d) The Agent, at the sole expense of Loan Parties, shall execute and deliver to the Loan Parties all releases or other documents reasonably necessary or desirable to evidence or effect any release of Liens or release of Guaranty Agreement authorized under Section 9.10(a); *provided***,** that (i) the Agent shall not be required to execute any document necessary to evidence such release authorized under clause (i)(B) or (v) of Section 9.10(a) unless a Responsible Officer of the Co-Borrowers shall certify in writing to the Agent that the transaction requiring such release is permitted under the Loan Documents (it being acknowledged that the Agent may rely on any such certificate without further enquiry), (ii) the Agent shall not be required to execute any document necessary to evidence such release on terms that, in the Agent's opinion, would expose the Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (iii) no such release shall in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Loan Parties in respect of) all interests retained by Loan Parties, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. To the extent the Agent is required to execute any releases or other documents in accordance with this Section 9.10(c), the Agent shall do so promptly upon request of the Co-Borrowers without the consent or further agreement of any Secured Party.

(e) The Agent shall have no obligation whatsoever to any of the Secured Parties to assure that the Collateral exists or is owned by any Loan Party or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or to continue exercising, any of the rights, authorities and powers granted or available to the Agent pursuant to any of the Loan Documents, it being understood and agreed that in

respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, the Agent may act in any manner it may deem appropriate, in its sole discretion given the Agent's own interest in the Collateral in its capacity as one of the Banks and that the Agent shall have no other duty or liability whatsoever to any Secured Party as to any of the foregoing, except as otherwise provided herein.

(f) The Secured Parties hereby irrevocably authorize the Agent, based upon the instruction of the Majority Banks, to (i) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363 of the Bankruptcy Code, (ii) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the UCC, including pursuant to Section 9-610 or 9-620 of the UCC, or (iii) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by the Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, (A) the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase), and (B) the Agent, based upon the instruction of the Majority Banks, may accept non-cash consideration, including debt and equity securities issued by such acquisition vehicle or vehicles and in connection therewith the Agent may reduce the Obligations owed to the Secured Parties (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration.

9.11 Issuing Bank. No Issuing Bank nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them hereunder or otherwise in connection with any Loan Document except for its or their own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Without limiting the generality of the preceding sentence, each Issuing Bank (a) shall have no duties or responsibilities except those expressly set forth in the Loan Documents, and shall not by reason of any Loan Document be a trustee or fiduciary for any Bank or for the Agent, (b) shall not be required to initiate any litigation or collection proceedings under any Loan Document, (c) shall not be responsible to any Bank or the Agent for any recitals, statements, representations, or warranties contained in any Loan Document, or any certificate or other documentation referred to or provided for in, or received by any of them under, any Loan Document, or for the value, validity, effectiveness, enforceability, or sufficiency of any Loan Document or any other documentation referred to or provided for therein or for any failure by any Person to perform any of its obligations thereunder, (d) may consult with legal counsel (including counsel for the Loan Parties or the Agent), independent public accountants, and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants, or experts, and (e) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate, or other instrument or

writing believed by it to be genuine and signed or sent by the proper party or parties. As to any matters not expressly provided for by any Loan Document, the Issuing Banks shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Majority Banks, and such instructions of the Majority Banks and any action taken or failure to act pursuant thereto shall be binding on all of the Banks and the Agent; **provided, however**, that Issuing Banks shall not be required to take any action which such Issuing Bank reasonably believes exposes it to personal liability or which such Issuing Bank reasonably believes is contrary to any Loan Document or applicable law.

9.12 Agency for Perfection. The Agent hereby appoints each other Bank as its agent (and each Bank hereby accepts such appointment) for the purpose of perfecting the Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Uniform Commercial Code can be perfected by possession or control. Should any Bank obtain possession or control of any such Collateral, such Bank shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver possession or control of such Collateral to the Agent or in accordance with the Agent's instructions.

9.13 Swap Banks. To the extent any Affiliate of a Bank is a party to a Swap Contract with a Co-Borrower and thereby becomes a beneficiary of the Liens pursuant to the Security Documents or any other Loan Document, such Affiliate of a Bank shall be deemed to appoint the Agent its nominee and agent to act for and on behalf of such Affiliate (and the Agent hereby accepts such nomination and agrees to act as agent for such Affiliate) in connection with the Security Documents and such other Loan Documents and to be bound by the terms of this Article 9.

9.14 Affiliates of Banks. By accepting the benefits of the Loan Documents, any Affiliate of a Bank that is owed any Obligation is bound by the terms of the Loan Documents. Notwithstanding the foregoing: (a) neither the Agent, any Bank nor any Loan Party shall be obligated to deliver any notice or communication required to be delivered to any Bank under any Loan Documents to any Affiliate of any Bank; and (b) no Affiliate of any Bank that is owed any Obligation shall be included in the determination of the Majority Banks or entitled to consent to, reject, or participate in any manner in any amendment, waiver or other modification of any Loan Document. The Agent shall deal solely and directly with the related Bank of any such Affiliate in connection with all matters relating to the Loan Documents. The Obligation owed to such Affiliate shall be considered the Obligations of its related Bank for all purposes under the Loan Documents and such Bank shall be solely responsible to the other parties hereto for all the obligations of such Affiliate under any Loan Document.

9.15 Erroneous Payments.

(a) If Agent (x) notifies a Bank or other Secured Party, or any Person who has received funds on behalf of a Bank or other Secured Party (any such Bank, other Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Agent) received by such Payment Recipient from the Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted, received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent pending its return or repayment as contemplated below in this clause (a) and held in trust for the benefit of the Agent, and such Bank or Secured Party shall (or, with respect to any Payment

Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Agent may, in its sole discretion, specify in writing), return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Bank or Secured Party, or any Person who has received funds on behalf of a Bank or Secured Party (and each of their respective successors and assigns), hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Bank or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (B) in the case of immediately preceding clause (z), an error and mistake has been made, in each case, with respect to such payment, prepayment or repayment; and

(ii) such Bank or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 9.15(b).

For the avoidance of doubt, the failure to deliver a notice to the Agent pursuant to this clause (b) shall not have any effect on a payment recipient's obligations pursuant to clause (a) above or on whether or not an erroneous payment has been made.

(c) Each Bank or Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Bank or Secured Party under any Loan Document, or otherwise payable or distributable by the Agent to such Bank or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Agent has demanded to be returned under clause (a) above.

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor in accordance with clause (a) above, from any Bank that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Agent's notice to such Bank at any time, then effective immediately (with the consideration

therefor being acknowledged by the parties hereto), (A) such Bank shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance)), and is hereby (together with Co-Borrowers) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Bank shall deliver any Notes evidencing such Loans to the Co-Borrowers or the Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Agent as the assignee Bank shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Agent as the assignee Bank shall become a Bank hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Bank shall cease to be a Bank hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Bank, (D) the Agent and the Co-Borrowers shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitment of any Bank and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 10.07 (but excluding, in all events, any assignment consent or approval requirements (whether from the Co-Borrowers or otherwise)), the Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Bank shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Bank (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Bank (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Agent on or with respect to any such Loans acquired from such Bank pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Agent) and (y) may, in the sole discretion of the Agent, be reduced by any amount specified by the Agent in writing to the applicable Bank from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Bank or other Secured Party, to the rights and interests of such Bank or other Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Co-Borrowers or any other Loan Party; provided that this clause (e) shall not be interpreted to increase (or accelerate the due date

for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Co-Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Co-Borrowers for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine or defense.

(g) Each party's obligations, agreements and waivers under this Section 9.15 shall survive the resignation or replacement of the Agent, any transfer of rights or obligations by, or the replacement of, a Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Article 10
MISCELLANEOUS

10.01 Amendments and Waivers. Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by the Co-Borrowers or any other Loan Party therefrom, shall be effective unless in writing and signed by the Majority Banks and the Co-Borrowers and acknowledged by the Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided*, *however*, that:

(a) no amendment, waiver or consent shall, unless in writing and signed by all of the Banks, do any of the following at any time:

(i) waive any of the conditions specified in Section 5.01;

(ii) release any Guarantor, except a Guarantor that has ceased to be a Restricted Subsidiary of a Loan Party in a transaction permitted under this Agreement or release all or substantially all of the Collateral in any transaction or series of related transactions, except such releases relating to sales of property permitted under Section 9.10;

(iii) change any provision of this Section or the definition of "Majority Banks" or any other provision hereof specifying the number or percentage of Banks required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder;

(iv) amend, modify or waive the definitions of "Working Capital Advance Cap," "Acquisition Advance Cap," "Borrowing Base Advance Cap," "L/C Caps," "Embedded Gross Margin," "Pro Rata Share," or any provision of this Agreement relating to the pro rata treatment of the Banks;

(v) consent to the assignment or transfer by any Co-Borrower of any of its rights and obligations under this Agreement and the other Loan Documents;

(vi) amend, modify or waive any provisions of the Intercreditor Agreement;

(vii) amend Section 2.15(a);

(viii) reduce, forgive or waive the principal of, or interest on, the Loans or any fees or other amounts payable hereunder to the Banks (except interest that accrues at the Default Rate can be waived by consent of the Majority Banks);

(ix) postpone, waive or otherwise defer any date scheduled for any payment of principal of or interest on the Loans or any fees or other amounts payable to the Banks; or

(x) result in a Credit Extension in excess of the Borrowing Base Advance Cap determined as of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b).

(b) no amendment, waiver or consent shall, unless in writing and signed by the Majority Banks and each Bank affected by such amendment, waiver or consent:

(i) increase any Commitment of such Bank (or reinstate any commitment terminated pursuant to Section 8.02) other than with respect to an increase in the applicable Commitments under Section 2.02 which shall require consent as set forth in said section;

(ii) change the order of application of any prepayment set forth in Section 2.07; or

(iii) waive any of the conditions specified in Section 5.02 or 5.03 to a Working Capital Loan or a Acquisition Loan, as applicable;

and *provided*, *further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Banks in addition to the Banks required above and each of the Co-Borrowers, affect the rights or duties of the Issuing Banks under this Agreement or any L/C-Related Document relating to any Letter of Credit issued or to be issued by it; and (ii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Banks required above and each of the Co-Borrowers, affect the rights or duties of the Agent under this Agreement or any other Loan Document.

Notwithstanding the foregoing, technical and conforming modifications to this Agreement, or any other Loan Document, may be made with the consent of Parent, the Co-Borrowers, and the Agent in its sole discretion to the extent necessary to cure any ambiguity, omission, defect or inconsistency.

10.02 Notices.

(a) Except in the case of communications expressly permitted to be given by telephone hereunder or under any other Loan Documents, all notices and other

communications (including pursuant to Sections 7.01 and 7.02) ("Communications") provided for herein or in any other Loan Document shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy or, subject to Section 10.02(b), by electronic communication, as follows:

(i) if to Parent or any Loan Party, to them at: 12140 Wickchester Ln, Ste 100, Houston, TX 77079; attn.: Gil Melman, Telephone No. 281-833-4154, Telecopy No. 832-320-2943, Email: gmelman@sparkenergy.com;

(ii) if to the Agent in connection with any Borrowing Request, Interest Election Request, or any payment or prepayment of the Obligations, to it at c/o Rabo Support Services, Inc., at 245 Park Avenue, 37th Floor, New York, NY 10167, Attention: Agency Services; Telecopy No. (914) 304-9327; Telephone No. (212) 574-7331; Email: fm.am.syndicatedloans@rabobank.com, with a copy to: sui.price@rabobank.com and ann.mcdonough @rabobank.com;

(iii) if to Rabobank as an Issuing Bank, to it at c/o Rabo Support Services, Inc., at 245 Park Avenue, 37th Floor, New York, NY 10167, Attention: Letter of Credit Department; Telecopy No. (914) 304-9330; Telephone No. (212) 574-7315; Email: sandra.l.rodriguez@rabobank.com with a copy to: RaboNYSBLC@rabobank.com;

(iv) if to the Agent in connection with any other matter (including deliveries under Sections 7.01 and 7.02 and other matters), to it at Rabobank Loan Syndications, 245 Park Avenue, New York, NY 10167, Attention: Loan Syndications; Telecopy No. (212) 808-2578; Telephone No. (212) 916-7974; Email: syndications.ny@rabobank.com; with a copy to: Jasvir.sihra@rabobank.com and, in respect of deliveries under Section 7.02, with a copy to Zukerman Gore Brandeis & Crossman, LLP, Eleven Times Square, 15th Floor, New York, New York 10036, Attention: Stephen J. Angelson, Esq. Telecopy No. (212) 223-6433; Telephone No. (212) 223-6700; Email: sangelson@zukermangore.com; and

(v) if to a Bank, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by telecopier shall be deemed to have been given when sent (except that, if not given before or during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day). Notices delivered through electronic communications to the extent provided in Section 10.02(b), shall be effective as provided in such Section 10.02(b).

(b) Communications to the Banks under the Loan Documents may be delivered or furnished by electronic communications pursuant to procedures approved by the Agent. The Agent and the Co-Borrowers may, in their discretion, agree to accept Communications to it under the Loan Documents by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited

to particular Communications. Unless the Agent otherwise prescribes, (i) Communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) Communications posted on an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in clause (i) of this Section 10.02(b) notification that such Communication is available and identifying the website address thereof; *provided* that, for both clauses (i) and (ii) of this Section 10.02(b), if such Communication is not sent before or during the normal business hours of the recipient, such Communication shall be deemed to have been sent at the opening of business on the next Business Day.

(c) Any party hereto may change its address or telecopy number for, or individual designated to receive, Communications under the Loan Documents by notice to the other parties hereto (or, in the case of any such change by a Bank or an Issuing Bank, by notice to the Co-Borrowers and the Agent). All Communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) The Co-Borrowers and the Banks agree that the Agent may make the Communications available to the Banks, Issuing Banks, and the Co-Borrowers by posting the Communications on Debt Domain, IntraLinks, SyndTrak, or a substantially similar electronic transmission system or digital workspace provider (the "***Platform***"). THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE AGENT PARTIES HAVE ANY LIABILITY TO ANY CO-BORROWER, ANY BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT, OR OTHERWISE) ARISING OUT OF ANY CO-BORROWER'S OR THE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY AGENT PARTY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; **PROVIDED, HOWEVER**, THAT IN NO EVENT SHALL ANY AGENT PARTY HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY BANK, ANY ISSUING BANK OR ANY OTHER PERSON FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES).

(e) Each Bank agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Bank for purposes hereof. Each Bank agrees (i) to provide to the Agent in writing (including by electronic communication), promptly after the date of this Agreement, an e-mail address to which the foregoing

notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

(f) The Agent, Issuing Banks, and the Banks shall be entitled to rely and act upon any notices (including telephonic notices of a Borrowing) purportedly given by or on behalf of any Co-Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Co-Borrowers shall indemnify the Agent, each Issuing Bank, each Bank, and the Related Parties of each of them from all losses, costs, expenses, and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Co-Borrower. The Agent may record all telephonic notices to, and other telephonic communications with, the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent, any Issuing Bank, or any Bank, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.04 Costs and Expenses. Parent and the Co-Borrowers shall:

(a) Each Loan Party agrees to pay (i) all reasonable and documented out-of-pocket expenses incurred by the Agent and its Affiliates (including Rabobank in its separate capacities as "a Lead Arranger" and "Active Bookrunner" with respect to the syndication of the Loans) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications, or waivers of the provisions hereof or thereof including the reasonable and documented fees, charges and disbursements of counsel for the Agent, and of such consultants, advisors, appraisers and auditors retained or engaged by the Agent (provided, if no Event of Default then exists, such retention or engagement is permitted by this Agreement or otherwise approved by a Co-Borrower), whether or not the transactions contemplated hereby or thereby shall be consummated; (ii) all reasonable and documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal, or extension of any Letter of Credit or any demand for payment thereunder, (iii) all out-of-pocket expenses incurred by the Agent, any Issuing Bank, or any Bank, including the fees, charges and disbursements of any advisors to the Agent and counsel for the Agent, any Issuing Bank, or any Bank, in connection with the enforcement or protection of such Person's rights in connection with this Agreement and the other Loan Documents or the Collateral, including its rights under this Section, and including in connection with any bankruptcy or insolvency proceeding, workout, restructuring, or negotiations in respect thereof, and (iv) all costs, expenses, taxes, assessments, and other charges incurred by the Agent in connection with any filing, registration, recording, or perfection of any security interest contemplated by any Security Document or any other document referred to therein or any audit, verification, inspection or appraisal of the Collateral, subject to the limitations set forth in Section 7.06.

(b) The agreements in this Section shall survive payments of all other Obligations.

(c) All amounts due under this Section shall be payable no later than 10 Business Days after written demand therefor.

10.05 Indemnity; Damage Waiver.

(a) Each Loan Party hereby agrees to indemnify the Agent, each Issuing Bank, each Bank, Rabobank in its separate capacities as "Lead Arranger" and "Active Bookrunner" hereunder with respect to the syndication of the Loans, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, and related expenses, including the fees, charges, and disbursements of any counsel for any Indemnitee incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any payments that the Agent is required to make under any indemnity issued to any bank holding any Loan Party's deposit, commodity or security accounts, (iv) any Environmental Liability related in any way to any Loan Party or any property owned or operated by any Loan Party, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted solely from the gross negligence, fraud or willful misconduct of such Indemnitee.

(b) To the extent that any Loan Party for any reason fails to indefeasibly pay any amount required to be paid by it to the Agent (or any sub-agent thereof), any Issuing Bank, or any Related Party of any of the foregoing under Section 10.05(a) each Bank severally agrees to pay to the Agent (or any such sub-agent), such Issuing Bank, or such Related Party, as the case may be, such Bank's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability, or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent), any Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity. The obligations of the Banks under this Section 10.05(b) are subject to the provisions of Section 2.14(b).

(c) To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan, or Letter of Credit or the use of the proceeds thereof.

(d) All amounts due under this Section shall be payable no later than 10 Business Days after written demand therefor.

10.06 Joint and Several Liability of the Co-Borrowers.

(a) All Obligations shall constitute joint and several obligations of the Co-Borrowers. Each Co-Borrower expressly represents and acknowledges that it is part of a common enterprise with the other Co-Borrowers and that any financial accommodations by the Agent, the Banks or Issuing Banks, or any of them, to any other Co-Borrowers hereunder and under the other Loan Documents are and will be of direct and indirect interest, benefit and advantage to all Co-Borrowers. Each Co-Borrower acknowledges that any notice of Borrowing or any other notice given by Parent or any Co-Borrower to the Agent, the Banks, or Issuing Banks shall bind all Co-Borrowers, and that any notice given by the Agent, the Banks, or Issuing Banks to any Co-Borrower shall be effective with respect to all Co-Borrowers. Each Co-Borrower acknowledges and agrees that each Co-Borrower shall be liable, on a joint and several basis, for all of the Loans and other Obligations, regardless of which such Person actually may have received the proceeds of any of the Loans or other extensions of credit or the amount of such Loans or other extensions of credit received or the manner in which the Agent, the Banks, or Issuing Banks accounts among the Co-Borrowers for such Loans or other Obligations on its books and records, and further acknowledges and agrees that Loans and other extensions of credit to any Co-Borrower inure to the mutual benefit of all of the Co-Borrowers and that the Agent, the Banks, and Issuing Banks are relying on the joint and several liability of the Co-Borrowers in extending the Loans and other financial accommodations under the Loan Documents and Bank Provider Agreements; *provided*, that notwithstanding anything to the contrary in this Section, no Co-Borrower shall be liable for any Swap Obligation incurred by an Loan Party other than such Co-Borrower, to the extent such Swap Obligation would constitute Excluded Swap Obligations with respect to such Co-Borrower at such time.

(b) Each Co-Borrower shall be entitled to subrogation and contribution rights from and against the other Co-Borrowers to the extent such Person is required to pay to the Agent, the Banks, or Issuing Banks any amount in excess of the Loans advanced directly to, or other Obligations incurred directly by, such Person or as otherwise available under applicable law; provided, however, that such subrogation and contribution rights are and shall be subject to the terms and conditions of Section 10.06(c) through 10.06(d).

(c) It is the intent of each Co-Borrower, the Agent, the Banks, Issuing Banks, and any other Person holding any of the Obligations that the maximum obligations of each Co-Borrower hereunder (such Person's "Maximum Borrower Liability") in any case or proceeding referred to below (but only in such a case or proceeding) shall not be in excess of:

(i) in a case or proceeding commenced by or against such Person under the Bankruptcy Code on or within one year from the date on which any of the Obligations of such Person are incurred, the maximum amount that would not otherwise cause the Obligations of such Person hereunder (or any other Obligations of such Person to the Agent, the Banks, Issuing Banks, and any other Person holding any of the Obligations) to be avoidable or unenforceable against such Person under (A) Section 548 of the Bankruptcy Code or (B) any state fraudulent transfer or fraudulent conveyance act or statute applied in such case or proceeding by virtue of Section 544 of the Bankruptcy Code; or

(ii) in a case or proceeding commenced by or against such Person under the Bankruptcy Code subsequent to one year from the date on which any of the Obligations of such Person are incurred, the maximum amount that would not otherwise cause the Obligations of such Person hereunder (or any other Obligations of such Person to the Agent, the Banks, the Issuing Banks, and any other Person holding any of the Obligations) to be avoidable or unenforceable against such Person under any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding by virtue of Section 544 of the Bankruptcy Code; or

(iii) in a case or proceeding commenced by or against such Person under any law, statute or regulation other than the Bankruptcy Code relating to dissolution, liquidation, conservatorship, bankruptcy, moratorium, readjustment of debt, compromise, rearrangement, receivership, insolvency, reorganization or similar debtor relief from time to time in effect affecting the rights of creditors generally (collectively, "Other Debtor Relief Law"), the maximum amount that would not otherwise cause the Obligations of such Person hereunder (or any other Obligations of such Person to the Agent, the Banks, the Issuing Banks, and any other Person holding any of the Obligations) to be avoidable or unenforceable against such Person under such Other Debtor Relief Law, including, without limitation, any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding. (The substantive state or federal laws under which the possible avoidance or unenforceability of the Obligations of any Co-Borrower hereunder (or any other Obligations of such Person to the Agent, the Banks, the Issuing Banks, and any other Person holding any of the Obligations) shall be determined in any such case or proceeding shall hereinafter be referred to as the "Avoidance Provisions").

Notwithstanding the foregoing, no provision of this Section 10.06(c) shall limit the liability of any Co-Borrower for loans advanced directly or indirectly to it under this Agreement.

(d) To the extent set forth in Section 10.06(c), but only to the extent that the Obligations of any Co-Borrower hereunder would otherwise be subject to avoidance under any Avoidance Provisions if such Person is not deemed to have received valuable consideration, fair value, fair consideration or reasonably equivalent value for such transfers or obligations, or if such transfers or obligations of any Co-Borrower hereunder would render such Person insolvent, or leave such Person with an unreasonably small capital or unreasonably small assets to conduct its business, or cause such Person to have incurred debts (or to have intended to have incurred debts) beyond its ability to pay such debts as they mature, in each case as of the time any of the obligations of such Person are deemed to have been incurred and transfers made under such Avoidance Provisions, then the obligations of such Person hereunder shall be reduced to that amount which, after giving effect thereto, would not cause the Obligations of such Person hereunder (or any other Obligations of such Person to the Agent, the Banks, the Issuing Banks, and any other Person holding any of the Obligations), as so reduced, to be subject to avoidance under such Avoidance Provisions. This Section 10.06(d) is intended solely to preserve the rights hereunder of the Agent, the Banks, the Issuing Banks, and any other Person holding any of the Obligations to the maximum extent that would not cause the

obligations of the Co-Borrowers hereunder to be subject to avoidance under any Avoidance Provisions, and none of the Co-Borrowers nor any other Person shall have any right, defense, offset, or claim under this Section 10.06(d) as against the Agent, the Banks, the Issuing Banks, and any other Person holding any of the Obligations that would not otherwise be available to such Person under the Avoidance Provisions.

(e) Each Co-Borrower agrees that the Obligations may at any time and from time to time exceed the Maximum Borrower Liability of such Person, and may exceed the aggregate Maximum Borrower Liability of all of the Co-Borrowers hereunder, without impairing this Agreement or any provision contained herein or affecting the rights and remedies of the Agent, the Banks, and the Issuing Banks hereunder.

(f) In the event any Co-Borrower (a "Funding Borrower") shall make any payment or payments under this Agreement or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations hereunder, each other Co-Borrower (each, a "Contributing Borrower") shall contribute to such Funding Borrower an amount equal to such payment or payments made, or losses suffered, by such Funding Borrower determined as of the date on which such payment or loss was made multiplied by the ratio of (i) the Maximum Borrower Liability of such Contributing Borrower (without giving effect to any right to receive any contribution or other obligation to make any contribution hereunder), to (ii) the aggregate Maximum Borrower Liability of all Co-Borrowers (including the Funding Borrowers) hereunder (without giving effect to any right to receive, or obligation to make, any contribution hereunder). Nothing in this Section 10.06(f) shall affect the joint and several liability of any Co-Borrower to the Agent, the Banks, and the Issuing Banks for the entire amount of its Obligations. Each Co-Borrower covenants and agrees that its right to receive any contribution hereunder from a Contributing Borrower shall be subordinate and junior in right of payment to all obligations of the Co-Borrowers to the Agent, the Banks, and the Issuing Banks hereunder.

(g) No Co-Borrower will exercise any rights which it may acquire by way of subrogation hereunder or under any other Loan Document or at law by any payment made hereunder or otherwise, nor shall any Co-Borrower seek or be entitled to seek any contribution or reimbursement from any other Co-Borrower in respect of payments made by such Person hereunder or under any other Loan Document, until Payment in Full. If any amounts shall be paid to any Co-Borrower on account of such subrogation or contribution rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by such Person in trust for the Agent, the Banks, and the Issuing Banks, segregated from other funds of such Person, and shall, forthwith upon receipt by such Person, be turned over to the Agent in the exact form received by such Person (duly endorsed by such Person to the Agent, if required), to be applied against the Obligations, whether matured or unmatured, as provided for herein.

10.07 Successors and Assigns.

(a) 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 (including any Affiliate of an Issuing Bank that issues any Letter of Credit, any Affiliate of a Bank who is owed any of the Obligations and any Indemnitee), except that (i) no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of each Bank (and any attempted assignment or transfer of any Loan Party without such consent shall be null and void), and (ii) no Bank may assign or otherwise transfer any of its rights or obligations hereunder except in accordance with this Section (and any attempted

assignment or transfer by any Bank that is not in accordance with this Section shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit and any Affiliate of a Bank who is owed any of the Obligations, and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the Issuing Banks, and the Banks)) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Bank may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and Loans (including for purposes of this Section 10.07(b), participations in L/C Disbursements)) at the time owing to it; *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(1) in the case of (x) an assignment of the entire remaining amount of the assigning Bank's Commitments or Loans, (y) contemporaneous assignments to any Bank and its Approved Funds that equal at least the amount specified in clause (ii) of this Section 10.07(b)(i) in the aggregate, or (z) an assignment to an existing Bank or an Affiliate or Approved Fund of an existing Bank, no minimum amount need be assigned; and

(2) in any case not described in clause (A) of this Section 10.07(b)(i), the aggregate amount of the Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitments are not then in effect, the Loans 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 Agent or if "Trade Date" is specified in the Assignment and Assumption, as of the "Trade Date" so specified therein) shall not be less than $5,000,000 with integral multiples of $500,000 in excess thereof, in the case of any assignment of Loans by any Bank, and, so long as no Event of Default has occurred and is continuing, the Co-Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) Each partial assignment of any Commitment or Loans shall be made as an assignment of a proportionate part of all the assigning Bank's rights and obligations under this Agreement in respect of such Commitment and Loans assigned and each assignment must include a pro rata portion of the assigning Bank's Commitment and applicable Loans.

(iii) No consent shall be required for any assignment except to the extent required by clause (B) of Section 10.07(b)(i) and, in addition:

(1) the consent of the Co-Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (i) an Event of Default has occurred and is continuing at the time of such assignment, or (ii) such assignment is to a Bank, an Affiliate of a Bank, or an Approved Fund; *provided* that the Co-Borrowers shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within 5 Business Days after having received notice thereof; and provided, further, that the Co-Borrowers' consent shall not be required during the primary syndication of the Commitments and Loans hereunder;

(2) the consent of the Agent shall be required for assignments in respect of a Commitment to a Person that is not a Bank with a Commitment, an Affiliate of such Bank, or an Approved Fund with respect to such Bank; and

(3) the consent of each Issuing Bank shall be required for any assignment of a Commitment.

(iv) The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of $5,000 (*provided* that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment).

(v) The assignee, if it shall not already be a Bank, shall deliver to the Agent an Administrative Questionnaire.

(vi) No such assignment shall be made to (A) the Co-Borrowers or any of the Co-Borrowers' Affiliates or Subsidiaries or (B) to any Defaulting Bank or any of its Subsidiaries, or any Person who, upon becoming a Bank hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vii) No such assignment shall be made to a natural Person (or a holding company, investment vehicle in trust for, or owned and operated for the primary benefit of, a natural Person).

(viii) In connection with any assignment of rights and obligations of any Defaulting Bank hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Co-Borrowers and the Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Bank, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Bank to the Agent, each Issuing Bank, and each

other Bank hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Bank hereunder shall become effective under applicable law without compliance with the provisions of this Section 10.07(b)(viii), then the assignee of such interest shall be deemed to be a Defaulting Bank for all purposes of this Agreement until such compliance occurs.

(c) Subject to acceptance and recording thereof pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto 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 rights referred to in Article 9 and Section 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment**;** *provided* that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Bank will constitute a waiver or release of any claim of any party hereunder arising from that Bank's having been a Defaulting Bank. Any assignment or transfer by a Bank of rights or obligations under this Agreement that does not comply with this Section 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 Section 10.07(e).

(d) The Agent, acting solely for this purpose as a non-fiduciary agent of the Co-Borrowers, 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 amount of the Loans owing to, each Bank pursuant to the terms hereof from time to time (the "Register"). With respect to any Bank, the transfer of the Commitments of such Bank and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register maintained by the Agent with respect to ownership of such Commitments and Loans. The entries in the Register shall be conclusive, and the Co-Borrowers, the Agent, and the Banks shall 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 Co-Borrowers and any Bank, at any reasonable time and from time to time, upon reasonable prior notice.

(e) Any Bank may at any time, without the consent of, or notice to, the Co-Borrowers, the Agent, or any Issuing Banks, sell participations to any Person (other than a natural Person (or a holding company, investment vehicle in trust for, or owned and operated for the primary benefit of, a natural person), the Co-Borrowers, or any of the Co-Borrowers' Affiliates) (a "Participant") in all or a portion of such Bank's rights or obligations under this Agreement (including all or a portion of its Commitments or the Loans (including such Bank's participations in L/C Disbursements) 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 Co-Borrowers, the Agent, the Issuing Banks, 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. For the avoidance of doubt, each Bank shall be responsible for the indemnity under Section 10.05(b) with respect to any payments made by such Bank to its Participants. 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 described in Section 10.01 that affects such Participant. Each Co-Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.01, 4.02, and 4.03, (subject to the requirements and limitations therein, including the requirements under Section 4.01 (it being understood that the documentation required under Section 4.01 shall be delivered to the participating Bank)) to the same extent as if it were a Bank and had acquired its interest by assignment pursuant to Section 10.07(b); *provided* that such Participant (1) agrees to be subject to the provisions of Section 10.15 as if it were an assignee under Section 10.07(b); and (2) shall not be entitled to receive any greater payment under Sections 4.01 or 4.02, with respect to any participation, than its participating Bank would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Requirements of Law that occurs after the Participant acquired the applicable participation. Each Bank that sells a participation agrees, at the Co-Borrowers request and expense, to use reasonable efforts to cooperate with the Co-Borrowers to effectuate the provisions of Section 10.15 as though it were a bank with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Bank**;** *provided* that such Participant agrees to be subject to Section 2.15(a). Each Bank that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Co-Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); *provided* that no Bank shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such 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 Agent (in its capacity as the Agent) shall have no responsibility for maintaining a Participant Register.

(f) 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 any pledge or assignment to secure obligations to a Federal Reserve Bank (or other central bank under any central banking system established under the jurisdiction or organization of such Bank (or its parent bank)); *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.

10.08 Set-off. If an Event of Default shall have occurred and be continuing, each Bank, each Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and

all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Bank, such Issuing Bank or any such Affiliate, to or for the credit or the account of any Co-Borrower or any other Loan Party against any and all of the obligations of any Co-Borrower or any other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Bank or such Issuing Bank or their respective Affiliates, irrespective of whether or not such Bank, Issuing Bank or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Co-Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Bank or such Issuing Bank different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Bank shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.15(a) and, pending such payment, shall be segregated by such Defaulting Bank from its other funds and deemed held in trust for the benefit of the Agent, the Issuing Banks, and the Banks, and (b) the Defaulting Bank shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Bank as to which it exercised such right of set-off. The rights of each Bank, each Issuing Bank, and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of set-off) that such Bank, such Issuing Bank, or their respective Affiliates may have. Each Bank and each Issuing Bank agrees to notify the Co-Borrowers and the Agent promptly after any such set-off and application and share such set-off pursuant to Section 2.15(a)**;** *provided* that the failure to give such notice shall not affect the validity of such set-off and application.

10.09 Survival. All covenants, agreements, certifications, representations and warranties made by the Co-Borrowers or any other Loan Party herein or in the other Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or the other Loan Documents shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent, any Issuing Bank or any Bank may have had notice or knowledge of any Default or incorrect certification, representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the occurrence of Payment in Full. The provisions of Article 4, Section 10.05, 10.25, and 10.27 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby and the occurrence of Payment in Full.

10.10 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract between and among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," and words of like import in this Agreement or any Loan Document shall be deemed to include Electronic Signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may

be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Agent to accept electronic signatures in any form or format without its prior consent.

10.11 Automatic Debit. With respect to any commitment, fee, arrangement fee, letter of credit fee or other fee, or any other cost or expense (including Attorney Costs) due and payable to the Agent (other than any such fee or other cost or expense which the Co-Borrowers have disputed in a writing delivered to the Agent prior to such debit), the Issuing Banks, or the Banks under the Loan Documents, the Co-Borrowers hereby irrevocably authorize the Agent to debit any deposit account of Co-Borrowers with the Agent in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount of the fee or the cost or expense then due, such debits will be reversed (in whole or in part, in Agent's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section shall be deemed a set-off.

10.12 Bank Blocked Account Charges and Procedures. Agent is hereby authorized to charge any deposit account of the Co-Borrowers or any of them maintained at Agent for any fee, cost or expense (including Attorney Costs) due and payable to the Banks under the Loan Documents. If the available balances in such deposit accounts are not sufficient to compensate the Banks for any such charges or fees due the Banks, the Co-Borrowers agree to pay on demand the amount due the Banks. Each of the Co-Borrowers agrees that it will not permit the Bank Blocked Accounts to become subject to any other pledge, assignment, Lien, charge or encumbrance of any kind, nature or description, other than the Banks' security interest or any Lien the bank where such Bank Blocked Accounts are held may have.

10.13 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

10.14 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Loan Parties and the Banks and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents.

10.15 Replacement of Banks. If any Bank requests compensation under Section 4.02, or if any Co-Borrower is required to pay any additional amount to any Bank or any Governmental Authority for the account of any Bank pursuant to Section 4.01, or in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.01, the consent of the Majority Banks shall have been obtained but the consent of one or more of such other Banks whose consent is required shall not have been obtained, or with respect to any Bank during such time as such Bank is a Defaulting Bank, then the Co-Borrowers may, at their sole expense and effort, upon notice to such Bank and the Agent, require such Bank to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Bank, if a Bank accepts such assignment), *provided* that:

(a) Such Bank shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.03) from the assignee (to the extent of such outstanding principal and accrued interest and fees);

(b) in the case of any such assignment resulting from a claim for compensation under Section 4.02 or payments required to be made pursuant to Section 4.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(c) such assignment does not conflict with applicable Laws.

If such Bank shall refuse or fail to execute and deliver any such Assignment and Assumption prior to the effective date of such replacement as notified by the Agent, such Bank shall be deemed to have executed and delivered such Assignment and Assumption, and shall no longer be a Bank hereunder upon the payment to such Bank of an amount equal to the aggregate amount of outstanding Obligations owed to such Bank in accordance with the wire transfer instructions for such Bank on file with the Agent. A Bank shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Bank or otherwise, the circumstances entitling a Co-Borrower to require such assignment and delegation cease to apply.

10.16 GOVERNING LAW AND JURISDICTION.

(a) This Agreement and the other Loan Documents (other than those containing a contrary express choice of law provision) shall be construed in accordance with, and this Agreement, such other Loan Documents, and all matters arising out of or relating in any way whatsoever to this Agreement and such other Loan Documents (whether in contract, tort, or otherwise) shall be governed by, the law of the State of New York, other than those conflict of law provisions that would defer to the substantive laws of another jurisdiction. This governing law election has been made by the parties in reliance (at least in part) on Section 5-1401 of the General Obligation Law of the State of New York, as amended (as and to the extent applicable), and other applicable law.

(b) Each Loan Party hereby irrevocably and unconditionally agrees that it shall not commence any action, litigation, or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Agent, any Bank, any Issuing Bank, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto and each other Loan Party hereby irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation, or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent, any Issuing Bank, or any Bank may otherwise have to bring any action or proceeding relating to any Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each party hereto and each other Loan Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in Section 10.16(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 10.02. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable law.

10.17 WAIVER OF JURY TRIAL. EACH PARTY HERETO AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.18 ENTIRE AGREEMENT. THIS AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING AMONG THE PARTIES HERETO, AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS AND UNDERSTANDINGS OF SUCH PERSONS, VERBAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF.

10.19 Intercreditor Agreement. Each Bank hereby agrees that it shall take no action to terminate its obligations under the Intercreditor Agreement and will otherwise be bound by and take no actions contrary to the Intercreditor Agreement.

10.20 USA Patriot Act Notice. Each of the Agent, each Issuing Bank, and each Bank subject to the USA Patriot Act, hereby notifies each Loan Party that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify, and record information that identifies each Loan Party and other information that will allow the Agent, such Issuing Bank, and such Bank to identify each Loan Party in accordance with the USA Patriot Act. Each Co-Borrower hereby agrees to provide, and cause each other Loan Party to provide, such information promptly upon the request of the Agent or any Bank. Each Bank subject to the USA Patriot Act acknowledges and agrees that neither such Bank, nor any of its Affiliates, participants or assignees, may rely on the Agent to carry out such Bank's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any Loan Party, its Affiliates or its agents, this Agreement, the Loan Documents or the transactions hereunder or

contemplated hereby: (a) any identity verification procedures, (b) any record-keeping, (c) comparisons with government lists, (d) customer notices, or (e) other procedures required under the CIP Regulations or such other law.

10.21 |dummy string|Treatment of Certain Information; Confidentiality.

(a) Each Loan Party acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to Parent or one or more of the Subsidiaries (in connection with this Agreement or otherwise) by any Bank or by one or more Subsidiaries or Affiliates of such Bank and each Loan Party hereby authorizes each Bank to share any information delivered to such Bank by any Loan Parties or their Subsidiaries pursuant to this Agreement, or in connection with the decision of such Bank to enter into this Agreement, to any such Subsidiary or Affiliate, it being understood that any such Subsidiary or Affiliate receiving such information shall be bound by the provisions of Section 10.21(b) as if it were a Bank hereunder. Such authorization shall survive the occurrence of Payment in Full.

(b) Each of the Agent, the Banks, and the Issuing Banks agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (iv) to any other party hereto; (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to a Co-Borrower and its obligations, this Agreement or payments hereunder; (vii) on a confidential basis to (A) any rating agency in connection with rating Loan Parties or their Subsidiaries or the credit facilities under this Agreement or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to this Agreements; (viii) with the consent of the Co-Borrowers; or (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section, or (B) becomes available to the Agent, any Bank, any Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties. In addition, the Agent and the Banks may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agent and the Banks in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this Section, "Information" means all information received from the Loan Parties or any of their Subsidiaries or representatives relating to the Loan Parties or any of their Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent, any Bank or any Issuing Bank on a nonconfidential basis prior to disclosure by the Loan Parties or any of their Subsidiaries or representatives; *provided* that, in the case of information received from the Loan Parties or any of their Subsidiaries or representatives after the date hereof, such information is identified in writing at the time of delivery as confidential. Any Person required to maintain the confidentiality of

Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

10.23 Press Release and Related Matters. No Loan Party shall, and no Loan Party shall permit any of its Affiliates to, issue any press release or other public disclosure using the name or logo or otherwise referring to the Agent, any other Bank or of any of their respective Affiliates, the Loan Documents or any transaction contemplated therein to which the Agent is party without the prior consent of the Agent or such Bank, as applicable, except to the extent required to do so under applicable law and then, in any event, such Loan Party or such Affiliate will advise the Agent or such Bank as soon as possible with respect to such press release or other public disclosure.

10.24 No Duty**.** All attorneys, accountants, appraisers, and other professional Persons and consultants retained by the Agent or any Bank shall have the right to act exclusively in the interest of the Agent and the Banks and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to Parent, any Co-Borrower, any holders of Equity Interests of any Loan Party or any other Person.

10.25 No Fiduciary Relationship**.** The relationship between the Co-Borrowers and the other Loan Parties on the one hand and the Agent, each Issuing Bank, and each Bank on the other is solely that of debtor and creditor, and neither the Agent nor any Bank has any fiduciary or other special relationship with the Co-Borrowers or any other Loan Parties, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between the Co-Borrowers and the other Loan Parties on the one hand and the Agent, each Issuing Bank, and each Bank on the other to be other than that of debtor and creditor

10.26 Construction; Independence of Covenants**.**

(a) Each Co-Borrower, each other Loan Party (by its execution of the Loan Documents to which it is a party), the Agent and each Bank acknowledges that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review the Loan Documents with its legal counsel and that the Loan Documents shall be construed as if jointly drafted by the parties thereto. Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

(b) All covenants and other agreements contained in this Agreement or any other Loan Document shall be given independent effect so that, if a particular action or condition is not permitted by any of such covenants or other agreements, the fact that such action or condition would be permitted by an exception to, or otherwise be within the limitations of, another covenant or other agreement shall not avoid the occurrence of a Default if such action is taken or such condition exists.

10.27 Payments Set Aside**.** To the extent that any payment by or on behalf of any Loan Party under any Loan Document is made to the Agent, any Issuing Bank or any Bank, or the Agent, any Issuing Bank or any Bank exercises its right of set-off as to any Loan Party, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, such Issuing Bank or such Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, then (a) to the extent of such recovery, the obligation or part thereof

originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Bank and each Issuing Bank severally agrees to pay to the Agent upon demand its Pro Rata Share of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

10.28 Benefits of Agreement**.** The Loan Documents are entered into for the sole protection and benefit of the parties hereto and their permitted successors and assigns, and no other Person (other than any Related Parties of the Agent, the Banks, the Issuing Banks, and any Participants to the extent provided for in Section 10.07(e)) shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, any Loan Document.

10.29 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Loan Documents in respect of CEA Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under any Loan Document, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the occurrence of Payment in Full. Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

10.30 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

10.31 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (as defined in clause (b) below) (such support, "***QFC Credit Support***" and each such QFC a "***Supported QFC***"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "***U.S. Special Resolution Regimes***") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity (as defined in clause (b) below) 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 (as defined in clause (b) below) of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as defined in clause (b) below) under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Bank shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.31, the following terms have the following meanings:

"***BHC Act Affiliate***" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"***Covered Entity***" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or

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

"***Default Right***" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"***QFC***" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

ARTICLE 11
CERTAIN ERISA MATTERS

(a) 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 Agent, and not, for the avoidance of doubt, to or for the benefit of the Co-Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Bank is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans (as defined below) with respect to such Bank's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs (as defined below), 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,

(iii) (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, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Bank.

(b) In addition, unless either (1) the immediately preceding clause (a)(i) is true with respect to a Bank or (2) a Bank has provided another representation, warranty and covenant in accordance with the immediately preceding clause (a)(iv), 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 Agent, and not, for the avoidance of doubt, to or for the benefit of the Co-Borrowers or any other Loan Party, that the Agent is not 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 Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

(c) For purposes of this Article 11, the following terms shall have the following meanings:

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

"***PTE***" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

CO-BORROWERS:

SPARK HOLDCO, LLC
SPARK ENERGY, LLC
SPARK ENERGY GAS, LLC
CENSTAR ENERGY CORP.
CENSTAR OPERATING COMPANY, LLC
OASIS POWER, LLC
OASIS POWER HOLDINGS, LLC
ELECTRICITY MAINE, LLC
ELECTRICITY N.H., LLC
PROVIDER POWER MASS, LLC
MAJOR ENERGY SERVICES LLC
MAJOR ENERGY ELECTRIC SERVICES LLC
RESPOND POWER LLC
PERIGEE ENERGY, LLC
VERDE ENERGY USA, INC.
VERDE ENERGY USA COMMODITIES, LLC
VERDE ENERGY USA CONNECTICUT, LLC
VERDE ENERGY USA DC, LLC
VERDE ENERGY USA ILLINOIS, LLC
VERDE ENERGY USA MARYLAND, LLC
VERDE ENERGY USA MASSACHUSETTS, LLC
VERDE ENERGY USA NEW JERSEY, LLC
VERDE ENERGY USA NEW YORK, LLC
VERDE ENERGY USA OHIO, LLC
VERDE ENERGY USA PENNSYLVANIA, LLC
VERDE ENERGY USA TEXAS HOLDINGS, LLC
VERDE ENERGY USA TEXAS, LLC
VERDE ENERGY USA TRADING, LLC
VERDE ENERGY SOLUTIONS, LLC
HIKO ENERGY, LLC

Each By:__
Name:
Title:

PARENT:

VIA RENEWABLES, INC. (fka Spark Energy, Inc.)

By:__
Name:
Title:

AGENT:

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH, as Agent

By:__
Name:
Title:

BANKS:

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH, as an Issuing Bank and a Bank

By:__
Name:
Title:

WOODFOREST NATIONAL BANK, as a Bank

By:__
Name:
Title:

BOKF, NA, A NATIONAL BANKING ASSOCIATION DBA BANK OF TEXAS, as an Issuing Bank and a Bank

By:__
Name:
Title:

BANCORPSOUTH BANK, as a Bank

By:__
Name:
Title:

ORIGIN BANK, as a Bank

By:__
Name:
Title:

VERITEX COMMUNITY BANK (formerly known as Green Bank), as a Bank

By:__
Name:
Title:

ZIONS BANCORPORATION, N.A. DBA AMEGY BANK, as a Bank

By:__
Name:
Title:

Annex II to Amendment No. 5

SCHEDULE 2.01

Commitments

Bank	Commitment	Credit Percentage
Coöperatieve Rabobank U.A., New York Branch	$40,000,000	17.582418%
Woodforest National Bank	$35,000,000	15.384615%
BOKF, NA, a National Banking Association dba Bank of Texas	$32,500,000	14.285714%
Wells Fargo Bank, National Association	$25,000,000	10.989011%
BancorpSouth Bank	$20,000,000	8.791209%
Origin Bank	$20,000,000	8.791209%
Veritex Community Bank (formerly known as Green Bank)	$20,000,000	8.791209%
Zions Bancorporation, N.A. dba Amegy Bank	$20,000,000	8.791209%
Gulf Capital Bank	$15,000,000	6.593406%
	$227,500,000	100%

Exhibit 21.1

LIST OF SUBSIDIARIES OF SPARK ENERGY, INC.

Entity	Jurisdiction
Spark HoldCo, LLC	Delaware
Spark Energy Gas, LLC	Texas
Spark Energy, LLC	Texas
Oasis Power Holdings, LLC	Texas
Oasis Power, LLC	Texas
CenStar Energy Corp.	New York
CenStar Operating Company, LLC	Texas
Major Energy Services LLC	New York
Major Energy Electric Services LLC	New York
Respond Power LLC	New York
Electricity Maine, LLC	Maine
Electricity N.H., LLC	Maine
Provider Power Mass, LLC	Maine
Perigee Energy, LLC	Texas
Verde Energy USA, Inc.	Delaware
Verde Energy USA Connecticut, LLC	Delaware
Verde Energy USA DC, LLC	Delaware
Verde Energy USA Illinois, LLC	Delaware
Verde Energy USA Maryland, LLC	Delaware
Verde Energy USA Massachusetts, LLC	Delaware
Verde Energy USA New Jersey, LLC	Delaware
Verde Energy USA New York, LLC	Delaware
Verde Energy USA Ohio, LLC	Delaware
Verde Energy USA Pennsylvania, LLC	Delaware
Verde Energy Solutions, LLC	Delaware
Verde Energy USA Trading, LLC	Delaware
Verde Energy USA Texas Holdings, LLC	Delaware
Verde Energy USA Commodities, LLC	Delaware
Verde Energy USA Texas, LLC	Texas
Hiko Energy, LLC	New York
Via Energy Solutions, LLC	Texas

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

(1) Registration Statement (Form S-3 No. 333-233863) of Spark Energy, Inc.,

(2) Registration Statement (Form S-8 No. 333-197738) pertaining to the Long Term Incentive Plan of Spark Energy, Inc., and

(3) Registration Statement (Form S-8 No. 333-231707) pertaining to the Second Amended and Restated Long Term Incentive Plan of Spark Energy, Inc.

of our reports dated March 3, 2022, with respect to the consolidated financial statements of Via Renewables, Inc., and the effectiveness of internal control over financial reporting of Via Renewables, Inc. included in this Annual Report (Form 10-K) of Via Renewables, Inc. for the year ended December 31, 2021.

/s/ Ernst & Young LLP

Houston, Texas
March 3, 2022

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, W. Keith Maxwell III, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2021 of Via Renewables, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 3, 2022

/s/W. Keith Maxwell III
W. Keith Maxwell III
President and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Mike Barajas, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2021 of Via Renewables, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 3, 2022

/s/ Mike Barajas

Mike Barajas
Chief Financial Officer
(Principal Accounting and Financial Officer)

EXHIBIT 32

CERTIFICATION OF
CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
UNDER SECTION 906 OF THE
SARBANES OXLEY ACT OF 2002, 18 U.S.C. § 1350

In connection with the Annual Report on Form 10-K for the year ended December 31, 2021 (the "Annual Report") of Via Renewables, Inc., a Delaware corporation (the "Company"), as filed with the Securities and Exchange Commission on the date hereof, W. Keith Maxwell III, Principal Executive Officer of the Company, and Mike Barajas, Principal Financial Officer of the Company, each certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his knowledge:

1. The Annual Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 3, 2022

/s/W. Ketih Maxwell III
W. Keith Maxwell III
President and Chief Executive Officer (Principal Executive Officer)

/s/Mike Barajas
Mike Barajas
Chief Financial Officer (Principal Financial and Accounting Officer)