Risk Factors Comparison 2024-02-14 to 2023-02-15 Form: 10-K

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The following is a summary of some of the risks and uncertainties that could materially adversely affect our business, financial condition and results of operations. You should read this summary together with the more detailed description of each risk factor contained below. Risks Related to Our Business • ~~The Russia- Ukraine war may adversely affect our business due to the impact on the global economy, including significant market disruptions that may lead to increased volatility in the price of certain commodities; •~~ Deterioration in global economic conditions, including the impacts of global pandemics, **conflicts including wars** ~~such as the COVID- 19 pandemic~~, and inflation on our business, may adversely affect our business, results of operations and cash flows and if we fail to implement our business strategies successfully, our financial performance could be harmed; • We may be unsuccessful or delayed in developing Blue Creek, which could significantly affect our operations and / or limit our long- term growth; • If transportation for our ~~met~~ **steelmaking** coal is disrupted, unavailable or more expensive for our customers, our ability to sell ~~met~~ **steelmaking** coal could suffer; • Work stoppages, labor shortages and other labor relations matters may harm our business. Union- represented labor creates an increased risk of work stoppages and higher labor costs; • Significant competition, as well as changes in foreign markets or economies, could harm our sales, profitability and cash flows; • Our sales in foreign jurisdictions are subject to risks and uncertainties, such as new tariffs and other trade measures, which could adversely affect our results of operations, financial position and cash flows; Risks Related to Our Industry • Substantially all of our revenues are derived from the sale of ~~met~~ **steelmaking** coal and our business may suffer from a substantial or extended decline in ~~met~~ **steelmaking** coal pricing and demand or other factors beyond our control. This lack of diversification of our business could adversely affect our financial condition, results of operations and cash flows; • Met coal mining involves many hazards and operating risks, and is dependent upon many factors and conditions beyond our control, which may cause our profitability and financial position to decline; • Negative views with respect to environmental and social matters and related governance considerations could harm the perception of our Company by certain investors, environmental and climate change activist groups and financial institutions, including banks and insurance companies, adversely affecting our ability to obtain financing and insurance coverage, ~~among~~ **and** ~~others~~ **otherwise achieve our strategic priorities** ; • Our inability to develop ~~met~~ **steelmaking** coal reserves in an economically feasible manner or our inability to acquire additional ~~met~~ **steelmaking** coal reserves that are economically recoverable may adversely affect our business; • Any significant downtime of our major pieces of mining equipment could impair our ability to supply ~~met~~ **steelmaking** coal to our customers and materially and adversely affect our results of operations and cash flows; • We may not recover our investments in our mining, exploration and other assets, which may require us to recognize impairment charges related to those assets; Risks Related to Regulatory Compliance • We are responsible for medical and disability benefits for black lung disease under federal law. Changes in the estimated claims to be paid or changes in the amount of collateral required may affect our operating results and cash flows; • Extensive federal and state environmental, health and safety laws and regulations impose significant costs on our operations and future regulations could increase these costs, limit our ability to produce or adversely affect our ability to meet our customers' demands; • Failure to obtain or renew surety bonds on acceptable terms could affect our ability to secure reclamation and coal lease obligations and, therefore, our ability to mine or lease ~~met~~ **steelmaking** coal; • We have reclamation and mine closing obligations. If the assumptions underlying our accruals are inaccurate, we could be required to ~~expand~~ **expend** greater amounts than anticipated; Risks Related to our Financial Results and Finances • Our substantial indebtedness could adversely affect our ability to raise additional capital to fund our operations and dividend policy, limit our ability to react to changes in the economy or our industry and prevent us from making debt service payments on the Notes; • We may be unable to generate sufficient taxable income from future operations, which may limit or eliminate our ability to utilize our significant **federal and state** tax NOLs or our deferred tax assets ~~; • The transition from LIBOR to SOFR may affect our financial results~~; Risks Related to the Ownership of our Common Stock • The market price of our common stock may fluctuate significantly and investors in our common stock could incur substantial losses; • Any declaration and payment of future dividends to holders of our common stock may be limited by restrictive covenants of our ABL Facility and the indenture governing the Notes (the" Indenture"), and will be on the sole discretion of the Board and will also depend on many factors; • Our common stock is subject to the 382 Transfer Restrictions (as defined below) under our certificate of incorporation and the Amended Rights Agreement (as defined below) which are intended to prevent a Section 382" ownership change," which if not complied with, could result in the forfeiture of such stock and related dividends or substantial dilution of the stock ownership, respectively; and • Delaware law and our charter documents may impede or discourage a takeover or change of control, which could adversely affect the price of our common stock. The Russia- Ukraine war, and......, financial condition and cash flows. Our activities may be adversely affected by global pandemics, including the ~~ongoing~~ COVID- 19 pandemic, which may prevent us from meeting our targeted production levels and / or executing our planned development initiatives (including, but not limited to, the development of Blue Creek), negatively impact our customers' demand for ~~met~~ **steelmaking** coal and their ability to honor or renew contracts, adversely affect the health and welfare of Company personnel or prevent our vendors and contractors from performing normal and contracted activities. The extent to which the COVID- 19 pandemic, or any other global pandemic, will ultimately affect our business, financial condition and results of operations will depend on future developments, which are highly uncertain and cannot be predicted. Such developments may include **, with respect to any global pandemic,** the geographic spread of the virus, the severity of the disease, the duration of the outbreak, the actions that may be taken by various governmental authorities in response to the outbreak and the impact on the U. S. or global economy. The COVID- 19 pandemic has resulted, and may continue to result, in disruptions to economic and industrial activity worldwide. ~~Though the global impact of COVID- 19 continues to evolve and remains highly uncertain, COVID- 19 may ultimately cause a significant decline in global steel production and, in turn, reduce demand for met coal.~~ We are highly dependent on the global steel industry. Our sales are primarily derived from coal shipments to customers located in regions that are, or may become, heavily affected by the COVID- 19 pandemic, particularly Asia and Europe. Not only is steel production in these regions at risk of decline, but we may also face additional challenges in the event that transportation restrictions are put in place that affect our ability to deliver coal to our customers in these regions. These factors may influence our customers' ability to honor or renew their contracts. In addition to the potential impact on global ~~met~~ **steelmaking** coal demand, COVID- 19 or any other global pandemic may result in disruptions or restrictions on our employees' ability to operate our coal mines in the ordinary course of business, which would restrict our production capacity. Similarly, we cannot predict how, if at all, the outbreak will affect our suppliers' ability to provide the mining materials and equipment we require. If our production capacity or our ability to meet our supply needs is affected, our business and our financial results could be materially and adversely affected. Finally, the COVID- 19 pandemic has substantially affected national and international financial markets, which could affect our ability to obtain financing for our business and / or pursue our planned development projects, including the development of our Blue Creek mine. Deterioration in global economic conditions as they relate to the steelmaking industry, as well as generally unfavorable global economic, financial and business conditions, may adversely affect our business, results of operations and cash flows. Demand for ~~met~~ **steelmaking** coal depends on domestic and foreign steel demand. As a result, if economic conditions in the global steelmaking industry deteriorate as they have in past years, the demand for ~~met~~ **steelmaking** coal may decrease. In addition, the global financial markets have been experiencing volatility and disruption over the last several years including, due to the COVID- 19 pandemic. These markets have experienced, among other things, volatility in security prices, commodities and currencies, diminished liquidity and credit availability, rating downgrades and declining valuations of certain investments. Weaknesses in global economic conditions have had an adverse effect and could have a material adverse effect on the demand for our ~~met~~ **steelmaking** coal and, in turn, on our sales, pricing and profitability. In addition, future governmental policy changes in foreign countries may be detrimental to the global coal market. For example, the Chinese government has from time to time implemented regulations and promulgated new laws or restrictions, such as the unofficial ban on Australian coal in November 2020, on their domestic coal industry, sometimes with little advance notice, which has impacted worldwide coal demand, supply and prices. The ban on Australian coal has significantly impacted the global ~~met~~ **steelmaking** coal market in recent years. This unofficial ban was lifted in January 2023. During the past several years, the Chinese government has initiated a number of anti- smog measures aimed at reducing hazardous air emissions through temporary production capacity restrictions with the steel, coal and coal- fired power sectors. It is possible that policy changes from foreign countries may be detrimental to the global coal markets and, thus, impact our business, financial condition or results of operations. **Additionally,we** ~~volatility in the price of certain commodities.We~~ face risks related to ~~the~~ ongoing **wars,including the** Russia- Ukraine war that began in February 2022 **and the Israel- Hamas war that began in October 2023** .The extent and duration of the military ~~conflict~~ **conflicts** ~~involving Russia and Ukraine~~ ,resulting sanctions and future market or supply disruptions in ~~the~~ **these** ~~region~~ **regions** ,are impossible to predict,but could be significant and may have a severe adverse effect on the region.Globally,various governments,such as the European Union,have banned imports from Russia including commodities such as natural gas and coal.These events significantly impacted coking coal markets by disrupting previously existing trading patterns.The resulting volatility,including market expectations of potential changes in coal prices and inflationary pressures on steel products,may significantly affect prices for our coal or the cost of supplies and equipment.The ~~war~~ **wars** ,trade and monetary sanctions,as well as any escalation of the ~~conflict~~ **conflicts** and future developments,could significantly affect coking coal prices and the demand for our coal.This could have a material adverse effect on our business,financial condition and results of operations,along with our operating costs,making it difficult to execute our planned capital expenditure program or the development of Blue Creek.Additionally,the geopolitical and macroeconomic consequences of the ~~war~~ **wars** and associated sanctions cannot be predicted,but could severely impact the world economy. ~~If any of these~~ If ~~met~~ **any of these events occur, the resulting political instability and societal disruption could reduce overall demand for our coal, causing a reduction in our revenues or an increase in our costs, which would materially adversely affect our results of operations, financial condition and cash flows. If steelmaking** coal prices drop to or below levels experienced in 2015 and the first half of 2016 for a prolonged period or if there are further downturns in economic conditions, particularly in developing countries such as China and India, our business, financial condition or results of operations could be adversely affected. While we are focused on cost control and operational efficiencies, there can be no assurance that these actions, or any others we may take, will be sufficient in response to challenging economic and financial conditions. In addition, the current level of ~~met~~ **steelmaking** coal prices may not be sustainable. Our business is subject to the risk of increases or fluctuations in the cost **, including increases due to inflation** , and delay in the delivery, of raw materials, mining equipment and purchased components. Met coal mining consumes large quantities of commodities including steel, copper, rubber products, diesel and other liquid fuels, and requires the use of capital equipment. Some commodities, such as steel, are needed to comply with roof control plans required by regulation. The cost of roof bolts we use in our mining operations depends on the price of scrap steel. The prices we pay for commodities and capital equipment are strongly impacted by the global market. A rapid or significant increase in the costs of commodities or capital equipment we use in our operations could impact our mining operations costs because we may have a limited ability to negotiate lower prices and, in some cases, may not have a ready substitute. Inflation rates in the U. S. have increased to levels not seen in several years, **and have been even higher in the mining sector,** which may result in decreased demand for our products, increases in our operating costs, constrained credit and liquidity, reduced government spending and volatility in financial markets. Future increases in costs for supplies that are used directly or indirectly in the normal course of our business and increases in other operating costs, such as increases in steel prices, freight rates, labor and other materials and supplies may negatively impact our profitability. **Our efforts to recover inflation- based cost**

increases from suppliers or customers may be hampered as a result of the structure of our contracts and the contract bidding process as well as competitive pressure in the industry, economic conditions and the countries to which we sell our export coal. Accordingly, substantial inflation may have an adverse impact on our business, including the development of Blue Creek, financial position, results of operations and cash flows. Inflation has also resulted in higher interest rates in the U. S., which could increase our cost of debt borrowing in the future. We use equipment in our ~~met~~ **steelmaking** coal mining and transportation operations such as continuous mining units, conveyors, shuttle cars, rail cars, locomotives, roof bolters, shearers and shields. Some equipment and materials are needed to comply with regulations, such as proximity detection devices on continuous mining machines. We procure some of this equipment from a concentrated group of suppliers, and obtaining this equipment often involves long lead times. Occasionally, demand for such equipment by mining companies can be high and some types of equipment may be in short supply. Delays in receiving or shortages of this equipment, as well as the raw materials used in the manufacturing of supplies and mining equipment, which, in some cases, do not have ready substitutes, or the cancellation of our supply contracts under which we obtain equipment and other consumables, could limit our ability to obtain these supplies or equipment. In addition, there continues to be consolidation in the supplier base providing mining materials and equipment, which has resulted in a limited number of suppliers for certain types of equipment and supplies. If any of our suppliers experiences an adverse event (including as a result of the COVID- 19 pandemic), decides to cease producing products used by the mining industry, or decides to no longer do business with us, we may be unable to obtain sufficient equipment and raw materials in a timely manner or at a reasonable price to allow us to meet our production goals and our revenues may be materially adversely impacted. We use considerable quantities of steel in the mining process. If the price of steel or other materials increases substantially or if the value of the U. S. dollar declines relative to foreign currencies with respect to certain imported supplies or other products, our operating expenses could increase. Any of the foregoing events could materially and adversely impact our business, financial condition, results of operations and cash flows. We typically sell our ~~met~~ **steelmaking** coal under fixed supply contracts primarily with indexed pricing terms that vary and volume terms of one to three years and are therefore exposed to commodity price risk on our sales. Sales commitments in the ~~met~~ **steelmaking** coal market are typically not long- term in nature and are generally no longer than one to three years in duration. Globally the market is evolving to shorter term pricing. Many of our ~~met~~ **steelmaking** coal supply agreements are priced on the basis of a variety of indices, where prices are determined on or before shipment by averaging the leading spot indexes reported in the market. As a result, our sales are subject to fluctuations in market pricing and we are not protected from oversupply or market conditions where we cannot sell our coal at economic prices. To limit this exposure, to the extent we are able, we have **incorporated** , and will continue to ~~,~~ incorporate **,** economic hardship clauses in our sales contracts. However, there can be no assurances **that** we will be able to mitigate such conditions as they arise. Met coal has been an extremely volatile commodity over the past ten years and prices may become volatile again in the future given the rapid increase of the last few years and the sharp decline in the second half of 2019. Any sustained failure to be able to market our coal during such periods would have a material adverse effect on our business, results of operations, cash flows and ability to pay dividends to our stockholders. The failure of our customers to honor or renew contracts could adversely affect our business. A significant portion of the sales of our ~~met~~ **steelmaking** coal is to customers with whom we have had a relationship for a long period of time. Typically, our customer contracts are for terms of one to three years or are evergreen with respect to contracted volumes. The success of our business depends on our ability to retain our current customers, renew our existing customer contracts and solicit new customers. Our ability to do so generally depends on a variety of factors, including the quality and price of our products, our ability to market these products effectively, our ability to deliver on a timely basis and the level of competition that we face. If our customers do not honor contract commitments, or if they terminate agreements or exercise force majeure provisions allowing for the temporary suspension of performance during specified events beyond the parties' control, such as the COVID- 19 pandemic, and we are unable to replace the contract, our revenues will be materially and adversely affected. Changes in the ~~met~~ **steelmaking** coal industry may cause some of our customers not to renew, extend or enter into new ~~met~~ **steelmaking** coal supply agreements or to enter into agreements to purchase fewer metric tons of ~~met~~ **steelmaking** coal or on different terms than in the past. Our ability to collect payments from our customers could be impaired and, as a result, our financial position could be materially and adversely affected if their creditworthiness deteriorates, if they declare bankruptcy, or if they fail to honor their contracts with us. Our ability to receive payment for ~~met~~ **steelmaking** coal sold and delivered depends on the continued creditworthiness and financial stability of our customers. A significant number of our customers are affected by the COVID- 19 pandemic, which may result in a deterioration of their financial stability and, in some cases, a bankruptcy. If we determine that a customer is not creditworthy or if a customer declares bankruptcy, we may not be required to deliver ~~met~~ **steelmaking** coal sold under the customer' s sales contract. If this occurs, we may decide to sell the customer' s ~~met~~ **steelmaking** coal on the spot market, which may be at prices lower than the contracted price, or we may be unable to sell the ~~met~~ **steelmaking** coal at all. In addition, if customers refuse to accept shipments of our ~~met~~ **steelmaking** coal for which they have an existing contractual obligation, our revenues will decrease and we may have to reduce production at our mines until our customers' contractual obligations are honored. Further, competition with other ~~met~~ **steelmaking** coal suppliers could cause us to extend credit to customers on terms that could increase the risk of payment default. Our inability to collect payment from counterparties to our sales contracts may materially adversely affect our business, financial condition, results of operations and cash flows. A significant reduction of, or loss of, purchases by our largest customers could materially adversely affect our profitability. For the year ended December 31, ~~2022~~ **2023** , we derived approximately ~~58~~ **56** . ~~6~~ **7** % of our total sales revenues from our five largest customers. There are inherent risks whenever a significant percentage of total revenues are concentrated with a limited number of customers, and it is not possible for us to predict the future level of demand for our ~~met~~ **steelmaking** coal that will be generated by our largest customers. We expect to renew, extend or enter into new supply agreements with these and other customers; however, we may be unsuccessful in obtaining such agreements with these customers and these customers may discontinue purchasing ~~met~~ **steelmaking** coal from us, reduce the quantity of ~~met~~ **steelmaking** coal that they have historically purchased from us or pressure us to reduce the prices that we charge for our ~~met~~ **steelmaking** coal due to market, economic or competitive conditions, including effects from the COVID- 19 pandemic. If any of our major customers were to significantly reduce the quantities of ~~met~~ **steelmaking** coal they purchase from us and we are unable to replace these customers with new customers (or we fail to obtain new, additional customers), or if we are otherwise unable to sell ~~met~~ **steelmaking** coal to those customers on terms as favorable to us as the terms under our current agreements, our profitability could suffer significantly. If we fail to implement our business strategies successfully, our financial performance could be harmed. Our future financial performance and success are dependent in large part upon our ability to successfully implement our business strategies. We may not be able to implement our business strategies successfully or achieve the anticipated benefits. If we are unable to do so, our long- term growth, profitability and ability to service any debt we incur in the future may be materially adversely affected. Even if we are able to implement some or all of the key elements of our business plan successfully, our operating results may not improve to the extent we anticipate, or at all. Implementation of our business strategies, including the development of Blue Creek, could also be affected by a number of factors beyond our control, such as global economic conditions (including effects of the COVID- 19 pandemic), ~~met~~ **steelmaking** coal prices, domestic and foreign steel demand, inflation and environmental, health and safety laws and regulations. A key element of our business strategy involves increasing production at our existing mines and developing Blue Creek recoverable reserves in a cost- efficient manner. As we expand our business activities, there will be additional demands on our financial, technical, operational and management resources. These aspects of our strategy are subject to numerous risks and uncertainties, including: • an inability to retain or hire experienced crews and other personnel and other labor relations matters; • a lack of customer demand for our mined ~~met~~ **steelmaking** coal; • an inability to secure necessary equipment, raw materials or engineering in a timely manner to successfully execute our expansion plans; • unanticipated delays that could limit or defer the production or expansion of our mining activities and jeopardize our long **-** term relationships with our existing customers and adversely affect our ability to obtain new customers for our mined ~~met~~ **steelmaking** coal; and • a lack of available cash or access to sufficient debt or equity financing for investment in our expansion. We may be unsuccessful or delayed in developing Blue Creek, which could significantly affect our operations and / or limit our long- term growth. The development of Blue Creek will require substantial capital expenditures that we may not recover. In addition, during our development of Blue Creek we will face numerous financial, regulatory, environmental, political and legal uncertainties that are beyond our control and that may cause unforeseen delays in, or unexpectedly increase the costs associated with, the completion of Blue Creek. Accordingly, we may not be able to complete the development of Blue Creek on schedule, at the budgeted cost or at all, and any such delays or increased costs could have a material adverse effect on our financial condition, results of operations or cash flows. We ~~incurred~~ **spent** approximately $ ~~47~~ **319** . 1 million ~~in spend~~ on the development of Blue Creek in ~~2022~~ **2023 , $ 366. 0 million on the project to date** and expect to invest approximately $ ~~225~~ **325** . 0 to $ ~~250~~ **375** . 0 million in ~~2023~~ **2024** . Our planned development of Blue Creek involves numerous risks, including, but not limited to, the following: • uncertainties in the national and worldwide economy and the price of ~~met~~ **steelmaking** coal; • our ability to obtain additional debt and / or equity financing to fund the development, permitting, construction and mining activities of Blue Creek on terms that are acceptable to us, or at all; • difficulties or delays in securing federally owned mineral leases within the mine plan; • the diversion of management' s attention from our existing mining operations; • our ability to obtain favorable tax or other incentives; • potential opposition from non- governmental organizations, local groups, or local residents; • the fact that our development, construction, ramp- up and operating costs may be higher than our estimates and further increase our planned capital expenditure and liquidity requirements; • shortages of construction materials and equipment or delays in the delivery of such materials and equipment; • unanticipated facility or equipment malfunctions or breakdowns; • delays from unexpected adverse geological and / or weather conditions, accidents, and other factors beyond our control, including the COVID- 19 pandemic; • failure to obtain, or delays in obtaining, all necessary governmental and third- party rights- of- way, easements, permits, licenses and approvals; • local infrastructure conditions and other logistical challenges; • the possibility that we may have insufficient expertise to engage in such development activity profitably or without incurring inappropriate amounts of risks; • the fact that the **steelmaking** coal reserves at Blue Creek may not be as economically recoverable as planned; • difficulties in integrating Blue Creek with our existing mining operations and failure to achieve any estimated economies of scale; and • our ability to hire qualified construction and other personnel. We cannot assure you that we will be able to overcome these risks or successfully develop Blue Creek. If we are unable to complete, or are substantially delayed in completing, the development of Blue Creek, our business, financial condition, results of operations, cash flows and ability to pay dividends to our stockholders could be adversely affected. Furthermore, even if Blue Creek is successfully developed, constructed, and placed into operation, we cannot assure you that it will operate at a profit sufficient to recover our total investment. In addition, if its development is successful, the operation of Blue Creek would exacerbate our existing mining and operation risks discussed elsewhere in this Report, including, but not limited to, risks related to increasing the concentration of our mining operations in Alabama, hazards and operating risks, transportation risks, liability risks and regulatory risks. See "- Risks Related to Our Business- All of our mining operations are located in Alabama, making us vulnerable to risks associated with having our production concentrated in one geographic area ", "- ~~Met~~ **Steelmaking** coal mining involves many hazards and operating risks, and is dependent upon many factors and conditions beyond our control, which may cause our profitability and financial position to decline ", "- If transportation for our ~~met~~ **steelmaking** coal is disrupted, unavailable or more expensive for our customers, our ability to sell ~~met~~ **steelmaking** coal could suffer ", "- Our business is subject to inherent risks, some for which we maintain third party insurance. We may incur losses and be subject to liability claims that could have a material adverse effect on our financial condition, results of operations or cash flows " and "- Our mines are subject to stringent federal and state safety regulations that increase our cost of doing business at active operations and may place restrictions on our methods of operation. In addition, federal, state or local regulatory agencies have the authority to order certain of our mines to be temporarily or permanently closed under certain circumstances, which could materially and adversely affect our ability to meet our customers' demands. " We may be unsuccessful in integrating the operations of any future acquisitions, including acquisitions involving new lines of business, with our existing operations, and in realizing all or any part of the anticipated benefits of any such acquisitions. From time to time, we may evaluate and acquire assets and businesses that we believe complement our existing assets and business. The assets and businesses we acquire may be dissimilar from our existing lines of business. Acquisitions may require substantial capital or the incurrence of substantial indebtedness. Our capitalization and results of operations may change significantly as a result of future acquisitions. Acquisitions and business expansions involve numerous risks, including the following: • difficulties in the integration of the assets and operations of the acquired businesses; • inefficiencies and difficulties that arise because of unfamiliarity with new assets and the businesses associated with them and new geographic areas; • the possibility that we have insufficient expertise to engage in such activities profitably or without incurring inappropriate amounts of risk; and • the diversion of management' s attention from other operations. Further, unexpected costs and challenges may arise whenever businesses with different operations or management are combined, and we may experience unanticipated delays in realizing the benefits of an acquisition. Entry into certain lines of business may subject us to new laws and regulations with which we are not familiar ~~,~~ and may lead to increased litigation and regulatory risk. Also, following an acquisition, we may discover previously unknown liabilities associated with the acquired business or assets for which we have no recourse under applicable indemnification provisions. If a new business generates insufficient revenue or if we are unable to efficiently manage our expanded operations, our results of operations may be adversely affected. If transportation for our ~~met~~ **steelmaking** coal is disrupted, unavailable or more expensive for our customers, our ability to sell ~~met~~ **steelmaking** coal could suffer. Transportation costs represent a significant portion of the total cost of ~~met~~ **steelmaking** coal to be delivered to our customers and, as a result, the cost of delivery is a factor in a customer' s purchasing decision. Overall price increases in our transportation costs could make our ~~met~~ **steelmaking** coal less competitive with the same or alternative products from competitors with lower transportation costs. We typically depend upon overland conveyor, trucks, rail or barges to transport our products. Disruption or delays of any of these transportation services due to weather- related problems, which are variable and unpredictable, strikes or lock- outs, accidents, infrastructure damage, governmental regulation, third- party actions, lack of capacity or other events beyond our control, such as the COVID- 19 pandemic, could impair our ability to supply our products to our customers and result in lost sales and reduced profitability. In addition, increases in transportation costs resulting from emission control requirements and fluctuations in the price of gasoline and diesel fuel, could make ~~met~~ **steelmaking** coal produced in one region of the United States less competitive than ~~met~~ **steelmaking** coal produced in other regions of the United States or abroad. All of our ~~met~~ **steelmaking** coal mines are served by only one rail carrier, which increases our vulnerability to these risks, although our access to barge transportation partially mitigates that risk. In addition, the majority of the ~~met~~ **steelmaking** coal produced by our underground mining operations is sold to ~~met~~ **steelmaking** coal customers who typically arrange and pay for transportation from the state- run docks at the Port of Mobile in Alabama to the point of use. As a result, disruption at the docks, port congestion and delayed ~~met~~ **steelmaking** coal shipments may result in demurrage fees to us. If this disruption were to persist over an extended period of time, demurrage costs could significantly impact our profits. In addition, there are limited cost **-** effective alternatives to the port. The cost of securing additional facilities and services of this nature could significantly increase transportation and other costs. An interruption of rail or port services could significantly limit our ability to operate and, to the extent that alternate sources of port and rail services are unavailable or not available on commercially reasonable terms, could increase transportation and port costs significantly. Further, delays of ocean vessels could affect our revenues, costs and relative competitiveness compared to the supply of ~~met~~ **steelmaking** coal and other products from our competitors. We are currently in the process of testing alternative outbound logistics routes in order to increase transportation and vessel shipping optionality **,** but we cannot provide any assurance that we will be able to reduce our transportation risks. **An increase in transportation costs, including increases resulting from emission control requirements and fluctuation in the price of diesel fuel, could have an adverse effect on our ability to increase or to maintain production on a profit- making basis and could therefore adversely affect our revenues and earnings. Increases in transportation costs could also reduce overall demand for coal or make our coal production less competitive than coal produced from other sources or other regions.** Our business may require substantial ongoing capital expenditures, and we may not have access to the capital required to reach full productive capacity at our mines. Maintaining and expanding mines and related infrastructure is capital intensive. Specifically, the exploration, permitting and development of ~~met~~ **steelmaking** coal reserves, mining costs, the maintenance of machinery, facilities and equipment and compliance with applicable laws and regulations require ongoing capital expenditures. While a significant amount of the capital expenditures required at our mines has been spent, we must continue to invest capital to maintain our production. In addition, any decisions to increase production at our existing mines or the development of the high- quality met coal recoverable reserves at Blue Creek could also affect our capital needs or cause future capital expenditures to be higher than in the past and / or higher than our estimates. We cannot assure you that we will be able to maintain our production levels or generate sufficient cash flow, or that we will have access to sufficient financing to continue our production, exploration, permitting and development activities at or above our present levels and on our current or projected timelines, and we may be required to defer all or a portion of our capital expenditures. Our results of operations, business and financial condition may be materially adversely affected if we cannot make such capital expenditures. To fund our capital expenditures, we will be required to use cash from our operations, incur debt or sell equity securities. Using cash from operations will reduce cash available for maintaining or increasing our operations activities. Our ability to obtain bank financing or our ability to access the capital markets for future equity or debt offerings, on the other hand, may be limited by our financial condition at the time of any such financing or offering and the covenants in our existing debt agreements, as well as by general economic conditions, contingencies and uncertainties that are beyond our control, such as the COVID- 19 pandemic. If cash flow generated by our operations or available borrowings under our bank financing arrangements are insufficient to meet our capital requirements and we are unable to access the capital markets on acceptable terms or at all, we could be forced to curtail the expansion of our existing mines and the development of our properties, which, in turn, could lead to a decline in our production and could materially and adversely affect our business, financial condition and results of operations.. Work stoppages, such as the strike initiated by the UMWA in April 2021, ~~labor shortages~~ and other labor relations matters may harm our business. Union-represented labor creates an increased risk of work stoppages and higher labor costs. If we fail to maintain satisfactory labor relations, disputes with the unionized portion of our workforce could affect us adversely. Union- represented labor creates an increased risk of work stoppages and higher labor costs. As of March 31, 2021, 66. 8 % of our employees were represented by the UMWA. In connection with the acquisition of certain assets of Walter Energy, we negotiated the **Collective Bargaining Agreement ("** CBA **")** with the UMWA, which was ratified by the UMWA' s members on February 16, 2016 and had a five-year term. The CBA contract with the UMWA expired on April 1, 2021, and the UMWA initiated a strike. ~~While~~ **On February 16, 2023, the labor union representing certain of** the Company **' s hourly employees announced that they were ending the strike and made an unconditional offer to return to work. The return- to- work process for eligible employees who wished to return to work which began in February** has **been completed. The Company continues** ~~business continuity plans in place, the strike may still cause disruption~~ to ~~production~~ **engage in good faith efforts with the labor union to reach** ~~and~~ - **an agreement on a new contract** ~~shipment activities and our operations and profitability could be adversely affected~~ . ~~In addition, future~~ **Future** work stoppages, labor union issues or labor disruptions at our mining operations, as well as at the operations of key customers or service providers, could impede our ability to produce and deliver our products, to receive critical equipment and supplies or to collect payment. This may increase our costs or impede our ability to operate one or more of our operations. We require a skilled workforce to run our business. If we cannot hire qualified people to meet replacement or expansion needs, we may not be able to achieve planned results. Efficient ~~met~~ **steelmaking** coal mining using modern techniques and equipment requires skilled laborers with mining experience and proficiency as well as qualified managers and supervisors. The demand for skilled employees sometimes causes a significant constriction of the labor supply resulting in higher labor costs. When ~~met~~ **steelmaking** coal producers compete for skilled miners, recruiting challenges can occur and employee turnover rates can increase, which negatively affect operating efficiency and costs. If a shortage of skilled workers exists and we are unable to train or retain the necessary number of miners, it could adversely affect our productivity, costs and ability to expand production. Significant competition, as well as changes in foreign markets or economies, could harm our sales, profitability and cash flows **. In addition, foreign currency fluctuations could adversely affect the competitiveness of our coal abroad** . We compete with other producers primarily on the basis of price, ~~met~~ **steelmaking** coal quality, transportation costs and reliability of delivery. The consolidation of the global ~~met~~ **steelmaking** coal industry over the last several years has contributed to increased competition among ~~met~~ **steelmaking** coal producers and we cannot assure you that the result of current or further consolidation will not adversely affect us. In addition, some of our global competitors have significantly greater financial resources and / or a broader portfolio of coals than we do, and in recent periods a number of our competitors idled production in light of lower ~~met~~ **steelmaking** coal prices in 2015 and the first half of 2016. The production that was idled by our competitors may restart, and in some instances has already restarted, and may affect domestic and foreign ~~met~~ **steelmaking** coal supply into the seaborne market and associated prices and impact our ability to retain or attract ~~met~~ **steelmaking** coal customers. Further, potential changes to international trade agreements, trade concessions, foreign currency fluctuations or other political and economic arrangements may benefit ~~met~~ **steelmaking** coal producers operating in countries other than the United States. We may be adversely impacted on the basis of price or other factors with companies that in the future may benefit from favorable foreign trade policies or other arrangements. In addition, increases in ~~met~~ **steelmaking** coal prices could encourage existing producers to expand capacity or could encourage new producers to enter the market. Overcapacity and increased production within the ~~met~~ **steelmaking** coal industry, both domestically and internationally, could materially reduce ~~met~~ **steelmaking** coal demand and prices and therefore materially reduce our revenues and profitability. In addition, our ability to ship our ~~met~~ **steelmaking** coal to international customers depends on port and transportation capacity. Increased competition within the domestic ~~met~~ **steelmaking** coal industry for international sales could result in us not being able to obtain throughput capacity at port facilities, as well as transport capacity, could cause the rates for such services to increase to a point where it is not economically feasible to export our ~~met~~ **steelmaking** coal. The general economic conditions in foreign markets and changes in currency exchange rates are factors outside of our control that may affect international ~~met~~ **steelmaking** coal prices. If our competitors' currencies decline against the U. S. dollar or against our customers' currencies, those competitors may be able to offer lower prices to our customers. Furthermore, if the currencies of our overseas customers were to significantly decline in value in comparison to the U. S. dollar, on which our sales contracts are based, those customers may seek decreased prices for the ~~met~~ **steelmaking** coal that we sell to them. These factors, in addition to adversely affecting the competitiveness of our ~~met~~ **steelmaking** coal in international markets, may also negatively impact our collection of trade receivables from our customers and could reduce our profitability or result in lower ~~met~~ **steelmaking** coal sales. Our sales in foreign jurisdictions are subject to risks and uncertainties that may have a negative impact on our profitability. Substantially all of our ~~met~~ **steelmaking** coal sales consist of sales to international customers and we expect that international sales will continue to account for a substantial portion of our revenue. A number of foreign countries in which we sell our ~~met~~ **steelmaking** coal implicate additional risks and uncertainties due to the different economic, cultural and political environments. Such risks and uncertainties include, but are not limited to: • longer sales- cycles and time to collection; • tariffs and international trade barriers and export license requirements, including any that might result from the current global trade uncertainties; • fewer or less certain legal protections for contract rights; • different and changing legal and regulatory requirements; • potential liability under the U. S. Foreign Corrupt Practices Act of 1977, as amended, or comparable foreign regulations; • government currency controls; • fluctuations in foreign currency exchange and interest rates; and • political and economic instability, changes, hostilities and other disruptions (including as a result of the COVID- 19 pandemic), as well as unexpected changes in diplomatic and trade relationships. Negative developments in any of these factors in the foreign markets into which we sell our ~~met~~ **steelmaking** coal could result in a reduction in demand for ~~met~~ **steelmaking** coal, the cancellation or delay of orders already placed, difficulty in collecting receivables, higher costs of doing business and / or non- compliance with legal and regulatory requirements, each or any of which could materially adversely impact our cash flows, results of operations and profitability. New tariffs and other trade measures could adversely affect our results of operations, financial position and cash flows. New and existing tariffs as well as other trade measures that may be implemented by the U. S. or retaliatory trade measures or tariffs implemented by other countries could result in reduced economic activity, increased costs in operating our business, reduced demand and / or changes in purchasing behaviors for ~~met~~ **steelmaking** coal, material changes in the pricing of ~~met~~ **steelmaking** coal, limits on trade with the United States or other potentially adverse economic outcomes. While we have historically been successful at managing the impacts of trade barriers on our business, we cannot predict future developments, and such existing or future tariffs could have a material adverse effect on our results of operations, financial position and cash flows. We may be subject to litigation, the disposition of which could negatively affect our profitability and cash flow in a particular period, or have a material adverse effect on our business, financial condition and results of operations. Our profitability or cash flow in a particular period could be affected by an adverse ruling in any litigation that may be filed against us in the future. In addition, such litigation could have a material adverse effect on our business, financial condition and results of operations. See " Part I, Item 3. Legal Proceedings. " Terrorist attacks and cyber- attacks or other security breaches may negatively affect our business, financial condition and results of operations and cash flows. Our business is affected by general economic conditions, fluctuations in consumer confidence and spending, and market liquidity, all of which can decline as a result of numerous factors outside of our control, such as terrorist attacks and acts of war. Future terrorist attacks against U. S. targets, rumors or threats of war, actual conflicts involving the United States or its allies, or military or trade disruptions affecting our customers could cause delays or losses in transportation and deliveries of ~~met~~ **steelmaking** coal to our customers, decreased sales of our ~~met~~ **steelmaking** coal and extension of time for payment of accounts receivable from our customers. Strategic targets such as energy- related assets may be at greater risk of future terrorist attacks than other targets in the United States. It is possible that any, or a combination, of these occurrences could have a material adverse effect on our business, financial condition and results of operations. In addition, we have become increasingly dependent upon digital technologies, including information systems, infrastructure and cloud applications and services, to operate our businesses, process and record financial and operating data, communicate with our employees and business partners, analyze seismic and drilling information, estimate quantities of ~~met~~ **steelmaking** coal reserves, as well as other activities related to our businesses. We own and operate some of these systems and applications while others are owned and operated by our third- party service providers. In the ordinary course of our business, we and our service providers collect, process, transmit and store data, such as proprietary business information and personally identifiable information. As our dependence on digital technologies has increased, **our IT systems and** ~~the~~ **those** ~~risk~~ of ~~cyber~~ **third parties are vulnerable to malicious and intentional cyberattacks involving malware and viruses, accidental or inadvertent** incidents, ~~including~~ **the exploitation of security vulnerabilities or " bugs " in software or hardware, among other scenarios.** ~~both~~ **Both** ~~deliberate attacks~~ **the frequency** and ~~unintentional events, also has~~ **magnitude of cyberattacks is expected to** ~~increased~~ - **increase and attackers are becoming more sophisticated** . A cyber- attack may involve persons gaining unauthorized access to our digital systems for purposes of gathering, monitoring, releasing, misappropriating or corrupting proprietary or confidential information, or causing operational disruption. ~~To that end, we have implemented security protocols and systems with the intent of maintaining the physical security of our operations and protecting our and our counterparties' confidential information and information related to identifiable individuals against unauthorized access. Despite such efforts, we may be subject to security breaches, which could result in unauthorized access to our facilities or the information that we are trying to protect.~~ Unauthorized physical access to one of our facilities or electronic access to our information systems could result in, among other things, unfavorable publicity, litigation by affected parties, damage to sources of competitive advantage, disruptions to our operations, loss of customers, financial obligations for damages related to the theft or misuse of such information and costs to remediate such security vulnerabilities, any of which could have a substantial impact on our results of operations, financial condition or cash flows. **As** ~~Our insurance may not protect us against such occurrences. While to date we have not experienced any material losses relating to cyber incidents, as~~ cyber incidents continue to evolve, we may be required to expend additional resources to continue to modify or enhance our protective measures or to investigate and remediate any vulnerability to cyber incidents **. Additionally, we may be unable to anticipate, detect or prevent future attacks, particularly as the methodologies utilized by attackers change frequently or are not recognized until launched, and we may be unable to investigate or remediate incidents because attackers are increasingly using techniques and tools designed to circumvent controls, to avoid detection, and to remove or obfuscate forensic evidence. The COVID- 19 pandemic has presented additional operational and cybersecurity risks due to continued work- from- home arrangements that have facilitated increased risk of social engineering events (for example phishing) and of the exploitation of vulnerabilities inherent in many non- corporate networks. To that end, we have implemented security protocols, controls, and systems with the intent of maintaining the physical and electronic security of our operations and protecting our and our counterparties' confidential information and information related to identifiable individuals against unauthorized access. Despite such efforts, we have been and may be subject to security breaches, which have resulted and could result in unauthorized access to our facilities or the information that we are trying to protect. For example, on July 29, 2023, the Company discovered a ransomware attack impacting its on- premises information technology systems, including the theft of certain Company data. Upon learning of the incident, the Company immediately retained external resources to investigate, isolate and contain the threat, and restore the Company' s affected information technology systems, and the Company was able to recover access to all material data. The Company did not incur during the third quarter of 2023, and does not expect to incur in the future, any material cyber- security- related expenses related to the incident. As of December 1, 2023, the Company has a cyber insurance**

policy. In the future, existing liquidity and cash flows may be insufficient to cover all losses that may be incurred in the continually evolving area of cyber risk. While the Company was able to manage this incident without any significant disruptions to our operations or any material financial impact, there can be no assurance that we will not be the target of a similar or more sophisticated attack in the future, which could materially adversely affect our business, results of operations, or financial condition . Our executive officers and other key personnel are important to our success and the loss of one or more of these individuals could harm our business. Our executive officers and other key personnel have significant experience in the ~~met~~ **steelmaking** coal or other commodity businesses and the loss of certain of these individuals could harm our business **, absent the completion of an orderly transition** . Moreover, there may be a limited number of persons with the requisite experience and skills to serve in our senior management positions. Although we have been successful in attracting qualified individuals for key management and corporate positions in the past, there can be no assurance that we will continue to be successful in attracting and retaining a sufficient number of qualified personnel in the future or that we will be able to do so on acceptable terms. The loss of key management personnel could harm our ability to successfully manage our business functions, prevent us from executing our business strategy and have a material adverse effect on our results of operations and cash flows. Our business may suffer as a result of a substantial or extended decline in ~~met~~ **steelmaking** coal pricing or the failure of any recovery or stabilization of ~~met~~ **steelmaking** coal prices to endure, as well as any substantial or extended decline in the demand for ~~met~~ **steelmaking** coal and other factors beyond our control, which could negatively affect our operating results and cash flows. Our profitability depends on the prices at which we sell our ~~met~~ **steelmaking** coal, which are largely dependent on prevailing market prices. A substantial or extended decrease in ~~met~~ **steelmaking** coal pricing or the failure of a price recovery or stabilization following such decrease will negatively affect our operating cash flows. We have experienced significant price fluctuations in our ~~met~~ **steelmaking** coal business, and we expect that such fluctuations will continue. Demand for, and therefore the price of, ~~met~~ **steelmaking** coal is driven by a variety of factors, including, but not limited to, the following: • the domestic and foreign supply and demand for ~~met~~ **steelmaking** coal; • the quantity and quality of ~~met~~ **steelmaking** coal available from competitors; • the demand for and price of steel; • adverse weather, climatic and other natural conditions, including natural disasters; • domestic and foreign economic conditions, including slowdowns in domestic and foreign economies and financial markets; • global and regional political events; • domestic and foreign legislative, regulatory and judicial developments, environmental regulatory changes and changes in energy policy and energy conservation measures that could adversely affect the ~~met~~ **steelmaking** coal industry; • capacity, reliability, availability and cost of transportation and port facilities, and the proximity of available ~~met~~ **steelmaking** coal to such transportation and port facilities; and • other factors beyond our control, such as terrorism, war, and pandemics, including the COVID- 19 pandemic. The ~~met~~ **steelmaking** coal industry also faces concerns with respect to oversupply from time to time, which could materially adversely affect our financial condition and results of operations. In addition, reductions in the demand for ~~met~~ **steelmaking** coal caused by reduced steel production by our customers, increases in the use of substitutes for steel (such as aluminum, composites or plastics) or less expensive substitutes for ~~met~~ **steelmaking** coal and the use of steelmaking technologies that use less or no ~~met~~ **steelmaking** coal can significantly adversely affect our financial results and impede growth. Our natural gas business is also subject to adverse changes in pricing due to, among other factors, changes in demand and competition from alternative energy sources. Our customers are continually evaluating alternative steel production technologies which may reduce demand for our product. Our product is primarily used as HCC for blast furnace steel producers. High- quality HCC commands a significant price premium over other forms of coal because of its value in use in blast furnaces for steel production. High- quality HCC is a scarce commodity and has specific physical and chemical properties which are necessary for efficient blast furnace operation. Alternative technologies are continually being investigated and developed with a view to reducing production costs or for other reasons, such as minimizing environmental or social impact. If competitive technologies emerge or are increasingly utilized that use other materials in place of our product or that diminish the required amount of our product, such as electric arc furnaces or pulverized coal injection processes, demand and price for our ~~met~~ **steelmaking** coal might fall. Many of these alternative technologies are designed to use lower quality coals or other sources of carbon instead of higher cost high- quality HCC. While conventional blast furnace technology has been the most economic large- scale steel production technology for a number of years, and while emergent technologies typically take many years to commercialize, there can be no assurance that over the longer term competitive technologies not reliant on HCC could emerge which could reduce demand and price premiums for HCC. Substantially all of our revenues are derived from the sale of ~~met~~ **steelmaking** coal. This lack of diversification of our business could adversely affect our financial condition, results of operations and cash flows. We rely on the ~~met~~ **steelmaking** coal production from our two active ~~met~~ **steelmaking** coal mines for substantially all of our revenues. For the year ended December 31, ~~2022~~ **2023** , revenues from the sale of ~~met~~ **steelmaking** coal accounted for approximately 98. ~~2~~ **3** % of our total revenues. As noted above, demand for ~~met~~ **steelmaking** coal depends on domestic and foreign steel demand. At times, the pricing and availability of steel can be volatile due to numerous factors beyond our control. The COVID- 19 pandemic has adversely affected the economies and financial markets of many countries, including those of our customers, which are primarily located in Europe, South America and Asia. Any economic downturn (including any downturn related to the COVID- 19 pandemic or another global pandemic) could adversely affect demand for our ~~met~~ **steelmaking** coal and contribute to volatile supply and demand conditions affecting prices and volumes. In addition, the ability of our suppliers' and customers' employees to work may be significantly impacted by individuals contracting or being exposed to COVID- 19, or as a result of control measures taken by us, other businesses and the government to curtail the spread of the virus, which may significantly affect the demand for ~~met~~ **steelmaking** coal. When steel prices are lower, the prices that we charge steelmaking customers for our ~~met~~ **steelmaking** coal may decline, which could adversely affect our financial condition, results of operations and cash flows. Since we are heavily dependent on the steelmaking industry, adverse economic conditions in this industry, even in the presence of otherwise favorable economic conditions in the broader coal industry, could have a significantly greater impact on our financial condition and results of operations than if our business were more diversified. In addition, our lack of diversification may make us more susceptible to such adverse economic conditions than our competitors with more diversified operations and / or asset portfolios, such as those that produce thermal coal in addition to ~~met~~ **steelmaking** coal. All of our mining operations are located in Alabama, making us vulnerable to risks associated with having our production concentrated in one geographic area. All of our mining operations are geographically concentrated in Alabama. As a result of this concentration, we may be disproportionately exposed to the impact of delays or interruptions in production caused by significant governmental regulation, transportation capacity constraints, constraints on the availability of required equipment, facilities, personnel or services, curtailment of production, extreme weather conditions, natural disasters, pandemics (such as the COVID- 19 pandemic) or interruption of transportation or other events that impact Alabama or its surrounding areas. If any of these factors were to impact Alabama more than other ~~met~~ **steelmaking** coal producing regions, our business, financial condition, results of operations and cash flows will be adversely affected relative to other mining companies with operations in unaffected regions or that have a more geographically diversified asset portfolio. ~~Met~~ **Steelmaking** coal mining involves many hazards and operating risks, **some of which may not be fully covered by insurance,** and is dependent upon many factors and conditions beyond our control ~~, which~~ **. The occurrence of a significant accident or other event that is not fully insured could curtail our operations and** may cause our profitability and financial position to decline. Our mining operations, including our preparation and transportation infrastructure, are subject to inherent hazards and operating risks that could disrupt operations, decrease production and increase the cost of mining for varying lengths of time. Specifically, underground mining and related processing activities present risks of injury to persons and damage to property and equipment. In addition, ~~met~~ **steelmaking** coal mining is dependent upon a number of conditions beyond our control that can disrupt operations and / or affect our costs and production schedules at particular mines. These risks, hazards and conditions include, but are not limited to: • variations in geological conditions, such as the thickness of the ~~met~~ **steelmaking** coal seam and amount of rock embedded in the ~~met~~ **steelmaking** coal deposit and variations in rock and other natural materials overlying the ~~met~~ **steelmaking** coal deposit, that could affect the stability of the roof and the side walls of the mine; • mining, process and equipment or mechanical failures, unexpected maintenance problems and delays in moving longwall equipment; • the unavailability of raw materials, equipment (including heavy mobile equipment) or other critical supplies such as tires, explosives, fuel, lubricants and other consumables of the type, quantity and / or size needed to meet production expectations; • adverse weather and natural disasters, such as heavy rains or snow, forest fires, flooding and other natural events, including seismic activities, ground failures, rock bursts or structural cave- ins or slides, affecting our operations or transportation to our customers; • railroad delays or derailments; • environmental hazards, such as subsidence and excess water ingress; • delays and difficulties in acquiring, maintaining or renewing necessary permits or mining rights; • availability of adequate skilled employees and other labor relations matters; • security breaches or terroristic acts; • unexpected mine accidents, including rock- falls and explosions caused by the ignition of met coal dust, natural gas or other explosive sources at our mine sites or fires caused by the spontaneous combustion of ~~met~~ **steelmaking** coal or similar mining accidents; • competition and / or conflicts with other natural resource extraction activities and production within our operating areas, such as natural gas extraction or oil and gas development; and • other hazards that could also result in personal injury and loss of life, pollution and suspension of operations. These risks and conditions could result in damage to or the destruction of our mineral properties, equipment or production facilities, personal injury or death, environmental damage, delays in mining, regulatory investigations, actions and penalties, repair and remediation costs, monetary losses and legal liability. In addition, a significant mine accident could potentially cause a suspension of operations or a complete mine shutdown. Our insurance coverage may not be available or sufficient to fully cover claims that may arise from these risks and conditions. We **may elect not to obtain insurance for any or all of these risks if we believe that the cost of available insurance is excessive relative to the risks presented. In addition, pollution or environmental risks generally are not fully insurable. Moreover, a significant mine accident could potentially cause a mine shutdown. The occurrence of an event that is not fully covered by insurance or that results in a mine shutdown could have a material adverse effect on our business, financial condition, results of operations and cash flows. We** have also seen adverse geological conditions in the mines, such as variations in ~~met~~ **steelmaking** coal seam thickness, variations in the competency and make- up of the roof strata, fault- related discontinuities in the ~~met~~ **steelmaking** coal seam and the potential for ingress of excessive amounts of natural gas or water. Such adverse conditions may increase our cost of sales and reduce our profitability and may cause us to decide to close a mine. Any of these risks or conditions could have a negative impact on our financial condition, results of operations and cash flows. In addition, if any of the foregoing changes, conditions or events occurs and is not excusable as a force majeure event, any resulting failure on our part to deliver ~~met~~ **steelmaking** coal to the purchaser under our contracts could result in economic penalties, suspension or cancellation of shipments or ultimately termination of the agreement, any of which could have a material adverse effect on our business, financial condition, results of operations and cash flows. Our business is subject to inherent risks, some for which we maintain third party insurance **. We may not have adequate insurance coverage for some business risks** . We may incur losses and be subject to liability claims that could have a material adverse effect on our financial condition, results of operations or cash flows. We maintain insurance policies that provide limited coverage for some, but not all, potential risks and liabilities associated with our business. The insurance that we maintain may contain certain deductible amounts and cover risks and liabilities typical for a coal mining business including, but not limited to, property, general liability and business interruption. Although we maintain insurance for a number of risks and hazards, we may not be insured or fully insured against the losses or liabilities that could arise from a significant accident in our coal operations. We may elect not to obtain insurance for any or all of these risks if we believe that the cost of available insurance is excessive relative to the risks presented. Moreover, a significant mine accident could potentially cause a mine shutdown. The occurrence of an event that is not fully covered by insurance **or that results in a mine shutdown** could have a material adverse effect on our business, financial condition, results of operations and cash flows **. The risk of increased insurance costs may be exasperated where an adverse event results in**

us asserting an insurance claim, the cost of which our insurers may seek to recoup during a future insurance renewal through increased premiums or limitations on coverage . As a result of market conditions, premiums and deductibles for certain insurance policies can increase substantially, and in some instances certain insurance may become unavailable or available only for reduced amounts of coverage. As a result, we may not be able to renew our existing insurance policies or procure other desirable insurance on commercially reasonable terms, if at all. In addition, certain environmental, contamination and pollution risks generally are not fully insurable. Even where insurance coverage applies, insurers may contest their obligations to make payments **. One of the tools used to manage this risk is an insurance captive, which allows us to control premiums, increase control over claims management, tailor coverage to our specific needs and improve risk control** . Our financial condition, results of operations and cash flows could be materially and adversely affected by losses and liabilities from uninsured or under- insured events, as well as by delays in the payment of insurance proceeds, or the failure by insurers to make payments. We also may incur costs and liabilities resulting from claims for damages to property or injury to persons arising from our operations. We must compensate employees for work- related injuries. If we do not make adequate provision for our workers' compensation and black lung liabilities, or we are pursued for applicable sanctions, costs and liabilities, our operations and profitability could be adversely affected. Certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under federal law and are insured beginning April 1, 2016 for claims made by or on behalf of any of our employees. As a result of our limited operating history as a stand- alone company, the DOL required us to provide insurance coverage rather than be self- insured for these obligations. The number and quality of viable financing alternatives available to us may be significantly impacted by unfavorable lending and investment policies by financial institutions associated with concerns about environmental impacts of carbon based fuels. Negative views with respect to environmental and social matters and related governance considerations could result in a low ESG or sustainability score and could harm the perception of our Company by certain investors and activists or result in the exclusion of our securities from consideration by those investors. In addition, there are fewer insurance companies willing to provide line of business coverages related to ESG concerns which can result in higher company premiums and retained losses. Global climate change continues to attract considerable public and scientific attention, with widespread concern about the impacts of human activity, especially the emission of GHGs, such as carbon dioxide and methane. Some of our operations, such as methane release resulting from ~~met~~ **steelmaking** coal mining, directly emit GHGs **. Increased attention to climate change, societal expectations on companies to address climate change and investor and societal expectations regarding voluntary ESG disclosures may result in negative views of us with respect to ESG issues that could result in a low ESG score or similar sustainability score, could harm the perception of our Company by certain investors, or could result in the exclusion of our securities from consideration by those investors** . Certain financial institutions, including banks and insurance companies, have taken actions to limit available financing, insurance and other services to entities that produce or use fossil fuels. Increasingly, the actions of such financial institutions and insurance companies are based upon non- standardized ESG or" sustainability" scores, ratings and benchmarking studies provided by various organizations that assess corporate governance related to environmental and social matters. Currently, there are no universal standards for such scores or ratings, but the importance of sustainability evaluations is becoming more broadly accepted by investors and stockholders. Further, there have been efforts in recent years by members of the general financial and investment communities, including investment advisors, sovereign wealth funds, public pension funds, universities, other institutional investors and activists, to divest themselves and to promote the divestment of securities issued by companies involved in carbon based fuels or that have low ratings or scores in studies and assessments of the type noted above, including coal producers. These entities also have been pressuring lenders to limit financing available to such companies. Companies in the energy industry, and in particular those focused on coal, natural gas or petroleum extraction and refining, often perform worse under ESG assessments compared to companies in other industries. These may have adverse consequences including, but not limited to: • restricting our ability to access capital and financial markets in the future; • excluding our securities from the portfolios of certain investment funds and investors; • reducing the demand and price for our equity securities; • increasing the cost of borrowing; • causing a decline in our credit ratings; • reducing the availability, and / or increasing the cost of, third- party insurance; • increasing our retention of risk through self- insurance; • making it more difficult to obtain surety bonds, letters of credit, bank guarantees or other financing; and • limiting our flexibility in business development activities such as the development of Blue Creek, mergers, acquisitions or divestitures. **ESG expectations, including both the matters in focus and the management of such matters, continue to evolve rapidly. For example, in addition to climate change, there is increasing attention on topics such as diversity and inclusion, human rights, and human and natural capital, in companies' own operations as well as their supply chains. In addition, perspectives on ESG considerations continue to evolve, and we cannot currently predict how regulators', investors' and other stakeholders' views on ESG matters may affect the regulatory and investment landscape and affect our business, financial condition, and results of operations. If we do not, or are perceived to not, adapt or comply with investor or stakeholder expectations and standards on ESG matters, we may suffer from reputational damage and our business, financial condition and results of operations could be materially and adversely affected. Any reputational damage associated with ESG factors may also adversely impact our ability to recruit and retain employees and customers.** Moreover, while we may publish voluntary disclosures regarding ESG matters from time to time, many of the statements in those voluntary disclosures are based on hypothetical expectations and assumptions that may or may not be representative of current or actual risks or events, or forecasts of expected risks or events, including the costs associated therewith. Such expectations and assumptions are necessarily uncertain and may be prone to error or subject to misinterpretation given the long timelines involved in measuring and reporting on many ESG matters. **In March 2022, the SEC proposed new rules relating to the disclosure of a range of climate- related risks and other information. To the extent this rule is finalized as proposed, we and / or our customers could incur increased costs related to the assessment and disclosure of climate- related information. Enhanced climate disclosure requirements could also**

accelerate any trend by certain stakeholders and capital providers to restrict or seek more stringent conditions with respect to their financing of certain carbon intensive sectors. Any future laws, regulations or other policies related to greenhouse gas emissions may adversely impact our business in material ways. The degree to which any particular law, regulation or policy impacts us will depend on several factors, including the substantive terms involved, the relevant time periods for enactment and any related transition periods. Defects in title of any real property or leasehold interests in our properties or associated ~~met~~ **steelmaking** coal reserves could limit our ability to mine or develop these properties or result in significant unanticipated costs. All of our mining operations are conducted on properties owned or leased by us. Our right to mine our ~~met~~ **steelmaking** coal reserves may be materially adversely affected by defects in title or boundaries or if our property interests are subject to superior property rights of third parties. We do not have title insurance for any of our real property or leasehold interests and, title to most of our owned or leased properties and mineral rights is not usually verified until we make a commitment to mine a property, which may not occur until after we have obtained necessary permits and completed exploration of the property. Any challenge to our title or leasehold interests could delay the mining of the property, result in the loss of some or all of our interest in the property or ~~met~~ **steelmaking** coal reserves and increase our costs. In order to conduct our mining operations on properties where these defects exist, we may incur unanticipated costs perfecting title. In addition, if we mine or conduct our operations on property that we do not own or lease, we could incur civil damages or liabilities for such mining operations and be subject to conversion, negligence, trespass, regulatory sanction and penalties. Some leases have minimum production requirements or require us to commence mining operations in a specified term to retain the lease. Failure to meet those requirements could result in losses of prepaid royalties and, in some rare cases, could result in a loss of the lease itself. We face uncertainties in estimating our proven and probable ~~met~~ **steelmaking** coal reserves, and inaccuracies in our estimates of our ~~met~~ **steelmaking** coal reserves could result in decreased profitability from lower than expected revenues or higher than expected costs. Our future performance depends on, among other things, the accuracy of our estimates of our proven and probable ~~met~~ **steelmaking** coal reserves. Reserve estimates are based on a number of sources of information, including engineering, geological, mining and property control maps and data, our operational experience of historical production from similar areas with similar conditions and assumptions governing future pricing and operational costs. We update our estimates of the quantity and quality of proven and probable ~~met~~ **steelmaking** coal reserves at least annually to reflect the production of ~~met~~ **steelmaking** coal from the reserves, updated geological models and mining recovery data, the tonnage contained in new lease areas acquired and estimated costs of production and sales prices. There are numerous factors and assumptions inherent in estimating ~~met~~ **steelmaking** coal quantities, qualities and costs to mine, including many factors beyond our control, such as the following: • geological and mining conditions, including faults in the ~~met~~ **steelmaking** coal seam; • historical production from the area compared with production from other producing areas; • the percentage of ~~met~~ **steelmaking** coal ultimately recoverable; • the assumed effects of regulations and taxes and other payments to governmental agencies; • our ability to obtain, maintain and renew all required permits; • future improvements in mining technology; • assumptions concerning the timing of the development of the reserves; and • assumptions concerning equipment and operational productivity, future ~~met~~ **steelmaking** coal prices, operating costs, including those for critical supplies such as fuel, tires and explosives, capital expenditures and development and reclamation costs. Each of these factors may vary considerably from the assumptions used in estimating the reserves. As a result, estimates of the quantities and qualities of economically recoverable ~~met~~ **steelmaking** coal attributable to any particular group of properties, classifications of reserves based on risk of recovery, estimated cost of production, and estimates of future net cash flows expected from these properties as prepared by different engineers or by the same engineers at different times may vary materially due to changes in the above factors and assumptions. Actual production recovered from identified reserve areas and properties, and revenues and expenditures associated with our mining operations may vary materially from estimates. Any inaccuracy in our estimates related to our reserves could result in decreased profitability from lower- than- expected revenues and / or higher than expected costs. Our inability to develop ~~met~~ **steelmaking** coal reserves in an economically feasible manner or our inability to acquire additional ~~met~~ **steelmaking** coal reserves that are economically recoverable may adversely affect our business. Our long- term profitability depends in part on our ability to cost- effectively mine and process ~~met~~ **steelmaking** coal reserves that possess the quality characteristics desired by our customers. As we mine, our ~~met~~ **steelmaking** coal reserves decline. As a result, our future success depends upon our ability to develop or acquire additional ~~met~~ **steelmaking** coal reserves that are economically recoverable to replace the reserves that we produce. Coal is economically recoverable when the price at which our ~~met~~ **steelmaking** coal can be sold exceeds the costs and expenses of mining and selling such ~~met~~ **steelmaking** coal. We may not be able to obtain adequate economically recoverable replacement reserves when we require them and, even if available, such reserves may not be at favorable prices or we may not be capable of mining those reserves at costs that are comparable to our existing ~~met~~ **steelmaking** coal reserves. Our ability to develop or acquire ~~met~~ **steelmaking** coal reserves in the future may also be limited by the availability of cash from our operations or financing under our existing or future financing arrangements, as well as certain restrictions under such arrangements. If we are unable to develop or acquire replacement reserves, our future production may decrease significantly as existing reserves are depleted and this may have a material adverse impact on our cash flows, financial position and results of operations. Any significant downtime of our major pieces of mining equipment could impair our ability to supply ~~met~~ **steelmaking** coal to our customers and materially and adversely affect our results of operations and cash flows. We depend on several major pieces of mining equipment to produce and transport our ~~met~~ **steelmaking** coal, including, but not limited to, longwall mining systems, continuous mining units, our preparation plant and blending facilities, and conveyors. Obtaining or repairing these major pieces of mining equipment often involves long lead times. If any of these pieces of equipment or facilities suffer major damage or are destroyed by fire, abnormal wear, flooding, incorrect operation or otherwise, we may be unable to replace or repair them in a timely manner or at a reasonable cost, which would impact our ability to produce and transport ~~met~~ **steelmaking** coal and materially and adversely affect our business, results of operations, financial condition and cash flows. Moreover, MSHA and other regulatory agencies sometimes make changes with regards to requirements for pieces of equipment. For example, in 2015, MSHA promulgated a new regulation requiring the implementation of proximity detection devices on all continuous mining machines. Such changes could cause delays if manufacturers and suppliers are unable to make the required changes in compliance with mandated deadlines. If either our preparation plant or river barge load- out facilities, or those of a third party processing or loading our ~~met~~ **steelmaking** coal, suffer extended downtime, including major damage, or are destroyed, our ability to process and deliver ~~met~~ **steelmaking** coal to prospective customers would be materially impacted, which would materially adversely affect our business, results of operations, financial condition and cash flows. We may not recover our investments in our mining, exploration and other assets, which may require us to recognize impairment charges related to those assets. The value of our assets may be adversely affected by numerous uncertain factors, some of which are beyond our control, including unfavorable changes in the economic environments in which we operate, lower- than- expected coal pricing, technical and geological operating difficulties, an inability to economically extract our coal reserves and unanticipated increases in operating costs. These may cause us to fail to recover all or a portion of our investments in those assets and may trigger the recognition of impairment charges in the future, which could have a substantial impact on our results of operations. Because of the volatile and cyclical nature of the U. S. and international coal markets, it is reasonably possible that our current estimates of projected future cash flows from our mining assets may change in the near term, which may result in the need for adjustments to the carrying value of our assets. We are responsible for medical and disability benefits for black lung disease under federal law. We assumed certain historical self- insured black lung liabilities of Walter Energy and its subsidiaries incurred prior to April 1, 2016 in connection with the acquisition of certain assets of Walter Energy. We are self- insured for these black lung liabilities and have posted certain collateral with the Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future. We are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Act, each as amended, and are self- insured for black lung related claims asserted by or on behalf of former employees of Walter Energy and its subsidiaries as assumed in the acquisition of certain assets of Walter Energy for the period prior to April 1, 2016. We perform an annual actuarial evaluation of the overall black lung liabilities as of each December 31st. The calculation is performed using assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others. If the number of or severity of successful claims increases, or we are required to accrue or pay additional amounts because the successful claims prove to be more severe than our original assessment, our operating results and cash flows could be negatively impacted. Our self- insurance program for these legacy liabilities is unique to the industry and was specifically negotiated with the DOL. As of December 31, ~~2022~~ **2023** , we have posted $ 18. 6 million in surety bonds and $ ~~8~~ **9** . ~~6~~ **0** million of collateral recognized as short term investments in addition to maintaining a black lung trust of $ ~~2.~~ 1 **. 8** million that was acquired in the acquisition of certain assets of Walter Energy. We received a letter from the DOL on February 21, 2020 under its new process for self- insurance renewals that would require us to increase the amount of collateral posted to $ 39. 8 million, but we ~~have~~ appealed such increase. We received another letter from the DOL on December 8, 2021 requesting additional information to support our appeal of the collateral requested by the DOL. On February 9, 2022, the DOL held a conference **call** with representatives from the Company related to our appeal. On July 12, 2022, we received a decision on our appeal from the DOL lowering the amount of collateral required to be posted from $ 39. 8 million to $ 28 million. We appealed this decision. In addition, on January 19, 2023, the DOL proposed revisions to regulations under the Black Lung Benefits Act governing authorization of self- insurers. The proposed rules ~~requires~~ - **require** , among other requirements, all self- insured operators to post security of at least 120 percent of their projected black lung liabilities. For additional information see " Part I, Item 1. Business- Environmental and Regulatory Matters- Workers' Compensation and Black Lung. " Our estimated total black lung liabilities as of December 31, ~~2022~~ **2023** were $ ~~30~~ **28** . ~~3~~ **8** million (net of the black lung trust). In future years, the DOL could require us to increase the amount of the collateral which could negatively impact our cash flows. Our failure to obtain and renew permits necessary for our mining operations could negatively affect our business. Mining companies must obtain numerous permits that impose strict regulations on various environmental and operational matters in connection with ~~met~~ **steelmaking** coal mining. These include permits issued by various federal, state and local agencies and regulatory bodies. The permitting rules, and the interpretations of these rules, are complex, change frequently and are often subject to discretionary interpretations by the regulators, all of which may make compliance more difficult or impractical, and may possibly preclude the continuance of ongoing operations or the development of future mining operations. The public, including non- governmental organizations, anti- mining groups and individuals, have certain statutory rights to comment upon and submit objections to requested permits and environmental impact statements prepared in connection with applicable regulatory processes, and otherwise engage in the permitting process, including bringing citizens' lawsuits to challenge the issuance of permits, the validity of environmental impact statements or performance of mining activities ~~. In addition, due to the COVID- 19 pandemic, there may be delays in obtaining permits from governmental agencies and regulatory bodies~~ . Accordingly, required permits may not be issued or renewed in a timely fashion or at all, or permits issued or renewed may be conditioned in a manner that may restrict our ability to efficiently and economically conduct our mining activities, any of which would materially reduce our production, cash flow and profitability. Extensive environmental, health and safety laws and regulations impose significant costs on our operations and future regulations could increase those costs, limit our ability to produce or adversely affect the demand for our products. Our businesses are subject to numerous federal, state and local laws and regulations with respect to matters such as: • permitting and licensing requirements; • employee health and safety, including occupational and mine health and safety; • workers' compensation; • black lung disease; • reclamation and restoration of property; and • environmental laws and regulations, including those related to GHGs and climate change, air quality, water quality, stream and surface water quality and protection, management of materials generated by mining operations, the storage, treatment and disposal of wastes, protection of plant and wildlife such as endangered species, protection of wetlands and remediation of contaminated soil and groundwater. In addition, the coal industry in the U. S. is affected by significant legislation mandating certain benefits for current and retired coal miners. Compliance with these requirements imposes significant costs on us and can result in reduced productivity. Moreover, the possibility exists that new health and safety legislation and / or regulations may be adopted and / or orders may be entered that may materially and adversely affect our mining operations. We must compensate employees for work- related injuries. If we do not make adequate provisions for our workers' compensation liabilities, it could harm our future operating results. In addition, the erosion through tort liability of the protections we are currently provided by workers' compensation laws could increase our liability for work-related injuries and materially and adversely affect our operating results. Compliance with applicable federal, state and local laws and regulations may be costly and time- consuming and may delay commencement or interrupt continuation of exploration or production at one or more of our operations. These laws are constantly evolving and may become increasingly stringent. The ultimate impact of complying with existing laws and regulations is not always clearly known or determinable due in part to the fact that certain implementing regulations for these laws have not yet been promulgated and in certain instances are undergoing revision. These laws and regulations, particularly new legislative or administrative proposals (or judicial interpretations of existing laws and regulations), **along with analogous foreign laws and regulations,** could result in substantially increased capital, operating and compliance costs and could have a material adverse effect on our operations and / or ~~, along with analogous foreign laws and regulations,~~ our customers' ability to use our products. Due in part to the extensive and comprehensive regulatory requirements, along with changing interpretations of these requirements, violations of applicable federal, state and local laws and regulations occur from time to time in our industry and at our operations. Changes in the law may require an unprecedented compliance effort on our part, could divert management' s attention, and may require significant expenditures. To the extent that these expenditures, as with all costs, are not ultimately reflected in the prices of our products and services, operating results will be detrimentally impacted. We believe that our major North American competitors are confronted by substantially similar conditions and thus do not believe that our relative position with regard to such competitors is materially affected by the impact of safety and environmental laws and regulations. However, the costs and operating restrictions necessary for compliance with safety and environmental laws and regulations, which is a major cost consideration for our operations, may have an adverse effect on our competitive position with regard to foreign producers and operators who may not be required to undertake equivalent costs in their operations. In addition, the specific impact on each competitor may vary depending on a number of factors, including the age and location of its operating facilities, applicable state legislation and its production methods. **Additionally, MSHA and state regulators may also order the temporary or permanent closing of a mine in the event of certain violations of safety rules, accidents or imminent dangers. In addition, regulators may order changes to mine plans or operations due to their interpretation or application of existing or new laws or regulations. Any required changes to mine plans or operations may result in temporary idling of production or addition of costs.** The Mine Act and the MINER Act impose stringent health and safety standards on mining operations. Regulations that have been adopted under the Mine Act and the MINER Act are comprehensive and affect numerous aspects of mining operations, including training of mining personnel, mining procedure, the equipment used in emergency procedures, and other matters. Alabama has a similar program for mine safety and health regulation and enforcement. The various requirements mandated by law or regulation can place restrictions on our methods of operations, and potentially lead to fees and civil penalties for the violation of such requirements, creating a significant effect on operating costs and productivity. In addition, federal, state or local regulatory agencies have the authority under certain circumstances following significant health and safety incidents, such as fatalities, to order a mine to be temporarily or permanently closed. If this occurred, we may be required to incur capital expenditures to re-open the mine. In the event that these agencies order the closing of our mines, our ~~met~~ **steelmaking** coal sales contracts generally permit us to issue force majeure notices, which suspend our obligations to deliver ~~met~~ **steelmaking** coal under these contracts; however, our customers may challenge our issuances of force majeure notices. If these challenges are successful, we may have to purchase ~~met~~ **steelmaking** coal from third- party sources, if available, to fulfill these obligations or incur capital expenditures to re- open the mines and / or negotiate settlements with the customers, which may include price reductions, the reduction of commitments, and the extension of time for delivery or the termination of customers' contracts. Any of these actions could have a material adverse effect on our business and results of operations. Increased focus by regulatory authorities on the effects of coal mining on the environment and recent regulatory developments related to coal mining operations, including the federal leasing program, could increase our costs to receive new permits to mine ~~met~~ **steelmaking** coal, make it more difficult to comply with our existing permits to mine coal or to obtain federal land and mineral leases, or otherwise adversely affect us. Regulatory agencies are increasingly focused on the effects of coal mining on the environment, particularly relating to water quality, which has resulted in more rigorous permitting requirements and enforcement efforts. See " Part I, Item 1. Business- Environmental and Regulatory Matters " for a detailed discussion of these regulations and programs. The SMCRA requires that comprehensive environmental protection and reclamation standards be met during the course of and following completion of mining activities. Among other requirements, the SMCRA provides that the applicable regulatory authority may not issue a permit unless the operation has been designed to prevent material damage to the hydrologic balance outside the permit area. In 1983, the OSM issued rules providing that no land within 100 feet of a stream shall be disturbed by surface mining activities, unless specifically authorized by the regulatory authority. On December 20, 2016, the OSM published a new, finalized " Stream Protection Rule, " setting standards for " material damage to the hydrologic balance outside the permit area " that are applicable to surface and underground mining operations. However, on February 16, 2017, former President Trump signed a joint congressional resolution disapproving the Stream Protection Rule pursuant to the Congressional Review Act. Accordingly, the regulations in effect prior to the Stream Protection Rule now apply, including OSM' s 1983 rule. It remains unclear whether and how additional actions by the Biden Administration could further impact regulatory or enforcement activities pursuant to the SMCRA. Section 404 of the Clean Water Act (" CWA ") requires mining companies to obtain USACE permits to place material in streams for the purpose of creating slurry ponds, water impoundments, refuse areas, valley fills or other mining activities. As is the case with other ~~met~~ **steelmaking** coal mining companies, our construction and mining activities require Section 404 permits. The issuance of permits to construct valley fills and refuse impoundments under Section 404 of the CWA has been the subject of many court cases and increased regulatory oversight, resulting in additional permitting requirements that are expected to delay or even prevent the opening of new mines. For example, in recent years, regulators have adopted more stringent water quality standards for materials such as selenium. We have begun to incorporate these new requirements into our current permit applications; however, there can be no guarantee that we will be able to meet these or any other new standards with respect to our permit applications. Additionally, in January 2011, the EPA rescinded a federal CWA permit held by another coal mining company for a surface mine in Appalachia citing associated environmental damage and degradation. On April 23, 2013, the D. C. Circuit ruled that the EPA has the power under the CWA to retroactively veto a Section 404 dredge and fill permit " whenever " it makes a determination about certain adverse effects, even years after the USACE has granted the permit to an applicant. On March 24, 2014, the U. S. Supreme Court denied petitions for review. Subsequently, on July 19, 2016, the D. C. Circuit affirmed the district court' s further ruling that the EPA' s decision to withdraw approval for disposal sites satisfied administrative requirements. The D. C. Circuit held that the EPA' s ex post withdrawal was a product of its broad veto authority under the CWA, not a procedural defect. While our operations are not directly impacted by this ruling, it could be an indication that other surface mining water permits could be subject to more substantial review in the future. Recent regulatory actions and court decisions ~~have~~ created some uncertainty over the scope of CWA jurisdiction. On June 29, 2015, in response to Supreme Court decisions discussing the scope of CWA jurisdiction, the EPA and the USACE jointly promulgated final rules expanding the scope of waters protected under the CWA, revising regulations that had been in place for more than 25 years. However, on October 22, 2019, the agencies published a final rule to repeal the 2015 rules and then on April 21, 2020, the EPA and the USACE published a replacement rule that would have significantly reduced the scope of waters subject to federal regulation under the CWA. On August 30, 2021, a federal court struck down the replacement rule and, on ~~December 30~~ **January 18** , ~~2022~~ **2023** , the EPA and the USACE published a final rule that would restore water protections that were in place prior to 2015. ~~Meanwhile~~ **However** , ~~in October~~ **on May 25,** ~~2022~~ **2023** , the Supreme Court **issued an opinion substantially narrowing** ~~heard oral argument in a case addressing~~ the **scope of** ~~proper test for determining whether wetlands are~~ " waters of the United States ~~.~~ " ~~This case could~~ **protected under the CWA. On September 8, 2023, the EPA and the USACE published a final rule conforming their regulations to the decision. These recent actions** ~~provide~~ **provided** much needed ~~clarification~~ **clarity** , as confusion over the scope of CWA jurisdiction ~~has~~ **had** led to significant permitting delays, litigation, and uncertainty in the mining industry. It is unknown what future changes will be implemented to the permitting review and issuance process or to other aspects of mining operations, but increased regulatory focus, future laws and judicial decisions could materially and adversely affect all coal mining companies. In addition, the public, including non- governmental organizations, anti- mining groups and individuals, have certain statutory rights to comment upon and submit objections to requested permits and environmental impact statements prepared in connection with applicable regulatory processes, and otherwise engage in the permitting process, including bringing citizens' lawsuits to challenge the issuance of permits, the validity of environmental impact statements or performance of mining activities. In each jurisdiction in which we operate, we could incur additional permitting and operating costs, may be unable to obtain new permits or maintain existing permits and could incur fines, penalties and other costs, any of which could materially adversely affect our business. If ~~met~~ **steelmaking** coal mining methods are limited or prohibited, it could significantly increase our operational costs and make it more difficult to economically recover a significant portion of our reserves. In the event that we cannot increase the price we charge for ~~met~~ **steelmaking** coal to cover the higher production costs without reducing customer demand for our ~~met~~ **steelmaking** coal, there could be a material adverse effect on our financial condition and results of operations. In addition, increased public focus on the environmental, health and aesthetic impacts of coal mining could harm our reputation and reduce demand for ~~met~~ **steelmaking** coal. Regulation of air emissions, including GHG emissions, could increase our operating costs and impact the demand for, price of and value of our products. The ~~federal~~ Clean Air Act and comparable state laws that regulate air emissions affect coal mining operations both directly and indirectly. Direct impacts on coal mining may occur through permitting requirements and / or emission control requirements relating to particulate matter, such as fugitive dust, or fine particulate matter measuring 2. 5 micrometers in diameter or smaller. The Clean Air Act indirectly affects our mining operations by extensively regulating the air emissions of sulfur dioxide, nitrogen oxides, mercury, ozone and other compounds emitted by steel manufacturers, coke ovens and coal- fired utilities. Increased regulation of air emissions could increase our operating costs and impact the demand for, price of and value of our products. Additionally, climate change continues to attract public and scientific attention, and increasing attention by government as well as private businesses is being paid to reducing GHG emissions. There are three primary sources of GHGs associated with the ~~met~~ **steelmaking** coal industry. First, the end use of our ~~met~~ **steelmaking** coal by our customers in steelmaking is a source of GHGs. Second, combustion of fuel by equipment used in ~~met~~ **steelmaking** coal production and to transport our ~~met~~ **steelmaking** coal to our customers is a source of GHGs. Third, ~~met~~ **steelmaking** coal mining itself can release methane, which is considered to be a more potent GHG than ~~CO_2~~ **carbon dioxide** , directly into the atmosphere. These emissions from ~~met~~ **steelmaking** coal consumption, transportation and production are subject to pending and proposed regulation as part of initiatives to address global climate. There are many legal and regulatory approaches currently in effect or being considered to address GHGs, including international treaty commitments and new foreign, federal and state legislation and regulations, that may impose carbon emissions taxes or fees, incentivize emission reductions, or establish a " cap and trade " program. In particular, in August 2022, President Biden signed the IRA into law. The IRA contains billions of dollars in incentives for the development of renewable energy, clean hydrogen, clean fuels, electric vehicles, investments in advanced biofuels and supporting infrastructure and carbon capture and sequestration, amongst other provisions. These incentives could accelerate the transition of the economy away from the use of fossil fuels towards lower- or zero- carbon emissions alternatives. Also, at the international level, in December 2015, the United States participated in the 21st Conference of the Parties of the United Nations Framework Convention on Climate Change (" Conference of Parties ") in Paris, France. The resulting Paris Agreement calls for the parties to undertake " ambitious efforts " to limit the average global temperature, and to conserve and enhance sinks and reservoirs of GHG. The Paris Agreement went into effect on November 4, 2016. The Paris Agreement establishes a framework for the parties to cooperate and report actions to reduce GHG emissions. Although the United States withdrew from the Paris Agreement effective November 4, 2020, President Biden issued an Executive Order on January 20, 2021 to rejoin the Paris Agreement, which went into effect on February 19, 2021. On April 21, 2021, the United States announced that it was setting an economy- wide target of reducing its GHG emissions by 50- 52 percent below 2005 levels in 2030. In November 2021, in connection with the 26th session of the Conference of Parties in Glasgow, Scotland, the United States and other world leaders made further commitments to reduce GHGs, including reducing global methane emissions by at least 30 % by 2030 and ending the international public finance of new unabated coal power generation abroad by the end of 2021. The resulting Glasgow Climate Pact calls upon the parties to " accelerate efforts towards the phase- down of unabated coal power and phase- out inefficient fossil fuel subsidies. " The existing laws and regulations or other current and future efforts to stabilize or reduce GHG emissions could adversely impact the demand for, price of and value of our products and reserves. As our operations also emit GHGs directly, current or future laws or regulations limiting GHG emissions could increase our own costs. For example, methane must be expelled from our underground ~~met~~ **steelmaking** coal mines for mining safety reasons. Although our natural gas operations capture methane from our underground ~~met~~ **steelmaking** coal mines, some methane is vented into the atmosphere when the ~~met~~ **steelmaking** coal is mined. In June 2010, Earthjustice petitioned the EPA to make a finding that emissions from coal mines may reasonably be anticipated to endanger public health and welfare, and to list them as a stationary source subject to further regulation of emissions. On April 30, 2013, the EPA denied the petition. Judicial challenges seeking to force the EPA to list coal mines as stationary sources have likewise been unsuccessful to date. If the EPA were to make an endangerment finding in the future, we may have to further reduce our methane emissions, install additional air pollution controls, pay certain taxes or fees for our emissions, incur costs to purchase credits that permit us to continue operations as they now exist at our underground ~~met~~ **steelmaking** coal mines or perhaps curtail ~~met~~ **steelmaking** coal production. Although the potential impacts on us of additional climate change regulation are difficult to reliably quantify, they could be material. In addition, there have also been efforts in recent years to influence the investment community, including investment advisors and certain sovereign wealth, pension and endowment funds promoting divestment of fossil fuel equities and pressuring lenders to limit funding to companies engaged in the extraction of fossil fuel reserves. Such environmental activism and initiatives aimed at limiting climate change and reducing air pollution could interfere with our business activities, operations and ability to access capital. Increasing attention to climate change risk has also resulted in a recent trend of governmental investigations and private litigation by local and state government agencies as well as private plaintiffs in an effort to hold companies accountable for the effects of climate change. Claims have been made against certain companies alleging that GHG emissions constitute a public nuisance under federal and / or state common law. Private individuals or public entities may seek to enforce environmental laws and regulations against us and could allege personal injury, property damages or other liabilities. While we are not a party to any such litigation, we could be named in actions making similar allegations. An unfavorable ruling in any such case could significantly impact our operations and could have an adverse impact on our financial condition. Further, climate change may cause more extreme weather conditions such as more intense hurricanes, thunderstorms, tornadoes and snow or ice storms, as well as rising sea levels and increased volatility in seasonal temperatures. Extreme weather conditions can interfere with our services and increase our costs, and damage resulting from extreme weather may not be fully insured. However, at this time, we are unable to determine the extent to which climate change may lead to increased storm or weather hazards affecting our operations. President Biden' s regulatory agenda, and a closely divided Congress, creates some regulatory uncertainty for the coal mining industry. Changes in mining or environmental laws could increase costs and harm our business, financial condition and results of operations. President Biden' s regulatory agenda, as well as a closely divided Congress, creates some regulatory uncertainty in the coal mining industry. President Biden has indicated that he is supportive of various programs and initiatives designed to, among other things, curtail climate change, clean up abandoned mines, and " green " the mining industry. In fact, during his first week in office, President Biden issued several executive orders to, among other things, make climate considerations an essential element of U. S. policy. Also, in August 2022, he signed into law the IRA, which provides billions of dollars in incentives for the development of renewable energy. However, he has also called for heavy investment in infrastructure projects, many of which require the use of steel. Indeed, on November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act, which invests billions of dollars in new funding to repair roads and bridges, expand and modernize rail service, and support other infrastructure projects. It remains unclear what other actions President Biden will take to implement his policy initiatives, and what support he will have for any potential legislature from Congress. Further, it is uncertain to what extent any new mining or environmental laws or regulations, or any repeal of existing mining or environmental laws or regulations, may affect our coal mining operations. However, such actions could materially increase our costs or impair our ability to explore and develop other mining projects, which could materially harm our business, financial condition and results of operations. Our operations may impact the environment or cause exposure to hazardous substances and our properties may have environmental contamination, which could result in material liabilities to us. Our operations currently use hazardous materials from time to time. We could become subject to claims for toxic torts, natural resource damages and other damages as well as for the investigation and cleanup of soil, surface water, groundwater and other media. Such claims may arise, for example, out of conditions at sites that we currently own or operate, as well as at sites that we previously owned or operated, or may acquire. Our liability for such claims may be joint and several, so that we may be held responsible for more than our share of the contamination or other damages, or even for the entire amount of damages assessed. We maintain extensive ~~met~~ **steelmaking** coal refuse areas and slurry impoundments at our mining complexes. Such areas and impoundments are subject to comprehensive regulation. Slurry impoundments have been known to fail, releasing large volumes of ~~met~~ **steelmaking** coal slurry into the surrounding environment. Structural failure of an impoundment can result in extensive damage to the environment and natural resources, such as bodies of water that the ~~met~~ **steelmaking** coal slurry reaches, as well as create liability for related personal injuries, property damages and injuries to wildlife. Some of our impoundments overlie mined out areas, which can pose a heightened risk of failure and the assessment of damages arising out of such failure. If one of our impoundments were to fail, we could be subject to substantial claims for the resulting environmental contamination and associated liability, as well as for related fines and penalties. Drainage flowing from or caused by mining activities can be acidic with elevated levels of dissolved metals, a condition referred to as AMD. Treatment of AMD can be costly. Although we do not currently face material costs associated with AMD, it is possible that we could incur significant costs in the future. These and other similar unforeseen impacts that our operations may have on the environment, as well as exposures to hazardous substances or wastes associated with our operations, could result in costs and liabilities that could materially and adversely affect us. See also " Part I, Item 1. Business — Environmental and Regulatory Matters. " Failure to obtain or renew surety bonds on acceptable terms could affect our ability to secure reclamation and coal lease obligations and, therefore, our ability to mine or lease ~~met~~ **steelmaking** coal. Federal and state laws require us to obtain surety bonds or post other financial security to secure performance or payment of certain long- term obligations, such as mine closure or reclamation costs, federal and state workers' compensation and black lung benefits costs, coal leases and other obligations. The amount of security required to be obtained can change as the result of new federal or state laws, as well as changes to the factors used to calculate the bonding or security amounts. We may have difficulty procuring or maintaining our surety bonds. Our bond issuers may demand higher fees or additional collateral, including letters of credit or other terms less favorable to us upon those renewals. Because we are required by state and federal law to have these bonds or other acceptable security in place before mining can commence or continue, our failure to maintain surety bonds, letters of credit or other guarantees or security arrangements would materially and adversely affect our ability to mine or lease ~~met~~ **steelmaking** coal. That failure could result from a variety of factors, including lack of availability, higher expense or unfavorable market terms, the exercise by third- party surety bond issuers of their right to refuse to renew the surety and restrictions on availability of collateral for current and future third- party surety bond issuers under the terms of our financing arrangements. We have reclamation and mine closing obligations. If the assumptions underlying our accruals are inaccurate, we could be required to expend greater amounts than anticipated. The SMCRA establishes operational, reclamation and closure standards for our mining operations. Alabama has a state law counterpart to SMCRA. We accrue for the costs of current mine disturbance and of final mine closure and reclamation, including the cost of treating mine water discharge where necessary. The amounts recorded are dependent upon a number of variables, including the estimated future closure costs, estimated proven reserves, assumptions involving profit margins, inflation rates and the assumed credit- adjusted risk- free interest rates. If these accruals are insufficient or our liability in a particular year is greater than currently anticipated, our future operating results could be materially affected. We have a substantial amount of indebtedness. Our substantial indebtedness could adversely affect our ability to raise additional capital to fund our operations and dividend policy, limit our ability to react to changes in the economy or our industry and prevent us from making debt service payments on the Notes. As of December 31, ~~2022~~ **2023** , we had approximately $ ~~335~~ **173** . ~~7~~ **2** million of outstanding indebtedness (consisting of $ ~~310~~ **156** . ~~6~~ **5** million of Notes, net of $ ~~8~~ **3** . ~~0~~ **5** million in unamortized debt discount and debt issuance costs and $ ~~33~~ **20** . ~~1~~ **2** million of financing lease obligations), all of which are secured, and $ ~~123~~ **107** . ~~3~~ **4** million of availability under our ABL Facility (subject to meeting the borrowing base and other conditions therein). Our substantial indebtedness could have important consequences for us. For example, it could: • restrict us from making strategic acquisitions, engaging in development activities, introducing new technologies or exploiting business opportunities; • cause us to make non- strategic divestitures; • require us to dedicate a substantial portion of our cash flow from operations to the repayment of our indebtedness, thereby reducing funds available to us for other purposes, including the payment of quarterly dividends or any special dividends, as well as engaging in any stock repurchases; • limit our flexibility in planning for, or reacting to, changes in our operations or business; • limit our ability to raise additional capital for working capital, capital expenditures, operations, debt service requirements, strategic initiatives or other purposes; • limit, along with the financial and other restrictive covenants in our indebtedness, among other things, our ability to borrow additional funds or dispose of assets; • prevent us from raising the funds necessary to repurchase all of the Notes tendered to us upon the occurrence of certain changes of control, which failure to repurchase would constitute a default under the Indenture; • make it more difficult for us to satisfy our obligations with respect to our indebtedness, including the Notes, and any failure to comply with the obligations of any of our debt instruments, including restrictive covenants and borrowing conditions, could result in an event of default under the Indenture and the agreements governing other indebtedness; • make us more highly leveraged than some of our competitors, which may place us at a competitive disadvantage; • make us more vulnerable to downturns in our business or the economy; or • expose us to the risk of increased interest rates, as certain of our borrowings, including borrowings under the ABL Facility, are at variable rates of interest and are based upon benchmarks that are subject to potential change or elimination, including as a result of the FCA Announcement (as defined below). In addition, our ABL Facility and the Indenture contain restrictive covenants that limit our ability to engage in activities that may be in our long- term best interest. Our failure to comply with those covenants could result in an event of default which, if not cured or waived, could result in the acceleration of substantially all of our indebtedness. We may not be able to generate sufficient cash to service all of our indebtedness and may be forced to take other actions to satisfy our obligations under our indebtedness that may not be successful. Our ability to pay principal and interest on the Notes and the ABL Facility and to satisfy our other debt obligations will depend upon, among other things: • our future financial and operating performance (including the realization of any cost savings described herein), which will be affected by prevailing economic, industry and competitive conditions and financial, business, legislative, regulatory and other factors, many of which are beyond our control; and • our future ability to borrow under the ABL Facility, the availability of which depends on, among other things, our complying with the covenants in the ABL

Facility. We cannot assure you that our business will generate cash flow from operations, or that we will be able to draw under the ABL Facility or otherwise, in an amount sufficient to fund our liquidity needs, including the payment of principal and interest on the Notes. If our cash flows and capital resources are insufficient to service our indebtedness, we may be forced to reduce or delay capital expenditures, sell assets, seek additional capital or restructure or refinance our indebtedness, including the Notes. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. Our ability to restructure or refinance our debt will depend on the condition of the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. In addition, the terms of existing or future debt agreements, including the ABL Facility and the Indenture, may restrict us from adopting some of these alternatives. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. We may not be able to consummate those dispositions for fair market value or at all. Furthermore, any proceeds that we could realize from any such dispositions may not be adequate to meet our debt service obligations then due. Our inability to generate sufficient cash flow to satisfy our debt obligations, or to refinance our indebtedness on commercially reasonable terms or at all, could result in a material adverse effect on our business, results of operations and financial condition and could negatively impact our ability to satisfy our obligations under the Notes. If we cannot make scheduled payments on our indebtedness, we will be in default, and holders of the Notes could declare all outstanding principal and interest to be due and payable, the lenders under the ABL Facility could terminate their commitments to loan money, our secured lenders (including the lenders under the ABL Facility and the holders of the Notes) could foreclose against the assets securing their loans and the Notes and we could be forced into bankruptcy or liquidation. Despite our current indebtedness levels, we may still be able to incur substantially more debt, including secured indebtedness. As of December 31, ~~2022~~ **2023** , we had approximately $ ~~335~~ **173** . ~~7~~ **2** million of total debt outstanding (consisting of $ ~~310~~ **156** . ~~6~~ **5** million of Notes, net of $ ~~8~~ **3** . ~~0~~ **5** million in unamortized debt discount and debt issuance costs, and $ ~~33~~ **20** . ~~1~~ **2** million of financing lease obligations). Despite our current indebtedness, we may be able to incur substantial additional debt in the future, including secured indebtedness. As of December 31, ~~2022~~ **2023** , the Company had no amounts drawn under the ABL Facility and there were $ 8. 7 million of letters of credit issued and outstanding under the ABL Facility. At December 31, ~~2022~~ **2023** , the Company had $ ~~123~~ **107** . ~~3~~ **4** million of availability under the ABL Facility (calculated net of $ 8. 7 million of letters of credit issued and outstanding at such time). Although covenants under the Indenture and the ABL Facility will limit our ability to incur additional indebtedness, these restrictions are subject to a number of qualifications and exceptions and, under certain circumstances, debt incurred in compliance with these restrictions could be substantial. Further, subsidiaries that we designate as unrestricted subsidiaries can incur unlimited additional indebtedness that is structurally senior to the Notes. In addition, the Indenture and the ABL Facility will not limit us from incurring obligations that do not constitute indebtedness as defined therein. If we incur any additional indebtedness secured by liens that rank equally with those securing the Notes, including any additional notes or term loan facilities, the holders of that indebtedness will be entitled to share ratably with the holders in any proceeds distributed in connection with any insolvency, liquidation, reorganization, dissolution or other winding- up of our company. If new debt is added to our current debt levels, the related risks that we and our subsidiaries now face could intensify. Additionally, we may recapitalize, incur additional indebtedness and take a number of other actions that could have the effect of diminishing our ability to make payments on the Notes when due. Our debt agreements contain restrictions that will limit our flexibility in operating our business. The ABL Facility and the Indenture contain, and any other existing or future indebtedness of ours would likely contain, a number of covenants that will impose significant operating and financial restrictions on us, including restrictions on our and our subsidiaries **'** ability to, among other things: • incur additional debt, guarantee indebtedness or issue certain preferred shares; • pay dividends on or make distributions in respect of, or repurchase or redeem, our capital stock or make other restricted payments; • prepay, redeem or repurchase subordinated debt; • make loans or certain investments; • sell certain assets; • grant or assume liens; • consolidate, merge, sell or otherwise dispose of all or substantially all of our assets; • enter into certain transactions with our affiliates; • alter the businesses we conduct; • enter into agreements restricting our subsidiaries' ability to pay dividends; and • designate our subsidiaries as unrestricted subsidiaries. As a result of these covenants, we will be limited in the manner in which we conduct our business, and we may be unable to engage in favorable business activities or finance future operations or capital needs. In addition, our ABL Facility requires us to maintain a minimum fixed charge coverage ratio at any time when the average availability is less than a certain amount at such time. In that event, we must satisfy a minimum fixed charge ratio of 1. 0 to 1. 0. A failure to comply with the covenants under the ABL Facility or any of our other future indebtedness could result in an event of default, which, if not cured or waived, could have a material adverse effect on our business, financial condition and results of operations. In the event of any such event of default, the lenders thereunder: • will not be required to lend any additional amounts to us; • could elect to declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be due and payable and terminate all commitments to extend further credit; • could require us to apply all of our available cash to repay these borrowings; or • could effectively prevent us from making debt service payments on the Notes (due to a cash sweep feature). Such actions by the lenders under the ABL Facility could also cause cross defaults under our other indebtedness. If we were unable to repay those amounts, the lenders under the ABL Facility could proceed against the collateral granted to them to secure the ABL Facility. If any of our outstanding indebtedness under the ABL Facility or our other indebtedness, including the Notes, were to be accelerated, there can be no assurance that our assets would be sufficient to repay such indebtedness in full. The need to maintain capacity for required letters of credit could limit our ability to provide financial assurance for self- insured obligations and negatively impact our ability to fund future working capital, capital expenditure or other general corporate requirements. Our ABL Facility includes, among other things, provisions that provide for the issuance of letters of credit. Obligations secured by letters of credit may increase in the future. If we do not maintain sufficient borrowing capacity under our ABL Facility, we may be unable to provide financial assurance for self- insured obligations and could negatively impact our ability to fund future working capital, capital expenditure or other general corporate requirements. Our variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase. Borrowings under our ABL Facility are at variable rates of interest and are based upon benchmarks that are subject to potential change or elimination, including as a result of the FCA Announcement, and therefore expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness will increase even though the amount borrowed remains the same, and our net income and cash flows, including cash available for servicing our indebtedness, will correspondingly decrease. ~~The transition from LIBOR to SOFR may affect our financial results. The United Kingdom Financial Conduct Authority (" FCA "), which regulates LIBOR, announced that the FCA would not compel banks to submit rates for the calculation of LIBOR after 2021 (the " FCA Announcement "). Following the FCA Announcement, the Alternative Reference Rates Committee (the " ARRC "), the working group backed by the United States Federal Reserve and tasked with recommending a replacement for U. S. dollar LIBOR, formally recommended the CME Group' s forward- looking Secured Overnight Financing Rate (" SOFR ") term rates for one-, three- and six- month tenors to replace U. S. dollar LIBOR as the successor benchmark rate, subject to the spread adjustment recommended by the ARRC. The transition from LIBOR to SOFR may result in financial market disruptions and increases in benchmark rates, resulting in increased financing costs to us, any of which could negatively impact the interest expenses associated with any future borrowings under the ABL Facility (which borrowings under the ABL Facility are based on SOFR as discussed under " Description of Other Indebtedness — Amendment and Restatement of ABL Facility "), and have an adverse effect on our business, results of operations, financial condition, and the market price of our common stock.~~ We may be unable to generate sufficient taxable income from future operations, or other circumstances could arise, which may limit or eliminate our ability to utilize our significant **federal and state** tax NOLs or our deferred tax assets. In connection with the acquisition of certain assets of Walter Energy consummated on March 31, 2016, we acquired deferred tax assets primarily associated with **federal and state** NOLs attributable to Walter Energy' s write- off of its investment in Walter Energy Canada Holdings, Inc. **As** ~~A valuation allowance was established on our opening balance sheet at April 1, 2016 because it was more likely than not that a portion~~ of ~~the acquired deferred tax assets would not be realized in the future. At~~ December 31, ~~2017~~ **2023** , we **believe** ~~had a $ 312. 5 million valuation allowance established against our deferred income tax assets, which represented a full valuation allowance against our net deferred income tax assets. For 2017, we recorded a pre- tax profit of $ 416. 5 million; however, we remained in a three- year cumulative loss position, had limited operating results as a new Company and given the industry' s recent history of significant losses concluded as of December 31, 2017 that another year of significant profitability was needed to support a release of the valuation allowance. During 2018, we continued our trend of sustained profitability, recording a pre- tax profit of $ 471. 0 million for the year. During the fourth quarter of 2018, after considering all relevant factors, we concluded that our deferred income tax assets were more likely than not to be realized. In evaluating the likelihood of utilizing our net deferred tax assets, the significant relevant factors that we considered were: (1) our recent history of profitability; (2) growth in the U. S. and global economies; (3) estimate of future HCC prices; (4) we moved from a three- year cumulative loss position to a cumulative income position for the first time since we established the full valuation allowance; and (5) future impact of taxable temporary differences. Based on this evaluation, at December 31, 2018, we released our valuation allowance against our net deferred income tax assets, primarily resulting in the $ 225. 8 million benefit in our provision for income taxes. As of December 31, 2022,~~ we have ~~considered~~ **utilized** all **of** ~~positive and negative evidence and concluded that our deferred income tax assets associated with~~ our federal NOLs and **federal** general business credit carryforwards **, subject** ~~remain more likely than not~~ to **the filing of the 2023 federal income tax return** ~~be realized and a valuation allowance was not required to be recorded~~ . On February 12, 2021, the Alabama Governor signed into law Alabama House Bill 170, now Act 2021- 1 (the " Act "). The Act makes several changes to the state' s business tax structure. Among the provisions of the Act, is the repeal of the so- called corporate income tax " throwback rule. " That rule required all sales originating in Alabama and delivered to a jurisdiction where the seller was not subject to tax, to be included in the seller' s Alabama income tax base. Thus, prior to repeal of the throwback rule, we had to rely on our Alabama NOL carryforwards to shelter taxes imposed under such throwback rule. As a result of the now repealed throwback rule, effective January 1, 2021, all such sales should now be excluded from Alabama taxable income without the need to utilize Alabama NOLs. As a result of the repeal of the throwback rule ~~, in the first quarter of 2021, we remeasured our Alabama deferred income tax assets and liabilities and recorded a non- cash income tax benefit of $ 22. 9 million. Additionally~~ , we determined that it is not more likely than not that we would have sufficient taxable income to utilize all of our Alabama deferred income tax assets prior to expiration. Therefore, **at** ~~we established a non- cash valuation allowance of $ 46. 0 million against such deferred income tax assets. At~~ December 31, ~~2022~~ **2023** , we have a valuation allowance against our state deferred income tax assets of approximately $ 41. ~~4~~ **0** million. Certain factors could change or circumstances could arise that could further limit or eliminate the amount of the available **federal and state** NOLs to the Company, such as an ownership change, an adjustment by a tax authority or changes in state and federal tax legislation. Also, certain circumstances, including our failing to generate sufficient future taxable income from operations, could limit our ability to fully utilize our deferred tax assets. Under the Internal Revenue Code of 1986, as amended (the" Code") **, and similar state laws** , a company is generally allowed a deduction for **federal and state** NOLs against its federal **and state** taxable income. At December 31, ~~2022~~ **2023** , we had ~~federal and~~ state NOLs of approximately $ ~~122~~ **928** . ~~1~~ **2** million ~~and $ 951. 7 million, respectively. In addition, we have approximately $ 23. 4 million of general business credit carryforwards~~ . These **state** NOLs ~~and income tax credit carryforwards collectively~~ represent a deferred tax asset of approximately $ ~~57~~ **6** . ~~1~~ **9** million, net of the valuation allowance. Our **federal and state** NOLs are subject to adjustment on audit by the Internal Revenue Service (the " IRS ") and state authorities. The IRS has not audited any of the tax returns for any of the years in which the losses giving rise to the **federal and state** NOLs were generated. Were the IRS to challenge the size or availability of our **federal and state** NOLs and prevail in such challenge, all or a portion of our **federal and state** NOLs, or our ability to utilize our **federal and**

state NOLs to offset any future taxable income, may be impaired, which could have a significant negative impact on our financial condition, results of operations and cash flows. A company' s ability to deduct its **federal and state** NOLs and utilize certain other available tax attributes can be substantially constrained under the general annual limitation rules of Section 382 of the Code if it undergoes an " ownership change " as defined in Section 382 or if similar provisions of state law apply. We experienced an ownership change in connection with the acquisition of certain assets of Walter Energy and as such, the limitations under Section 382 would generally apply unless an exception to such rule applies. An exception to the limitation rules of Section 382 is applicable to certain companies under the jurisdiction of a bankruptcy court. Due to certain uncertainties as to whether such exception applies to us, we filed a request for a private letter ruling from the IRS on these points. On September 18, 2017, the IRS issued to us a private letter ruling, which favorably resolved these uncertainties. Based on such private letter ruling, we believe that there is no current limitation under Section 382 on the utilization of our **federal** NOLs to shield our income from federal taxation **and that a similar analysis would be applied to our state NOLs** . The private letter ruling was issued based on, among other things, certain facts and assumptions, as well as certain representations, statements and undertakings provided to the IRS by us. If any of these material facts, assumptions, representations, statements or undertakings are, or become, incorrect, inaccurate or incomplete, the private letter ruling may be invalidated and our ability to rely on the conclusions reached therein could be jeopardized. While we do not believe an ownership change has occurred since April 1, 2016, because the rules under Section 382 are highly complex and actions of our stockholders which are beyond our control or knowledge could impact whether an ownership change has occurred, we cannot give you any assurance that another Section 382 ownership change has not occurred or will not occur in the future. As a result of our qualifying for the aforementioned exception, were we to have undergone a subsequent ownership change prior to April 1, 2018, our **federal and state** NOLs would effectively be reduced to zero. An ownership change after such date would severely limit our ability to utilize our **federal and state** NOLs and other tax attributes. Certain transactions, including public offerings by us or our stockholders and redemptions may cause us to undergo an " owner shift " which by itself or when aggregated with other owner shifts that we have undergone or will undergo could cause us to experience an ownership change. Our certificate of incorporation contains transfer restrictions (the " 382 Transfer Restrictions ") to minimize the likelihood of an ownership change. See "- Risks Related to the Ownership of Our Common Stock- Our common stock is subject to the 382 Transfer Restrictions under our certificate of incorporation and the Amended Rights Agreement which are intended to prevent a Section 382 " ownership change, " which if not complied with, could result in the forfeiture of such stock and related distributions or substantial dilution of the stock ownership, respectively. Accordingly, this may impact the market price of our common stock and discourage third parties from seeking strategic transactions with us that could be beneficial to our stockholders. " The 382 Transfer Restrictions were originally set to expire in April 2020. Pursuant to the first amendment to the certificate of incorporation approved by the Company' s stockholders at the Company' s Annual Meeting of Stockholders held on April 23, 2019, the Company effected a three- year extension of the 382 Transfer Restrictions until April 19, 2023, which became effective on March 18, 2020 upon the filing of a certificate of amendment setting forth such amendment with the Secretary of State of the State of Delaware. Pursuant to the second amendment to the certificate of incorporation approved by the Company' s stockholders at the Company' s Annual Meeting of Stockholders held on April 26, 2022, the Company effected a further extension of the 382 Transfer Restrictions until April 19, 2026. In addition, on February 14, 2020, we adopted an NOLs rights agreement, which was amended on March 4, 2022 **and December 8, 2023** (the " Rights Agreement, " and as amended, the" Amended Rights Agreement"), to supplement the 382 Transfer Restrictions through April 19, 2026 **and increase the exercise price, respectively** . See " Part II, Item 7. Management' s Discussion and Analysis of Financial Condition and Results of Operations- Amended Rights Agreement. " We may engage in transactions or approve waivers of the 382 Transfer Restrictions or the Amended Rights Agreement that may cause an ownership shift. In doing so, we expect to first perform the calculations necessary to confirm that our ability to use our **federal and state** NOLs and other federal **and state** income tax attributes will not be affected or otherwise determine that such transactions or waivers are in our best interests. For example, under certain circumstances, the Board may determine it is in our best interest to exempt certain transactions from the operation of the 382 Transfer Restrictions and the Amended Rights Agreement, if such transaction is determined not to be detrimental to the utilization of our **federal and state** NOLs or otherwise in our best interests. These calculations are complex and reflect certain necessary assumptions. Accordingly, it is possible that we could approve or engage in a transaction involving our common stock that causes an ownership change and impairs the use of our **federal and state** NOLs and other federal **and state** income tax attributes. For more information, see "- Risks Related to the Ownership of Our Common Stock- We could engage in or approve transactions involving our common stock that adversely affect significant stockholders and our other stockholders. " **Certain U. S. federal income tax provisions currently available, including coal percentage depletion and foreign- derived intangible income, may be eliminated by future legislation. From time to time, legislation is proposed that could result in the reduction or elimination of certain U. S. federal income tax provisions currently available to companies engaged in the exploration, development, production and exportation of coal reserves. These proposals have included, but are not limited to: (1) the elimination of current deductions, (2) the repeal of the percentage depletion allowance or deductions under Code Section 250: Foreign- Derived Intangible Income. The passage of these or other similar proposals could increase our taxable income and negatively impact our cash flows and the value of an investment in our common stock.** The market price of our common stock may fluctuate significantly and investors in our common stock could incur substantial losses. The market price of our common stock could fluctuate significantly due to a number of factors, including: • our quarterly or annual earnings, or those of other companies in our industry; • actual or anticipated fluctuations in our operating and financial results, including reserve estimates; • changes in accounting standards, policies, guidance, interpretations or principles; • the public reaction to our press releases, our other public announcements and our filings with the SEC; • announcements by us or our competitors of significant acquisitions, dispositions or innovations; • changes in financial estimates and recommendations by securities analysts following our stock, or the failure of securities analysts to cover our common stock; • changes in earnings estimates by securities analysts or our ability to meet those estimates; • the operating and stock price performance of other comparable companies; • declaration of bankruptcy by any of our customers or competitors; • general economic conditions, overall market fluctuations, and changes in the price of ~~met~~ **steelmaking** coal, steel or other commodities, including the impact of the COVID- 19 pandemic on any of the foregoing; • additions or departures of key management personnel; • actions by our stockholders; • the trading volume of our common stock; • sales of our common stock by us or the perception that such sales may occur; and • changes in business, legal or regulatory conditions, or other developments (including the COVID- 19 pandemic) affecting participants in, and publicity regarding, the ~~met~~ **steelmaking** coal mining business, the domestic steel industry or any of our significant customers. In particular, the realization of any of the risks described in these " Risk Factors " could have a material and adverse impact on the market price of our common stock in the future and cause the price of our stock to decline. In addition, the stock market in general has experienced extreme volatility that has often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock, regardless of our actual performance. In the past, following periods of volatility in the market price of a company' s securities, stockholders have often instituted securities class action litigation against the company. If we were to be involved in a class action lawsuit, it could divert the attention of senior management, and, if adversely determined, have a material adverse effect on our business, results of operations and financial condition. If securities or industry analysts adversely change their recommendations regarding our stock or if our operating results do not meet their expectations, our stock price could decline. The trading market for our common stock could be influenced by the research and reports that industry or securities analysts may publish about us or our business. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. Moreover, if one or more of the analysts who cover our company downgrade our stock or if our operating results do not meet their expectations, our stock price could decline **. The requirements of being a public company, including compliance with the reporting requirements of the Securities Exchange Act of 1934, as amended (the " Exchange Act "), and the requirements of the Sarbanes- Oxley Act, require application of significant resources and management attention, and we may be unable to comply with these requirements in a timely or cost- effective manner. We are responsible for maintaining systems and documentation necessary to evaluate the effectiveness of our internal control over financial reporting. These activities may divert management' s attention from other business concerns. To maintain and improve our controls and procedures, we must commit significant resources, may be required to hire additional staff and need to continue to provide effective management oversight, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. The requirements of being a public company, including compliance with the reporting requirements of the Exchange Act, and the requirements of the Sarbanes- Oxley Act, require application of significant resources and management attention, and we may be unable to comply with these requirements in a timely or cost- effective manner. As a public company, we must comply with laws, regulations and requirements, certain corporate governance provisions of the Sarbanes- Oxley Act of 2002, related regulations of the SEC and the requirements of the New York Stock Exchange. Complying with these statutes, regulations and requirements occupies a significant amount of time for our Board and management and requires us to incur significant costs. We are required to: • maintain a comprehensive compliance function; • comply with rules promulgated by the New York Stock Exchange; • prepare and distribute periodic public reports in compliance with our obligations under the federal securities laws; • maintain internal policies; and • engage outside counsel and accountants in the above activities. We are responsible for assessing the operating effectiveness of internal controls over financial reporting and we may conclude that our internal controls over financial reporting are ineffective. During the course of the preparation of our financial statements, we evaluate our internal controls to identify and correct deficiencies in our internal controls over financial reporting. If we fail to maintain an effective system of disclosure controls or internal control over financial reporting, including satisfaction of the requirements of the Sarbanes- Oxley Act, we may not be able to accurately or timely report on our financial results or adequately identify and reduce fraud. As a result, the financial condition of our business could be adversely affected, current and potential future stockholders could lose confidence in us and / or our reported financial results, which may cause a negative effect on the trading price of our common stock. We could also be exposed to litigation or regulatory proceedings, which may be costly or divert management attention. Additionally, our independent registered public accounting firm may issue an adverse report indicating that our internal controls are not effective due to deficiencies in how our controls are documented, designed, operated or reviewed. Efforts to remediate any such deficiencies and otherwise comply with these requirements may strain our resources, and we may be unable to do so in a timely or cost- effective manner** . Any declaration and payment of future dividends to holders of our common stock or stock repurchases will depend on future financial performance and may be limited by restrictive covenants of our ABL Facility and the Indenture, and will be at the sole discretion of the Board and will also depend on many factors. Our ability to declare future dividends and make future share repurchases will depend on our future financial performance, which in turn depends on the successful implementation of our strategy and on financial, competitive, regulatory, technical and other factors, general economic conditions, demand and selling prices for our products and other factors specific to our industry, many of which are beyond our control. Therefore, our ability to generate cash depends on the performance of our operations and could be limited by decreases in our profitability or increases in costs, regulatory changes, capital expenditures or debt servicing requirements. In addition, any declaration and payment of future dividends to holders of our common stock may be limited by restrictive covenants of our ABL Facility and the Indenture, and will be at the sole discretion of the Board and will depend on many factors, including our financial condition, earnings, capital requirements, level of indebtedness, borrowing availability under our ABL Facility, statutory and contractual restrictions applying to the payment of dividends and other considerations that the Board deems relevant. The terms of our ABL Facility and the Indenture may restrict our ability to pay cash dividends on our common stock. We are prohibited from paying any cash dividend on our common stock unless we satisfy certain conditions. Furthermore, we are permitted under the terms of our ABL Facility and the Indenture to incur additional indebtedness, the terms of which may severely restrict or prohibit the payment of dividends and the associated debt service may impact our ability to satisfy the conditions for paying dividends under our ABL Facility and the Indenture. The agreements governing our current and future indebtedness may not permit us to pay dividends on our common stock. Accordingly, the Company cannot make any assurance that future dividends will be paid or future repurchases will be made. An investor' s percentage ownership in us may be diluted by future issuances of capital stock or securities or instruments that are convertible into our capital stock, which could reduce its influence over matters on which stockholders vote. The Board has the authority, without action or vote of our stockholders, to issue all or any part of our authorized but unissued shares of common stock, including shares issuable upon the exercise of options, shares that may be issued to satisfy our obligations under our incentive plans, shares of our authorized but unissued preferred stock and securities and instruments that are convertible into our common stock. Issuances of common stock or voting preferred stock would reduce an investor' s influence over matters on which our stockholders vote and, in the case of issuances of preferred stock, likely would result in its interest in us being subject to the prior rights of holders of that preferred stock. We may issue preferred stock whose terms could adversely affect the voting power or value of our 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 common stock respecting dividends and distributions, as the Board may determine. The terms of one or more classes or series of preferred stock could adversely impact the voting power or value of our common stock. In addition, the issuance of such preferred stock could make it more difficult for a third party to acquire us. 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 could affect the residual value of the common stock. On February 14, 2020, the Company entered into the Rights Agreement, which was amended on March 4, 2022 to extend the expiration date to April 19, 2026 and increase the exercise price to $ 56. 00 **and on December 8, 2023 to increase the exercise price to $ 159. 00** . In connection with the adoption of the Rights Agreement, the Board approved a certificate of designations of Series A Junior Participating Preferred Stock (as defined below) designating 140, 000 shares of preferred stock, which was filed on February 14, 2020 with the Secretary of State of the State of Delaware and became effective on such date. See " Part II, Item 7. Management' s Discussion and Analysis of Financial Condition and Results of Operations- Designation of Series A Junior Participating Preferred Stock. " **Our common stock is subject to the 382 Transfer Restrictions under our certificate of incorporation and the Amended Rights Agreement which are intended to prevent a Section 382 " ownership change, " which if not complied with, could result in the** forfeiture of such stock and related dividends or substantial dilution of the stock ownership, respectively. Accordingly, this may impact the market price of our common stock and discourage third parties from seeking strategic transactions with us that could be beneficial to our stockholders. Our certificate of incorporation contains certain transfer restrictions on our shares, which we refer to as the " 382 Transfer Restrictions. " The 382 Transfer Restrictions are intended to prevent the likelihood that we will be deemed to have an " ownership change " within the meaning of Section 382 of the Code that could limit or eliminate our ability to utilize significant **federal and state** NOLs and other federal **and state** income tax attributes under and in accordance with the Code and regulations promulgated by the IRS **and similar state rules** . In 2022, the 382 Transfer Restrictions were amended to expire on April 19, 2026. In particular, without the approval of the Board, no person or group of persons treated as a single entity under Treasury Regulation Section 1. 382- 3 will be permitted to acquire, whether directly, indirectly or constructively, and whether in one transaction or a series of related transactions, any of our common stock or any other instrument treated as stock for purposes of Section 382, to the extent that after giving effect to such purported acquisition (a) the purported acquirer, or any other person by reason of the purported acquirer' s acquisition, would become a Substantial Holder (as defined below), or (b) the percentage of ownership of our common stock by a person that, prior to giving effect to the purported acquisition, is already a Substantial Holder would be increased. A " Substantial Holder " is a person that owns (as determined for purposes of Section 382 of the Code) at least 4. 99 % of the total value of our common stock, including any instrument treated as stock for purposes of Section 382 of the Code. Furthermore, under our certificate of incorporation, the Board has the sole power to determine compliance with the 382 Transfer Restrictions and we cannot assure you that the Board will concur with any conclusions reached by any holder of our securities or their respective advisors, and / or approve or ratify any proposed acquisitions of our securities. ~~If~~ **The Board has established procedures to consider requests and if** the Board determines that a Prohibited Transfer (as defined in our certificate of incorporation) has occurred, such Prohibited Transfer shall, to the fullest extent permitted by law, be void ab initio and have no legal effect, and upon written demand by us, the Purported Transferee (as defined in the certificate of incorporation) shall disgorge or cause to be disgorged our securities, together with any dividends or distributions received, with respect to such securities. On February 14, 2020, we adopted the Rights Agreement, which was amended on March 4, 2022 to extend the expiration date to April 19, 2026 and increase the exercise price to $ 56 **. 00 and on December 8, 2023 to increase the exercise price to $ 159** . 00, to supplement the 382 Transfer Restrictions. In general terms, the Amended Rights Agreement works by imposing a significant penalty upon any person or group that acquires 4. 99 % or more of the outstanding common stock or any existing stockholder who currently owns 5. 00 % or more of the common stock that acquires any additional shares of common stock (such person, group or existing stockholder, an" Acquiring Person") without the approval of the Board. Under the Amended Rights Agreement, from and after February 28, 2020, each share of our common stock carries with it one preferred share purchase right until the earlier of the date when the preferred share purchase rights become exercisable or expire. The Amended Rights Agreement also gives discretion to the Board to determine that someone is an Acquiring Person even if they do not own 4. 99 % or more of the outstanding common stock but do own 4. 99 % or more in value of the Company' s outstanding stock, as determined pursuant to Section 382 of the Code and the regulations promulgated thereunder. In addition, the Board has established procedures to consider **and approve** requests to exempt certain acquisitions of the Company’ s securities from the Amended Rights Agreement if the Board determines that doing so would not limit or impair the availability of the **federal and state** NOLs or is otherwise in the best interests of the Company **and conditioned upon and subject to the satisfaction of certain continuing factual representations and covenants** . See" Part II, Item 7. Management’ s Discussion and Analysis of Financial Condition and Results of Operations- Amended Rights Agreement." The 382 Transfer Restrictions and the Amended Rights Agreement may make our stock less attractive to large institutional holders and limit the price that investors might be willing to pay for shares of our common stock and otherwise have an adverse impact on the market for our common stock. In addition, these restrictions could discourage a third party from proposing a change of control or other strategic transaction concerning the Company or otherwise have the effect of delaying or preventing a change of control of the Company that other stockholders may view as beneficial. Because of the complexity of applying Section 382, and because the determination of ownership for purposes of Section 382 does not correspond to SEC beneficial ownership reporting on Schedules 13D and 13G, stockholders and potential acquirers of our securities should consult with their legal and tax advisors prior to making any acquisition of our securities that could implicate the 382 Transfer Restrictions. Under the 382 Transfer Restrictions that are contained in our certificate of incorporation and the Amended Rights Agreement, our 4. 99 % stockholders will effectively be required to seek the approval of, or a determination by, the Board before they engage in certain transactions involving our common stock. Furthermore, we could engage in or approve transactions involving our common stock that limit our ability to approve future transactions involving our common stock by our 4. 99 % stockholders without impairing the use of our federal **or state** income tax attributes. In addition, we could engage in or approve transactions involving our common stock that cause stockholders owning less than 4. 99 % to become 4. 99 % stockholders, resulting in those stockholders’ having to either disgorge our securities, and any dividends or distributions related to such securities, in accordance with the 382 Transfer Restrictions or seek the approval of, or a determination by, the Board before they could engage in certain future transactions involving our common stock. Provisions in our certificate of incorporation and bylaws and Delaware law, as well as the Amended Rights Agreement, make it more difficult to effect a change in control of the Company, which could adversely affect the price of our common stock. The existence of some provisions in our certificate of incorporation and bylaws and Delaware corporate law, as well as the Amended Rights Agreement, could delay or prevent a change in control of our company, even if that change would be beneficial to our stockholders. Our certificate of incorporation and bylaws contain provisions that may make acquiring control of our company difficult, including: • the Board' s ability to issue, from time to time, one or more series of preferred stock and, with respect to each such series, to fix the terms thereof by resolution; • provisions relating to the appointment of directors upon an increase in the number of directors or vacancy on the Board; • provisions requiring stockholders to hold at least a majority of our outstanding common stock in the aggregate to request special meetings; • provisions that restrict transfers of our stock (including any other instruments treated as stock for purposes of Section 382) that could limit our ability to utilize **federal and state** NOLs; • provisions that provide that the doctrine of “ corporate opportunity ” will not apply with respect to the Company, to any of our stockholders or directors, other than any stockholder or director that is an employee, consultant or officer of ours; and • provisions that set forth advance notice procedures for stockholders’ nominations of directors and proposals for consideration at meetings of stockholders. In addition, we have elected to opt out of Section 203 of the Delaware General Corporation Law (" DGCL"), which, subject to some exceptions, prohibits business combinations between a Delaware corporation and an interested stockholder, which is generally defined as a stockholder who becomes a beneficial owner of 15 % or more of a Delaware corporation’ s voting stock for a three- year period following the date that the stockholder became an interested stockholder. These provisions also could discourage proxy contests and make it more difficult for you and other stockholders to elect directors and take other corporate actions. As a result, these provisions could make it more difficult for a third party to acquire us, even if doing so would benefit our stockholders, which may limit the price that investors are willing to pay in the future for shares of our common stock. The related party transactions and corporate opportunities provisions in our certificate of incorporation permit us to enter into transactions in which one or more of our directors or officers may be a party to or may be interested in and could enable our non- employee directors or stockholders and their affiliates to benefit from corporate opportunities that might otherwise be available to us. Subject to the limitations of applicable law, our certificate of incorporation, among other things: • permits us to enter into contracts and transactions in which one or more of our officers or directors may be a party to or may be financially or otherwise interested in so long as such contract or transaction is approved by the Board in accordance with the DGCL; • permits any of our stockholders or non- employee directors and their affiliates to engage in a corporate opportunity in the same or similar business activities or lines of business in which we engage or propose to engage, compete with us and to make investments in any kind of property in which we may make investments and will not be deemed to have (i) acted in a manner inconsistent with his or her fiduciary or other duties to us regarding the opportunity, (ii) acted in bad faith or in a manner inconsistent with our best interests or (iii) be liable to us or our stockholders for breach of any fiduciary duty by reason of the fact that they have engaged in such activities; and • provides that if any of our stockholders, non- employee directors or their affiliates acquire knowledge of a potential business opportunity, transaction or other matter (other than one expressly offered to any non- employee director in writing solely in his or her capacity as our director), such stockholder, non- employee director or affiliate will have no duty to communicate or offer that opportunity to us, and will be permitted to pursue or acquire such opportunity or offer that opportunity to another person and will not be deemed to have (i) acted in a manner inconsistent with his or her fiduciary or other duties to us regarding the opportunity, (ii) acted in bad faith or in a manner inconsistent with our best interests or (iii) be liable to us or our stockholders for breach of any fiduciary duty by reason of the fact that they have pursued or acquired such opportunity or offered the opportunity to another person. Our stockholders or their affiliates, or our non- employee directors, may become aware, from time to time, of certain business opportunities (such as acquisition opportunities) and may direct such opportunities to other businesses in which they have invested, in which case we may not become aware of or otherwise have the ability to pursue such opportunity. Further, such businesses may choose to compete with us for these opportunities, possibly causing these opportunities to not be available to us or causing them to be more expensive for us to pursue. As a result, our renouncing our interest and expectancy in any business opportunity that may be from time to time presented to our stockholders and their affiliates, or our non- employee directors, could adversely impact our business or prospects if attractive business opportunities are procured by such parties for their own benefit rather than for ours.